

Department of Legislative Services
Maryland General Assembly
2005 Session

FISCAL AND POLICY NOTE

Senate Bill 157 (Chairman, Judicial Proceedings Committee)
(By Request – Departmental – Human Resources)

Judicial Proceedings

Juvenile Causes - Appeal of Permanency Plans

This departmental bill prohibits an appeal of a juvenile court order in a civil case that establishes or continues a child's permanency plan if the plan is: (1) placement with a relative for adoption or custody and guardianship; (2) adoption by a nonrelative; or (3) guardianship by a nonrelative.

Fiscal Summary

State Effect: Because it is assumed that this bill would apply in a limited number of cases, State finances should not be affected.

Local Effect: Because it is assumed that this bill would apply in a limited number of cases, local finances should not be affected.

Small Business Effect: The Department of Human Resources (DHR) has determined that this bill has minimal or no impact on small business (attached). Legislative Services concurs with this assessment.

Analysis

Current Law/Background: Current law requires a juvenile court, not later than 11 months after a child found to be in need of assistance has been placed in foster care, to hold a permanency planning hearing to determine the permanency plan for that child. At that hearing, the court is required to make certain decisions and findings, specifically, whether the child should be returned to the parent or guardian; placed with relatives to

whom adoption or guardianship is granted; placed for adoption; emancipated; or because of the child's special needs or circumstances, continued in placement on a permanent or long-term basis or for a specified period.

This bill overturns in part *In re Damon M.*, 362 Md. 429, 765 A.2d 624 (2001), in which the Court of Appeals held that an order amending a permanency plan calling for reunification to foster care or adoption is immediately appealable.

According to DHR, in cases in which the permanency plan is changed to adoption or custody and guardianship by a relative, adoption by a nonrelative, or guardianship by a nonrelative, a further court order must be entered to effectuate the plan. Parties to the juvenile court proceeding have a right to appeal from orders granting guardianship to an individual or terminating parental rights. As a result, the holding of *Damon M.* effectively allows the parent in those cases to appeal twice from the juvenile court's determination.

DHR advises that the right of a party to appeal from an order changing the child's permanency plan to adoption by a relative or a nonrelative has led some juvenile courts to stay proceedings in termination of parental rights (TPR) cases pending the outcome of the permanency plan appeal. Staying these proceedings is counter to the statute that requires the juvenile court to conduct the TPR hearing in lieu of the next six-month review of the plan. Eliminating appeals from permanency plans in those cases would eliminate the concern of juvenile courts that they lack jurisdiction to hear the TPR proceeding when a permanency plan appeal is pending, DHR states.

Court appeals routinely require eight months to one year to resolve, delaying the achievement of permanency for a child in cases in which a parent appeals from the plan to change to adoption and thereafter appeals again from the TPR, even in cases in which the TPR proceeding is not stayed.

This bill would not prevent an appeal from a permanency plan order for long-term or permanent foster care because no other avenue of review of those orders is available. Likewise, this bill would not prevent an appeal from an order reducing the services to be offered to the parent or reducing the parent's visitation with the child, even if those orders accompany a change in the child's permanency plan. Changes of those sorts are changes in the terms of the juvenile court's previous order of custody to the department of social services and would continue to be immediately appealed.

Approximately half of all child in need of assistance (CINA) cases appealed are appeals from the change of the child's permanency plan to adoption, according to DHR. Since permanency plan reviews are mandated every six months by federal law, they must

continue pending the appeal from the original change in the plan. As a result, as many as three appeals of a child's permanency plan have been pending at one time in the same CINA case.

During the last court term, there were 42 CINA appeals in the Court of Special Appeals. However, the Administrative Office of the Courts (AOC) cannot say how many of those appeals concerned a child's permanency plan. AOC states that this bill would minimally reduce the appellate courts' workload.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Department of Human Resources, Judiciary (Administrative Office of the Courts), Department of Legislative Services

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mam/ljm

Analysis by: Lisa A. Daigle

Direct Inquiries to:
(410) 946-5510
(301) 970-5510