
By: **Chairman, Judicial Proceedings Committee (By Request - Maryland
Judicial Conference)**

Introduced and read first time: February 3, 2006

Assigned to: Judicial Proceedings

A BILL ENTITLED

1 AN ACT concerning

2 **Permanency for Families and Children Act of 2005 - Revision**

3 FOR the purpose of altering provisions of the Permanency for Families and Children
4 Act of 2005, to reinstate a right to counsel for a minor when consent to
5 guardianship or adoption is given, to clarify a certain right to counsel applies
6 only during the minority of the prospective adoptee, to provide for additional
7 specific instances in which a parent's consent for adoption or guardianship is not
8 required, to clarify and expand certain notice requirements, to provide for
9 separate orders in certain cases, to reinstate certain provisions concerning
10 access to a dental or medical record, to reinstate a certain provision as to the
11 legal effect of an adult's adoption, to specify the factors a court is required to
12 consider in ruling on a certain adoption petition, to specify that consent of a
13 party to a certain adoption is not valid except under certain circumstances, to
14 require the court to advise parents of the right to have independent counsel and
15 receive adoption counseling under certain circumstances, to require the court,
16 before ruling a nonconsensual adoption petition, to order a certain agency to
17 investigate and make a certain report, to delete a provision as to the effect of a
18 timely appeal, to make certain clarifying and conforming changes, and to correct
19 technical errors; providing for the construction of this Act; and generally
20 relating to termination of parental rights, guardianship, and adoption and the
21 Permanency for Families and Children Act of 2005.

22 BY renumbering

23 Article - Family Law

24 Section 5-352(c), 5-3A-34(a), (b), and (c), 5-3A-35(a), (b), and (c), 5-3A-36,
25 5-3B-15(a) through (d), 5-3B-19, 5-3B-20, 5-3B-21, 5-3B-22, 5-3B-23,
26 5-3B-24, and 5-3B-25, respectively,

27 to be Section 5-352(d), 5-3A-35(a), (b), and (d), 5-3A-36(a), (b), and (d),

28 5-3A-37, 5-3B-15(c) though (f), 5-3B-20, 5-3B-21, 5-3B-22, 5-3B-23,

29 5-3B-24, 5-3B-25, and 5-3B-26, respectively

30 Annotated Code of Maryland

31 (2004 Replacement Volume and 2005 Supplement)

32 BY repealing and reenacting, with amendments,

1 Article 88A - Department of Human Resources
2 Section 18
3 Annotated Code of Maryland
4 (2003 Replacement Volume and 2005 Supplement)

5 BY repealing and reenacting, with amendments,
6 Article - Family Law
7 Section 5-307(a)(1)(ii), 5-318(a)(2)(i) and (iii), 5-320(a)(1)(iii), 5-321(d),
8 5-322(b)(1), 5-324(a) and (b)(1), 5-325(a)(4), 5-327(1) and (3), 5-334(b)(2),
9 5-336(b)(2), 5-338(a)(1), 5-341(c), 5-3A-07(b)(1), 5-3A-13(b), 5-3A-16,
10 5-3A-17(b)(2), 5-3A-18, 5-3A-19(c), 5-3A-23(b)(1)(i), 5-3A-24, 5-3B-16,
11 and 5-705.1
12 Annotated Code of Maryland
13 (2004 Replacement Volume and 2005 Supplement)

14 BY adding to
15 Article - Family Law
16 Section 5-324(c), 5-360, 5-3A-34, 5-3A-43, 5-3B-19, and 5-3B-30
17 Annotated Code of Maryland
18 (2004 Replacement Volume and 2005 Supplement)

19 BY adding to
20 Article - Family Law
21 Section 5-352(c), 5-3A-35(c), 5-3A-36(c), 5-3B-15(a) and (b), and 5-3B-25(c)
22 Annotated Code of Maryland
23 (2004 Replacement Volume and 2005 Supplement)
24 (As enacted by Section 1 of this Act)

25 BY repealing and reenacting, with amendments,
26 Article - Family Law
27 Section 5-3B-20, 5-3B-21(a), and 5-3B-22(b)(3)
28 Annotated Code of Maryland
29 (2004 Replacement Volume and 2005 Supplement)
30 (As enacted by Section 1 of this Act)

31 BY repealing and reenacting, with amendments,
32 Article - Insurance
33 Section 12-201(b)(2)
34 Annotated Code of Maryland
35 (2003 Replacement Volume and 2005 Supplement)

36 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
37 MARYLAND, That Section(s) 5-352(c), 5-3A-34(a), (b), and (c), 5-3A-35(a), (b), and
38 (c), 5-3A-36, 5-3B-15(a) through (d), 5-3B-19, 5-3B-20, 5-3B-21, 5-3B-22,

1 5-3B-23, 5-3B-24, and 5-3B-25, respectively, of Article - Family Law of the
 2 Annotated Code of Maryland be renumbered to be Section(s) 5-352(d), 5-3A-35(a),
 3 (b), and (d), 5-3A-36(a), (b), and (d), 5-3A-37, 5-3B-15(c) though (f), 5-3B-20,
 4 5-3B-21, 5-3B-22, 5-3B-23, 5-3B-24, 5-3B-25, and 5-3B-26, respectively.

5 SECTION 2. AND BE IT FURTHER ENACTED, That the Laws of Maryland
 6 read as follows:

7 **Article 88A - Department of Human Resources**

8 18.

9 The Department of Human Resources shall maintain a website on which to post
 10 notices of petitions under §§ 5-316(f)(3)(ii), 5-3A-15(d)(3)(ii), and [5-3B-15(d)(3)(ii)]
 11 5-3B-15(F)(3)(II) of the Family Law Article.

12 COMMITTEE NOTE: This section is amended to reflect the renumbering of
 13 current FL § 5-3B-15(d) as proposed FL § 5-3B-15(f).

14 **Article - Family Law**

15 5-307.

16 (a) (1) Unless the public defender is required under Article 27A, § 4 of the
 17 Code to provide representation, in a case under Part II or Part III of this subtitle, a
 18 juvenile court shall appoint an attorney to represent a parent who:

19 (ii) when a petition for guardianship or adoption is filed OR
 20 CONSENT TO GUARDIANSHIP OR ADOPTION IS GIVEN, is a minor.

21 COMMITTEE NOTE: Subsection (a)(1)(ii) of this section is amended to ensure
 22 that a parent who signs a consent while a minor but becomes an adult
 23 before the petition for guardianship or adoption is filed has the right to
 24 appointed counsel to review the consent to ensure knowing and voluntary
 25 consent as required by current FL § 5-321(a)(v). The Committee did not
 26 intend to change former FL §§ 5-301(h) and 5-323(a)(1)(iii), which, by
 27 defining minor with relation to the signing of a consent rather than filing
 28 of a petition, did so require.

29 As to "minor", see Art. 1, § 24 of the Code.

30 Defined terms: "Guardianship" § 5-301

31 "Juvenile court" § 1-101

32 "Parent" § 5-301

33 5-318.

34 (a) (2) If a party becomes aware, before a juvenile court rules on a
 35 guardianship petition, that a condition of consent under § 5-320(b) of this subtitle
 36 may not be fulfilled:

- (i) the party promptly shall:
1. file notice with the juvenile court; [and]
 2. give notice to all of the other parties; AND
 3. IF CONSENT WAS RECEIVED FROM A GOVERNMENTAL UNIT OR PERSON WHO IS NOT A PARTY, GIVE NOTICE TO THAT UNIT OR PERSON;
- (iii) if the party, UNIT, OR PERSON whose condition cannot be fulfilled fails to enter into a new consent, the juvenile court shall set the case in for a prompt trial on the merits of the petition.

COMMITTEE NOTE: Subsection (a)(2)(i) and (iii) of this section is amended to accommodate instances in which a nonparty consents.

Defined terms: "Guardianship" § 5-301

"Juvenile court" § 1-101

"Party" § 5-301

"Person" § 1-101

5-320.

(a) A juvenile court may grant guardianship of a child only if:

- (1) (iii) 1. each of the child's living parents consents:
 - A. in writing;
 - B. knowingly and voluntarily, on the record before the juvenile court; or
 - C. by failure to file a timely notice of objection after being served with a show cause order in accordance with this subtitle; [or]
2. [if] an administrative, executive, or judicial body of a state or other jurisdiction has granted a governmental unit or person other than a parent the power to consent to adoption, AND the unit or person consents; or
3. PARENTAL RIGHTS HAVE BEEN TERMINATED IN COMPLIANCE WITH THE LAWS OF A STATE OR OTHER JURISDICTION, AS DESCRIBED IN § 5-305 OF THIS SUBTITLE; OR

COMMITTEE NOTE: Subsection (a)(1)(iii) of this section is amended to add a specific reference to provisions governing recognition of out-of-state orders and to make technical corrections.

Defined terms: "Child" § 5-301

"Juvenile court" § 1-101

"Parent" § 5-301

"Person" § 1-101

1 "State" § 1-101

2 5-321.

3 (d) If, at any time before a juvenile court enters an order for adoption of a
4 child, the juvenile court finds that a condition [for] OF CONSENT TO guardianship
5 will not be fulfilled, the consent or acquiescence becomes invalid.

6 COMMITTEE NOTE: Subsection (d) of this section is amended to substitute
7 "condition of consent to guardianship" for "condition for guardianship", to
8 conform to current FL § 5-327.

9 Defined terms: "Child" § 5-301

10 "Guardianship" § 5-301

11 "Juvenile court" § 1-101

12 5-322.

13 (b) (1) Within 5 days after entry of an order under this section, a juvenile
14 court shall give notice of the order to [each]:

15 (I) EACH party or, if represented, counsel;

16 (II) EACH OF THE CHILD'S LIVING PARENTS WHO HAS NOT WAIVED
17 THE RIGHT TO NOTICE;

18 (III) EACH LIVING PARENT'S LAST ATTORNEY OF RECORD IN THE
19 CINA CASE; AND

20 (IV) THE CHILD'S LAST ATTORNEY OF RECORD IN THE CINA CASE.

21 COMMITTEE NOTE: Subsection (b)(1) of this section is amended to ensure
22 notice of entry of a guardianship order is given to a parent who has
23 consented but not waived notice and, if not the same attorneys in the
24 guardianship case, the child's and parent's last attorneys of record in the
25 CINA case.

26 Defined terms: "Child" § 5-301

27 "CINA case" § 1-101

28 "Juvenile court" § 1-101

29 "Parent" § 5-301

30 "Party" § 5-301

31 5-324.

32 (a) In A SEPARATE ORDER ACCOMPANYING an order denying guardianship of
33 a child, a juvenile court shall include:

34 (1) a specific factual finding on whether reasonable efforts have been
35 made to finalize the child's permanency plan;

1 (2) any order under Title 3, Subtitle 8 of the Courts Article in the child's
2 best interests; and

3 (3) a date, no later than 180 days after the date of the order, for the next
4 review hearing under Title 3, Subtitle 8 of the Courts Article.

5 (b) (1) In A SEPARATE ORDER ACCOMPANYING an order granting
6 guardianship of a child, a juvenile court:

7 (i) shall include a directive terminating the child's CINA case;

8 (ii) consistent with the child's best interests:

9 1. may place the child:

10 A. subject to paragraph (2) of this subsection, in a specific
11 type of facility; or

12 B. with a specific individual;

13 2. may direct provision of services by a local department to:

14 A. the child; or

15 B. the child's caregiver;

16 3. subject to a local department retaining legal guardianship,
17 may award to a caregiver limited authority to make an emergency or ordinary
18 decision as to the child's care, education, mental or physical health, or welfare;

19 4. may allow access to a medical or other record of the child;

20 5. may allow visitation for the child with a specific
21 individual;

22 6. may appoint, or continue the appointment of, a
23 court-appointed special advocate for any purpose set forth under § 3-830 of the
24 Courts Article;

25 7. shall direct the provision of any other service or taking of
26 any other action as to the child's education, health, and welfare, including:

27 A. for a child who is at least 16 years old, services needed to
28 help the child's transition from guardianship to independence; or

29 B. for a child with a disability, services to obtain ongoing
30 care, if any, needed after the guardianship case ends; and

31 8. may co-commit the child to the custody of the Department
32 of Health and Mental Hygiene and order the Department of Health and Mental

1 Hygiene to provide a plan for the child of clinically appropriate services in the least
2 restrictive setting, in accordance with federal and State law;

3 (iii) if entered under § 5-322 of this subtitle, shall state each party's
4 response to the petition;

5 (iv) shall state a specific factual finding on whether reasonable
6 efforts have been made to finalize the child's permanency plan;

7 (v) shall state whether the child's parent has waived the right to
8 notice; and

9 (vi) shall set a date, no later than 180 days after the date of the
10 order, for the initial guardianship review hearing under § 5-326 of this subtitle.

11 (C) A JUVENILE COURT SHALL SEND A COPY OF AN ORDER ENTERED UNDER
12 THIS SECTION TO:

13 (1) EACH PARTY OR, IF REPRESENTED, COUNSEL;

14 (2) EACH OF THE CHILD'S LIVING PARENTS WHO HAS NOT WAIVED THE
15 RIGHT TO NOTICE;

16 (3) EACH LIVING PARENT'S LAST ATTORNEY OF RECORD IN THE CINA
17 CASE; AND

18 (4) THE CHILD'S LAST ATTORNEY OF RECORD IN THE CINA CASE.

19 COMMITTEE NOTE: Subsections (a) and (b)(1) of this section are amended to
20 provide for CINA case orders to be separate from guardianship orders, to
21 minimize the amount of confidential information disclosed in the event of
22 an appeal.

23 Subsection (c) of this section is added to specify for whom a juvenile court
24 is to be responsible for giving a copy of an order denying or granting
25 guardianship, thereby ensuring notice to a parent who has consented but
26 not waived notice and, if not the same attorneys in the guardianship case,
27 the child's and parent's last attorneys of record in the CINA case.

28 Defined terms: "Caregiver" § 5-301

29 "Child" § 5-301

30 "CINA case" § 1-101

31 "Disability" § 5-301

32 "Guardianship" § 5-301

33 "Include" § 1-101

34 "Juvenile court" § 1-101

35 "Local department" § 1-101

36 "Parent" § 5-301

37 "Party" § 5-301

1 5-325.

2 (a) An order for guardianship of an individual:

3 (4) [unless a timely appeal is filed,] terminates the individual's CINA
4 case.

5 COMMITTEE NOTE: Subsection (a)(4) of this section is amended to delete
6 "unless a timely appeal is filed," for consistency with current FL §
7 5-324(b)(1)(i) and clarification that stay of a guardianship order is
8 intended only on motion approved by the appellate court.

9 Defined terms: "CINA case" § 1-101

10 "Guardianship" § 5-301

11 5-327.

12 If, after a juvenile court grants guardianship, a party becomes aware that a
13 condition of consent to the guardianship may not be fulfilled:

14 (1) the party promptly shall:

15 (i) file notice with the juvenile court; [and]

16 (ii) give notice to all of the other parties; AND

17 (III) IF CONSENT WAS RECEIVED FROM A GOVERNMENTAL UNIT OR
18 PERSON WHO IS NOT A PARTY, GIVE NOTICE TO THAT UNIT OR PERSON;

19 (3) if the party, UNIT, OR PERSON whose condition cannot be fulfilled
20 fails to enter into a new consent, the juvenile court shall:

21 (i) set aside the guardianship order;

22 (ii) set the case in for a prompt trial on the merits of the
23 guardianship petition; and

24 (iii) reopen the CINA case for review as required under Title 3,
25 Subtitle 8 of the Courts Article.

26 COMMITTEE NOTE: Items (1) and (3) of this section are amended to
27 accommodate instances in which a nonparty consents.

28 Defined terms: "CINA case" § 1-101

29 "Guardianship" § 5-301

30 "Juvenile court" § 1-101

31 "Party" § 5-301

32 "Person" § 1-101

1 5-334.

2 (b) On issuance of a show cause order as to adoption of a child under this
3 section, a petitioner shall serve the order on:

4 (2) [the] EACH LIVING PARENT'S last attorney of record in the CINA
5 case [for each living parent who has not consented to the adoption]; and

6 COMMITTEE NOTE: Subsection (b)(2) of this section is amended to make the
7 due process provisions in Part II and Part III parallel, by conforming this
8 provision to current FL § 5-316(b)(2).

9 Defined terms: "Child" § 5-301

10 "CINA case" § 1-101

11 "Parent" § 5-301

12 5-336.

13 (b) A juvenile court may not enter an order for adoption of a child under this
14 Part III of this subtitle before the later of:

15 (2) expiration of the time SET for revocation of consent, and not waived,
16 under § 5-339 of this subtitle; or

17 COMMITTEE NOTE: Subsection (b)(2) of this section is amended to add the
18 word "set", to correspond with current FL § 5-319(b)(2).

19 Defined terms: "Child" § 5-301

20 "Juvenile court" § 1-101

21 5-338.

22 (a) A juvenile court may enter an order for a child's adoption under this Part
23 III of this subtitle only if:

24 (1) (I) BOTH THE CHILD'S PARENTS ARE DEAD;

25 (II) AN ADMINISTRATIVE, EXECUTIVE, OR JUDICIAL BODY OF A
26 STATE OR OTHER JURISDICTION HAS GRANTED A GOVERNMENTAL UNIT OR PERSON
27 OTHER THAN A PARENT THE POWER TO CONSENT TO ADOPTION, AND THE UNIT OR
28 PERSON CONSENTS;

29 (III) PARENTAL RIGHTS HAVE BEEN TERMINATED IN COMPLIANCE
30 WITH THE LAWS OF A STATE OR OTHER JURISDICTION, AS DESCRIBED IN § 5-305 OF
31 THIS SUBTITLE; OR

32 [(i)] (IV) 1. at least one of the child's parents:

33 [1.] A. is represented by an attorney;

- 1 [2.] B. has had an opportunity to receive adoption
 2 counseling and guidance services; and
- 3 [3.] C. consents to the adoption:
- 4 [A.] I. in writing; or
- 5 [B.] II. knowingly and voluntarily, on the record before the
 6 juvenile court; and
- 7 [(ii)] 2. [a] THE parent who does not consent:
- 8 [1.] A. is dead; or
- 9 [2. A.] B. I. despite reasonable efforts as provided in § 5-316
 10 of this subtitle, cannot be located;
- 11 [B.] II. has not contacted the local department with custody
 12 of the child or the child for at least 180 days immediately before the filing of the
 13 petition; and
- 14 [C.] III. fails to respond to a show cause order served under §
 15 5-334 of this subtitle;

16 COMMITTEE NOTE: Subsection (a)(1) of this section is renumbered as
 17 subsection (a)(1)(iv), to allow the addition of new subsection (a)(1)(i)
 18 through (iii) to cover additional instances in which a parent's consent is not
 19 required.

20 Defined terms: "Child" § 5-301

21 "Juvenile court" § 1-101

22 "Local department" § 1-101

23 "Parent" § 5-301

24 "Person" § 1-101

25 "State" § 1-101

26 5-341.

27 (c) ADOPTION OF AN ADULT HAS THE SAME LEGAL EFFECT AS ADOPTION OF
 28 A MINOR.

29 (D) (1) When a juvenile court enters an order for a child's adoption under
 30 this Part III of this subtitle, the juvenile court shall send notice to:

31 (i) each juvenile court that has a pending CINA case as to the
 32 adoptee;

33 (ii) each of the child's living, former parents who has not waived the
 34 right to notice [and that];

1 (III) EACH LIVING parent's last attorney of record in the CINA case;
2 and

3 [(iii)] (IV) the child's last attorney of record in the CINA case.

4 (2) Service on a parent under this subsection shall be at the parent's last
5 address known to the juvenile court.

6 COMMITTEE NOTE: Subsection (c) of this section is renumbered as subsection
7 (d), to allow addition of new subsection (c), which is derived without
8 substantive change from former FL § 5-308(c).

9 Renumbered subsection (d) of this section is amended to provide for notice
10 to a parent's CINA attorney, rather than a former parent's, to make the due
11 process provisions in Part II and Part III parallel. The Committee intended
12 for a CINA attorney to receive notice of adoption, as this notice also will
13 alert the last attorney of record that the CINA case is completed as a result
14 of the adoption.

15 As to "adult" and "minor", see Art. 1, § 24 of the Code.

16 Defined terms: "Child" § 5-301

17 "CINA case" § 1-101

18 "Juvenile court" § 1-101

19 "Parent" § 5-301

20 5-352.

21 (C) ADOPTION OF AN ADULT HAS THE SAME LEGAL EFFECT AS ADOPTION OF
22 A MINOR.

23 COMMITTEE NOTE: Subsection (c) of this section is renumbered as subsection
24 (d), to allow addition of new subsection (c), which is derived without
25 substantive change from former FL § 5-308(c).

26 As to "adult" and "minor", see Art. 1, § 24 of the Code.

27 5-360. ACCESS FOR ADOPTIVE PARENT.

28 (A) ALLOWED.

29 SUBJECT TO SUBSECTION (B) OF THIS SECTION, ACCESS TO A DENTAL OR
30 MEDICAL RECORD OF AN ADOPTED MINOR MAY NOT BE DENIED TO A PARENT OF THE
31 MINOR BECAUSE THE PARENT IS AN ADOPTIVE PARENT.

32 (B) LIMIT ON IDENTIFYING INFORMATION.

33 ACCESS TO A DENTAL OR MEDICAL RECORD UNDER THIS SECTION MAY NOT
34 INCLUDE ACCESS TO ANY PART OF THE RECORD THAT HAS IDENTIFYING
35 INFORMATION AS TO A FORMER PARENT OF THE MINOR.

1 COMMITTEE NOTE: This section is derived from former FL § 5-329.1.

2 In subsection (b) of this section, the word "natural", which formerly
3 modified the reference to the former parent, is deleted to reflect that the
4 parental rights of a nonbiological i.e., adoptive parent can be terminated in
5 the same manner as a biological parent's can.

6 As to "minor", see Art. 1, § 24 of the Code.

7 Defined terms: "Identifying information" § 5-301

8 "Include" § 1-101

9 "Parent" § 5-301

10 5-3A-07.

11 (b) (1) In [a case] AN ADOPTION PROCEEDING under this subtitle, a court
12 shall appoint an attorney to represent a [child] PROSPECTIVE ADOPTEE WHO:

13 (i) [who] IS AT LEAST 10 YEARS OLD; AND

14 (II) 1. IS A MINOR; OR

15 2. has a disability that makes the [child] PROSPECTIVE
16 ADOPTEE incapable of effectively participating in the [case; or

17 (ii) if the child must decide whether to consent to the adoption, who
18 is at least 10 years old] PROCEEDING.

19 COMMITTEE NOTE: Subsection (b)(1) of this section is amended to clarify that,
20 absent a disability, counsel is appointed for those over 10 years of age only
21 during their minority.

22 As to "minor", see Art. 1, § 24 of the Code.

23 Defined term: "Disability" § 5-101

24 5-3A-13.

25 (b) A court may grant guardianship under this subtitle only for a [child]
26 MINOR.

27 COMMITTEE NOTE: Subsection (b) of this section is amended to substitute
28 "minor" for "child", to reinstate the former limitation on guardianship of
29 those under 18 years of age. As to "minor", see Art. 1, § 24 of the Code.

30 Defined term: "Guardianship" § 5-3A-01

1 5-3A-16.

2 [In addition to any investigation required under § 5-3A-21 of this subtitle,
3 before] BEFORE ruling on a guardianship petition, a court may order any
4 investigation that the court considers necessary.

5 COMMITTEE NOTE: This section is amended to delete an extraneous
6 cross-reference.

7 Defined term: "Guardianship" § 5-3A-01

8 5-3A-17.

9 (b) A court may not enter a final order for guardianship under this subtitle
10 until the later of expiration of the time for:

11 (2) the filing of a [notice of objection] RESPONSE TO AN ORDER TO SHOW
12 CAUSE.

13 COMMITTEE NOTE: Subsection (b)(2) of this section is amended to clarify that
14 the form of notice of objection to a show cause order is a response.

15 Defined term: "Guardianship" § 5-3A-01

16 5-3A-18.

17 (a) A court may grant a guardianship of a child only if:

18 (1) each of the child's living parents consents:

19 (i) in writing; or

20 (ii) by failure to timely file notice of objection after being served
21 with a show cause order in accordance with this subtitle;

22 (2) an administrative, executive, or judicial body of a state or other
23 jurisdiction has granted a GOVERNMENTAL UNIT OR person other than a parent the
24 power to consent to [adoption] ADOPTION, and the GOVERNMENTAL UNIT OR person
25 consents; or

26 (3) [in accordance with § 5-3A-21 of this subtitle, the court orders
27 guardianship without consent otherwise required under this section] PARENTAL
28 RIGHTS HAVE BEEN TERMINATED IN COMPLIANCE WITH THE LAWS OF A STATE OR
29 OTHER JURISDICTION, AS DESCRIBED IN § 5-3A-05 OF THIS SUBTITLE.

30 (b) A GOVERNMENTAL UNIT OR person:

31 (1) may condition consent or acquiescence on adoption into a specific
32 family that a child placement agency has approved for the placement; but

1 (2) may not condition consent or acquiescence on any factor other than
2 placement into a specific family.

3 COMMITTEE NOTE: This section is amended to accommodate instances in
4 which consent is given by a governmental unit or person other than a
5 parent and to clarify the instances in which consent is not required due to
6 prior termination of parental rights.

7 Defined terms: "Guardianship" § 5-3A-01

8 "Parent" § 5-3A-01

9 5-3A-19.

10 (c) If a petitioner becomes aware, before a court rules on a petition, that a
11 condition of consent under § 5-3A-18(b) of this subtitle cannot be fulfilled, the
12 petitioner promptly shall:

13 (1) file notice with the court;

14 (2) give notice to all of the other parties; [and]

15 (3) IF CONSENT WAS RECEIVED FROM A GOVERNMENTAL UNIT OR
16 PERSON WHO IS NOT A PARTY, GIVE NOTICE TO THAT UNIT OR PERSON; AND

17 [(3)] (4) (i) if the UNIT OR person enters into a new consent, file the consent
18 with the court; or

19 (ii) if the UNIT OR person fails to enter into a new consent, dismiss
20 the petition.

21 COMMITTEE NOTE: Subsection (c) of this section is amended to accommodate
22 instances in which a nonparty gives consent.

23 Defined term: "Person" § 1-101

24 5-3A-23.

25 (b) (1) Whenever a child placement agency files a report under this section,
26 the child placement agency shall mail notice of the child's status:

27 (i) to each of the child's living parents who has not waived the right
28 to notice AND, IF REPRESENTED, COUNSEL; and

29 COMMITTEE NOTE: Subsection (b)(1)(i) of this section is amended to add a
30 requirement for notice to counsel, as well as the parent.

31 Defined terms: "Child placement agency" § 5-101

32 "Parent" § 5-3A-01

1 5-3A-24.

2 If a petitioner becomes aware, after a court rules on a petition, that a condition
3 of consent under § 5-3A-18(b) of this subtitle cannot be fulfilled, the petitioner
4 promptly shall:

5 (1) file notice with the court;

6 (2) give notice to all of the other parties; [and]

7 (3) IF CONSENT WAS RECEIVED FROM A GOVERNMENTAL UNIT OR
8 PERSON WHO IS NOT A PARTY, GIVE NOTICE TO THAT UNIT OR PERSON; AND

9 [(3)] (4) (i) if the unit or person enters into a new consent, file the
10 consent with the court;

11 (ii) if the unit or person fails to enter into a new consent, ask the
12 court to set aside the guardianship order; or

13 (iii) if the unit or person cannot be located after exhaustion of the
14 service requirements under § 5-3A-15 of this subtitle, ask the court to determine
15 whether it is in the child's best interests to continue the guardianship despite the
16 inability to fulfill the condition.

17 COMMITTEE NOTE: This section is amended to add new item (3), to
18 accommodate instances in which a nonparty gives consent.

19 Defined term: "Person" § 1-101

20 5-3A-34. CONSIDERATIONS.

21 (A) IN GENERAL.

22 IN RULING ON A PETITION FOR A CHILD'S ADOPTION UNDER THIS PART III OF
23 THIS SUBTITLE, A COURT SHALL CONSIDER:

24 (1) ALL FACTORS NECESSARY TO DETERMINE THE CHILD'S BEST
25 INTERESTS; AND

26 (2) THE REPORT REQUIRED UNDER § 5-3A-31 OF THIS SUBTITLE.

27 (B) MARRIAGE.

28 IN RULING ON AN ADOPTION PETITION UNDER THIS PART III OF THIS SUBTITLE,
29 A COURT MAY NOT DENY THE PETITION SOLELY BECAUSE THE PETITIONER IS
30 SINGLE OR UNMARRIED.

31 COMMITTEE NOTE: Subsection (a) of this section is new and added to state
32 expressly that a court may consider relevant factors not limited solely to
33 religious background covered under former FL § 5-316(2).

1 Subsection (b) of this section is derived without substantive change from
2 former FL § 5-309(b).

3 Subsection (b) of this section, the reference to being "unmarried" is
4 substituted for the former reference to "not hav[ing] a spouse".

5 Defined term: "Child" § 5-3A-01

6 5-3A-35.

7 (C) CONSENT OF A PARTY TO AN ADOPTION UNDER THIS PART III OF THIS
8 SUBTITLE IS NOT VALID UNLESS:

9 (1) THE CONSENT IS GIVEN IN A LANGUAGE THAT THE PARTY
10 UNDERSTANDS;

11 (2) IF GIVEN IN A LANGUAGE OTHER THAN ENGLISH, THE CONSENT:

12 (I) IS GIVEN BEFORE A JUDGE ON THE RECORD; OR

13 (II) IS ACCOMPANIED BY THE AFFIDAVIT OF A TRANSLATOR
14 STATING THAT THE TRANSLATION OF THE DOCUMENT OF CONSENT IS ACCURATE;

15 (3) THE CONSENT NAMES THE CHILD;

16 (4) THE CONSENT CONTAINS ENOUGH INFORMATION TO IDENTIFY THE
17 PROSPECTIVE ADOPTIVE PARENT; AND

18 (5) THE PARTY HAS RECEIVED WRITTEN NOTICE OR ON-THE-RECORD
19 NOTICE OF:

20 (I) THE REVOCATION PROVISIONS IN THIS SECTION;

21 (II) THE SEARCH RIGHTS OF ADOPTEES AND PARENTS UNDER §
22 5-3A-42 OF THIS SUBTITLE AND THE SEARCH RIGHTS OF ADOPTEES, PARENTS, AND
23 SIBLINGS UNDER SUBTITLE 4B OF THIS TITLE; AND

24 (III) THE RIGHT TO FILE A DISCLOSURE VETO UNDER § 5-3A-42 OF
25 THIS SUBTITLE.

26 COMMITTEE NOTE: FL § 5-3A-34(a), (b), and (c) is renumbered as FL §
27 5-3A-35(a), (b), and (d), to reflect addition of proposed FL § 5-3A-34 and
28 of new subsection (c) of this section. The addition of subsection (c)
29 reinstates former FL § 5-314(a), as it related to consent to adoption under
30 Part III, and ensures that consent is given knowingly, by ensuring that the
31 individual consenting understands the consent being given. As to
32 interpreters in connection with on-the-record consent, see Md. Rule
33 16-819.

34 Defined term: "Child" § 5-3A-01

1 5-3A-36.

2 (C) ADOPTION OF AN ADULT HAS THE SAME LEGAL EFFECT AS ADOPTION OF
3 A MINOR.

4 COMMITTEE NOTE: FL § 5-3A-34(a), (b), and (c) is renumbered as FL §
5 5-3A-35(a), (b), and (d), to reflect addition of proposed FL § 5-3A-34 and
6 of new subsection (c) of this section, which is derived without substantive
7 change from former FL § 5-308(c).

8 As to "adult" and "minor", see Art. 1, § 24 of the Code.

9 5-3A-43. ACCESS FOR ADOPTIVE PARENT.

10 (A) ALLOWED.

11 SUBJECT TO SUBSECTION (B) OF THIS SECTION, ACCESS TO A DENTAL OR
12 MEDICAL RECORD OF AN ADOPTED MINOR MAY NOT BE DENIED TO A PARENT OF THE
13 MINOR BECAUSE THE PARENT IS AN ADOPTIVE PARENT.

14 (B) LIMIT ON IDENTIFYING INFORMATION.

15 ACCESS TO A DENTAL OR MEDICAL RECORD UNDER THIS SECTION MAY NOT
16 INCLUDE ACCESS TO ANY PART OF THE RECORD THAT HAS IDENTIFYING
17 INFORMATION AS TO A FORMER PARENT OF THE MINOR.

18 COMMITTEE NOTE: This section is derived from former FL § 5-329.1.

19 In subsection (b) of this section, the word "natural", which formerly
20 modified the reference to the former parent, is deleted to reflect that the
21 parental rights of a nonbiological i.e., adoptive parent can be terminated in
22 the same manner as a biological parent's can.

23 As to "minor", see Art. 1, § 24 of the Code.

24 Defined terms: "Identifying information" § 5-3A-01

25 "Include" § 1-101

26 "Parent" § 5-3A-01

27 5-3B-15.

28 (A) SCOPE OF SECTION.

29 THIS SECTION DOES NOT APPLY TO AN ADOPTION BY A SPOUSE OF THE
30 PROSPECTIVE ADOPTEE'S PARENT OR A RELATIVE OF THE PROSPECTIVE ADOPTEE.

31 (B) ISSUANCE OF ORDER.

32 A COURT SHALL ISSUE A SHOW CAUSE ORDER THAT INCLUDES ADVICE AS TO
33 THE PARENT'S RIGHTS TO:

- 1 (1) HAVE INDEPENDENT COUNSEL; AND
- 2 (2) RECEIVE ADOPTION COUNSELING AND GUIDANCE.

3 COMMITTEE NOTE: Subsections (a) through (d) of this section are renumbered
 4 as subsections (c) through (f), to allow addition of new subsections (a) and
 5 (b). As to corresponding provisions in consent documents, see revised §
 6 5-3B-21(a)(5).

7 Defined terms: "Include" § 1-101

8 "Parent" § 5-3B-01

9 "Prospective adoptee" § 5-3B-01

10 5-3B-16.

11 (A) Before ruling on [an] A CONSENSUAL adoption petition UNDER §
 12 5-3B-20(1) OF THIS SUBTITLE, a court may order any investigation that the court
 13 considers necessary.

14 (B) BEFORE RULING ON A NONCONSENSUAL ADOPTION PETITION UNDER §§
 15 5-3B-20(2) AND 5-3B-22 OF THIS SUBTITLE, A COURT SHALL ORDER AN APPROPRIATE
 16 AGENCY TO INVESTIGATE AND SUBMIT A REPORT THAT INCLUDES SUMMARIES OF:

17 (1) THE PROSPECTIVE ADOPTEE'S EMOTIONAL TIES WITH AND
 18 FEELINGS TOWARD THE PROSPECTIVE ADOPTEE'S PARENTS, THE PROSPECTIVE
 19 ADOPTEE'S SIBLINGS, AND OTHERS WHO MAY AFFECT THE PROSPECTIVE ADOPTEE'S
 20 BEST INTERESTS SIGNIFICANTLY; AND

21 (2) THE PROSPECTIVE ADOPTEE'S ADJUSTMENT TO:

22 (I) COMMUNITY;

23 (II) HOME; AND

24 (III) SCHOOL.

25 COMMITTEE NOTE: This section is amended to renumber the provisions as
 26 subsection (a), to amend the provisions to limit their application to
 27 consensual adoptions, and to add a new subsection (b), which is derived
 28 from former FL § 5-312(c)(2)(ii)1 and 2.

29 The word "order" is substituted for the former word "request", as more
 30 consistent with the duty to consider the report. See proposed FL §
 31 5-3B-22.

32 Defined terms: "Include" § 1-101

33 "Parent" § 5-3B-01

34 "Prospective adoptee" § 5-3B-01

1 5-3B-19. CONSIDERATIONS.

2 (A) IN GENERAL.

3 IN RULING ON A PETITION FOR A PROSPECTIVE ADOPTEE'S ADOPTION UNDER
4 THIS SUBTITLE, A COURT SHALL CONSIDER:

5 (1) ALL FACTORS NECESSARY TO DETERMINE THE PROSPECTIVE
6 ADOPTEE'S BEST INTERESTS; AND

7 (2) ANY REPORT PREPARED FOR THE COURT.

8 (B) MARRIAGE.

9 IN RULING ON AN ADOPTION PETITION UNDER THIS SUBTITLE, A COURT MAY
10 NOT DENY THE PETITION SOLELY BECAUSE THE PETITIONER IS SINGLE OR
11 UNMARRIED.

12 COMMITTEE NOTE: Subsection (a) of this section is new and added to state
13 expressly that a court may consider relevant factors not limited solely to
14 religious background covered under former FL § 5-316(2) and to require
15 consideration of a report. See, e.g., revised § 5-3B-16.

16 Subsection (b) of this section is derived without substantive change from
17 former FL § 5-309(b).

18 In subsection (b) of this section, the reference to being "unmarried" is
19 substituted for the former reference to "not hav[ing] a spouse".

20 Defined term: "Prospective adoptee" § 5-3B-01

21 5-3B-20.

22 A court may enter an order for adoption only if:

23 (1) (i) 1. each of the prospective adoptee's living parents consents:

24 [1.] A. in writing; or

25 [2.] B. by failure to timely file notice of objection after being
26 served with a show cause order in accordance with this subtitle; [and]

27 2. AN ADMINISTRATIVE, EXECUTIVE, OR JUDICIAL BODY OF
28 A STATE OR OTHER JURISDICTION HAS GRANTED A GOVERNMENTAL UNIT OR
29 PERSON OTHER THAN A PARENT THE POWER TO CONSENT TO ADOPTION, AND THE
30 UNIT OR PERSON CONSENTS; OR

31 3. PARENTAL RIGHTS HAVE BEEN TERMINATED IN
32 COMPLIANCE WITH THE LAWS OF A STATE OR OTHER JURISDICTION, AS DESCRIBED
33 IN § 5-3B-04 OF THIS SUBTITLE; AND

1 (ii) if the prospective adoptee is at least 10 years old, the
2 prospective adoptee consents; or

3 (2) in accordance with [§ 5-3B-21] § 5-3B-22 of this subtitle, the court
4 orders adoption without consent otherwise required under this section.

5 COMMITTEE NOTE: This section is renumbered to reflect the addition of
6 proposed § 5-3B-19 and the renumbered provisions are amended to add a
7 specific reference to provisions governing out-of-state orders and to
8 update a cross-reference.

9 Defined terms: "Parent" § 5-3B-01

10 "Person" § 1-101

11 "Prospective adoptee" § 5-3B-01

12 "State" § 1-101

13 5-3B-21.

14 (a) (1) CONSENT OF A PARENT MAY INCLUDE A WAIVER OF RIGHTS TO
15 NOTICE OF:

16 (I) THE FILING OF A PETITION UNDER THIS SUBTITLE; AND

17 (II) FURTHER PROCEEDINGS UNDER THIS SUBTITLE.

18 (2) Consent to adoption under this subtitle is not valid unless the
19 consent:

20 [(1)] (I) is given after the prospective adoptee is born;

21 [(2)] (II) is given in a language that the party understands;

22 [(3)] (III) if given in a language other than English:

23 [(i)] 1. is given before a judge on the record; or

24 [(ii)] 2. is accompanied by the affidavit of a translator stating that
25 the translation of the document of consent is accurate;

26 [(4)] (IV) contains an express notice of:

27 [(i)] 1. the right to revoke consent, at any time within 30 days
28 after the consent is signed;

29 [(ii)] 2. the search rights of adoptees and parents under § 5-3B-29
30 of this subtitle and the search rights of adoptees, siblings, and parents under Subtitle
31 4B of this title; and

32 [(iii)] 3. the right to file a disclosure veto under § 5-3B-29 of this
33 subtitle;

1 [(5)] (V) except as to an adoption by a spouse of the prospective adoptee's
 2 parent or a relative of the prospective adoptee, states that the parent has been
 3 advised of the parent's rights to:

4 [(i)] 1. have independent counsel; and

5 [(ii)] 2. receive adoption counseling and guidance;

6 [(6)] (VI) states whether the parent chose to have or not have counsel or
 7 counseling; and

8 [(7)] (VII) is accompanied by an affidavit of counsel appointed under §
 9 5-3B-06 of this subtitle stating that a parent who is a minor or has a disability gives
 10 consent knowingly and voluntarily.

11 COMMITTEE NOTE: FL § 5-3B-20(a) is renumbered as FL § 5-3B-21(a) to
 12 reflect the addition of proposed FL § 5-3B-19 and of new subsection (a)(1),
 13 to parallel waiver provisions in current FL §§ 5-321(a)(1), 5-339(a)(1)(ii),
 14 and 5-3A-19(a)(1).

15 Defined terms: "Include" § 1-101

16 "Parent" § 5-3B-01

17 5-3B-22.

18 (b) (3) In [ruling] DETERMINING WHETHER IT IS IN THE BEST INTERESTS
 19 OF A PROSPECTIVE ADOPTEE TO TERMINATE A PARENT'S RIGHTS under this
 20 subsection, a court shall [give]:

21 (I) GIVE primary consideration to the health and safety of the
 22 prospective adoptee [in determining the prospective adoptee's best interests]; AND

23 (II) CONSIDER THE REPORT REQUIRED UNDER § 5-3B-16 OF THIS
 24 SUBTITLE.

25 COMMITTEE NOTE: Subsection (b)(3) of this section is amended to add the
 26 requirement for consideration of a report.

27 Defined terms: "Parent" § 5-3B-01

28 "Prospective adoptee" § 5-3B-01

29 5-3B-25.

30 (C) ADOPTION OF AN ADULT HAS THE SAME LEGAL EFFECT AS ADOPTION OF
 31 A MINOR.

32 COMMITTEE NOTE: Subsection (b) of this section is derived without
 33 substantive change from former FL § 5-308(c).

34 As to "adult" and "minor", see Art. 1, § 24 of the Code.

1 5-3B-30. ACCESS FOR ADOPTIVE PARENT.

2 (A) ALLOWED.

3 SUBJECT TO SUBSECTION (B) OF THIS SECTION, ACCESS TO A DENTAL OR
4 MEDICAL RECORD OF AN ADOPTED MINOR MAY NOT BE DENIED TO A PARENT OF THE
5 MINOR BECAUSE THE PARENT IS AN ADOPTIVE PARENT.

6 (B) LIMIT ON IDENTIFYING INFORMATION.

7 ACCESS TO A DENTAL OR MEDICAL RECORD UNDER THIS SECTION MAY NOT
8 INCLUDE ACCESS TO ANY PART OF THE RECORD THAT HAS IDENTIFYING
9 INFORMATION AS TO A FORMER PARENT OF THE MINOR.

10 COMMITTEE NOTE: This section is derived from former FL § 5-329.1.

11 In subsection (b) of this section, the word "natural", which formerly
12 modified the reference to the former parent, is deleted to reflect that the
13 parental rights of a nonbiological i.e., adoptive parent can be terminated in
14 the same manner as a biological parent's can.

15 As to "minor", see Art. 1, § 24 of the Code.

16 Defined terms: "Identifying information" § 5-3B-01

17 "Include" § 1-101

18 "Parent" § 5-3B-01

19 5-705.1.

20 (A) IN THIS SECTION, "LOCAL DEPARTMENT" MEANS A DEPARTMENT OF
21 SOCIAL SERVICES FOR A COUNTY IN THIS STATE.

22 (b) The following provisions of this subtitle shall apply to the reporting of
23 suspected abuse or neglect under this section:

24 (1) except as provided in subsection (a) of this section, the definitions set
25 forth in § 5-701 of this subtitle;

26 (2) the provisions relating to the confidentiality of reports specified in §
27 5-707(a)(1) and (2) of this subtitle; and

28 (3) the provisions relating to immunity from civil liability or criminal
29 penalty specified in § 5-708 of this subtitle.

30 (c) (1) If suspected abuse or neglect is alleged to have occurred outside of
31 this State and the victim is currently a child who lives outside of this State, a person
32 who would be required to report suspected abuse or neglect under the provisions of §
33 5-704 or § 5-705 of this subtitle shall report the suspected abuse or neglect to any
34 local department in accordance with paragraph (2) of this subsection.

35 (2) A person described in § 5-704 of this subtitle shall make:

1 (i) an oral report, by telephone or direct communication, as soon as
2 possible; and

3 (ii) a written report not later than 48 hours after the contact,
4 examination, attention, or treatment that caused the person to believe that the child
5 had been subjected to abuse or neglect.

6 (3) A person described in § 5-705 of this subtitle shall make an oral or a
7 written report.

8 (4) To the extent possible, a report under this subsection shall include
9 the information specified in § 5-704(c) of this subtitle.

10 (d) Promptly after receiving a report of suspected abuse or neglect under this
11 section, the local department shall forward the report to the appropriate agency
12 outside of this State that is authorized to receive and investigate reports of suspected
13 abuse or neglect.

14 **Article - Insurance**

15 12-201.

16 (b) (2) (i) For individuals related closely by blood or law, a substantial
17 interest engendered by love and affection is an insurable interest.

18 (ii) For the prospective parent of a prospective adoptive child, an
19 insurable interest exists in the life of the child as of the date of the earlier of:

20 1. a placement for adoption, as defined in § 5-301 of the
21 Family Law Article, provided that:

22 A. any consents required under [§ 5-311] TITLE 5, SUBTITLE
23 3 OR SUBTITLES 3A of the Family Law Article have been given; or

24 B. a decree awarding guardianship has been granted under
25 [§ 5-317] TITLE 5, SUBTITLE 3 OR SUBTITLE 3A of the Family Law Article; or

26 2. an interlocutory or final decree of adoption.

27 SECTION 3. AND BE IT FURTHER ENACTED, That this Act may not be
28 construed to negate or otherwise affect any consent to adoption or guardianship
29 entered into between January 1, 2006, and the effective date of this Act.

30 SECTION 4. AND BE IT FURTHER ENACTED, That this Act shall take effect
31 June 1, 2006.