

Department of Legislative Services
Maryland General Assembly
2006 Session

FISCAL AND POLICY NOTE

Senate Bill 795 (Chairman, Judicial Proceedings Committee)
(By Request – Maryland Judicial Conference)

Judicial Proceedings

Judiciary

Permanency for Families and Children Act of 2005 - Revisions

This bill makes corrections and revisions to the Permanency for Families and Children Act of 2005, which substantively revised provisions for termination of parental rights (TPR) proceedings, guardianship, and adoption.

The bill is effective June 1, 2006.

Fiscal Summary

State Effect: The bill's requirements could be met with existing resources.

Local Effect: The bill's requirements could be met with existing resources.

Small Business Effect: None.

Analysis

Bill Summary: The bill sets forth numerous clarifying, technical, and conforming provisions. Also, the bill specifies that unless the public defender is required to provide legal representation, a juvenile court must appoint an attorney to represent a parent who is a minor and signs consent to guardianship or adoption, but becomes an adult before the petition for guardianship or adoption is filed. The bill also clarifies that a governmental unit or a person who is not a party to a guardianship or adoption proceeding may give consent to guardianship or adoption. Accordingly, notice must be provided to this governmental unit or person, when notice is provided to parties, their counsel, or to the court of specified proceedings. References to provisions governing recognition of out-of-

state orders that terminate parental rights have been added. The bill clarifies that notice must be provided to parents who have consented to guardianship or adoption, but not waived notice, and to the last attorney of record for the Child in Need of Assistance case (CINA) in case that attorney is different from an attorney for the guardianship case. CINA case orders must be separate from the order granting or denying guardianship of a child.

In a case of adoption without prior TPR, the bill's provisions clarify that a juvenile court may enter an order for adoption only if both the child's parents are dead, an administrative, executive or judicial body or another jurisdiction has granted a governmental unit or a person who is not a party the authority to consent to adoption and the unit or person gives consent, or parental rights have been terminated in another state or jurisdiction. The bill also clarifies that an adoptive parent is authorized to access the dental and medical records of an adopted minor.

In a private agency adoption proceeding, the bill clarifies that a court must appoint an attorney to represent a prospective adoptee who is at least 10 years old and is a minor. When child placement agencies file required reports, notice must be provided to counsel that represent the parents, as well as the parents. In ruling on an adoption petition, the court must consider all factors necessary to determine the child's best interests, and the report on the suitability of the petitioner to adopt the child and the quality of the relationship between the petitioner and child.

When considering an adoption petition for an independent adoption, the court is required to order an appropriate agency to investigate and submit a report on the quality of the emotional relationship between the parents, siblings, and others who may affect the best interests of the adoptee, as well as the adoptee's adjustment to community, home, and school. Provisions also require the court to consider the report before ruling on the petition.

Current Law: The statutes regarding TPR and adoption are separated into three discrete areas to clarify the substantive legal distinctions between involuntary termination and voluntary relinquishment of parental rights. Included are the legal processes related to a specified procedure to facilitate ease of use. The areas are:

- guardianship to and adoption through local departments of social services;
- private agency guardianship and adoption; and
- independent adoption.

The law does not apply to cases pending on or before December 31, 2005.

Guardianship to and Adoption through Local Departments of Social Services

General Provisions: Various provisions clarify and revise definitions. Procedures related to the handling of adoption orders from foreign jurisdictions are clarified. The definition of paternity includes the results of genetic testing and specifies that a man must sign an affidavit of paternity to have his name put on a child's birth certificate. Any hearing held on the issue of paternity must be held prior to a ruling on a petition for guardianship. The requirement for representation by counsel includes adoption cases. Provisions authorize and make enforceable post-adoption contact agreements between birth parents and adoptive parents. The court is authorized to assign costs, including genetic testing costs and counsel fees as the court considers appropriate, but the economic situations of the parties must be considered. Provisions specify a party's right to a final order of guardianship and the types of interlocutory appeals that may be taken in a TPR or adoption proceeding.

Guardianship: The elements of a valid guardianship petition are set forth and provisions specify that a guardianship petition must be filed prior to a child's eighteenth birthday. The responsibility for adequate notice of the filing of a petition for guardianship is set forth, and a 30-day time limit to revoke consent is established for a parent who has consented to guardianship. The 30-day time period runs after the parent signs the consent, or after the consent is filed as required, whichever is later. However, consent to guardianship that is entered into before a judge on the record must include a waiver of the revocation period. The requirements for service of the order to show cause are specified, including what steps must be taken to search for parents. Provisions specify the language to be included in a publication notice and require publication of adequate notice on the web site of the Department of Human Resources (DHR), in addition to publication in a general circulation newspaper. The web site notice must be posted for 30 days and newspaper publication must be for at least 1 day.

Consent to guardianship may be conditioned on adoption of a child into a specific family, however, the condition that may be imposed is limited to family placement only. The procedure for a hearing when the condition of a conditional consent to guardianship cannot be fulfilled is specified. There must be a hearing prior to the entry of a guardianship order. The minimum and maximum time limits for ruling on a guardianship petition are specified. The procedures regarding consent to the granting of a guardianship petition are specified. Notice of a grant of consensual guardianship to all relevant parties is required. Provisions establish the voluntary relinquishment of parental rights. The factors that must be considered in the event the grant of guardianship is nonconsensual, that is, a TPR proceeding, and the contents of the court's orders are specified. The court has the authority to terminate a CINA case once guardianship has been granted and has specified responsibilities post-guardianship.

Adoption Without Prior TPR: The court has specific authority to enter an adoption order for a CINA prior to termination of parental rights. In the event that the parent of a CINA consents to guardianship, the need for a separate TPR proceeding is eliminated. Adequate notice must be provided. The elements of a valid order to show cause, the factors a court must consider when ruling on an adoption petition prior to TPR, and the time frames for guardianship cases must be included in the notice. These provisions: (1) specify the circumstances under which the court may grant adoption prior to TPR; (2) how consent to adoption may be established; and (3) the elements of adequate notice of the final order for adoption. Procedures in the event a proceeding becomes contested are also specified.

Adoption After TPR: The procedures for adoption when a child is CINA, after termination of parental rights are specified. The guardian must give consent for a child to be adopted, because the guardian may not always be a local department.

Private Agency Guardianship and Adoption

A 30-day revocation period of consent to guardianship is provided. However, a parent may not revoke consent if the child is at least 30 days old and the consent is given before a judge on the record, or if in the preceding year, the parent has filed a notice of objection or revoked consent to guardianship of the child. The court has the authority to enforce post-adoption contact agreements. Conditional consent is authorized for the birth parents but may only specify that placement of a child be with a certain adoptive parent. The definition of “father” includes the person who is the genetic father of a child. A contested paternity case must be settled by the same court hearing the guardianship case and before the guardianship petition is addressed.

Independent Adoption

The requirements for adequate notice to unknown parents or parents who have not been located are specified. Publication of notice of adoption proceedings on the DHR web site for 30 days is required. The parent has a revocation period of up to 30 days, but the parent may not revoke consent if the child is at least 30 days old and consent is given before a judge on the record or the parent revoked consent or filed a notice of objection to adoption of the child in the preceding year. Procedures for enforceable post-adoption contact between parties are set forth.

Background: Maryland’s Foster Care Court Improvement Project (FCCIP) is a federal grant-based program that addresses improving the processing of CINA, related TPR, and adoption cases. In 1997, an assessment of the juvenile courts’ processing of CINA and

related cases was the impetus for a report, *Improving Court Performance for Abused and Neglected Children*. As a result of this report, FCCIP recommended a substantive revision of CINA statutes, which was enacted as Chapter 415 of 2001.

During the revision of the CINA statute, FCCIP determined that the TPR and adoption statutes needed revision also. A recommendation to revise TPR and adoption statutes was approved by Chief Judge Bell of the Maryland Court of Appeals and the federal government. FCCIP, under the purview of the CINA subcommittee and its consultants, began rewriting TPR and adoption statutes in 2000. The CINA subcommittee consists of judges, masters, representatives from DHR, attorneys who represent parents and children, staff from local departments of social services, and representatives from private placement and adoption agencies. The proposed revision of TPR was intended to separate procedures relating to TPR and adoption procedures into discrete areas to provide more clarity. Provisions also eliminate archaic language, and codified case law and best practices, as identified by various stakeholders.

Additional Information

Prior Introductions: None.

Cross File: HB 978 (Chairman, Judiciary Committee) (By Request – Maryland Judicial Conference) – Judiciary.

Information Source(s): Department of Human Resources, Judiciary (Administrative Office of the Courts), Office of the Public Defender, Department of Health and Mental Hygiene, Department of Legislative Services

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