

# SENATE BILL 551

D4, E3

(8lr1624)

## ENROLLED BILL

—Judicial Proceedings/Judiciary—

Introduced by **Senator Gladden**

Read and Examined by Proofreaders:

\_\_\_\_\_  
Proofreader.

\_\_\_\_\_  
Proofreader.

Sealed with the Great Seal and presented to the Governor, for his approval this

\_\_\_\_\_ day of \_\_\_\_\_ at \_\_\_\_\_ o'clock, \_\_\_\_\_ M.

\_\_\_\_\_  
President.

### CHAPTER \_\_\_\_\_

1 AN ACT concerning

2 ~~Family Law— CINA, Guardianship, Adoption, and Custody Proceedings—~~  
3 ~~Blindness of Parent, Guardian, or Custodian Child~~  
4 Children in Need of Assistance – Custody Determinations – Prohibition  
5 Against Consideration of Disabilities

6 FOR the purpose of prohibiting a court, ~~in a certain hearing concerning a child in need~~  
7 ~~of assistance (CINA), from considering the blindness of the child’s parent,~~  
8 ~~guardian, or custodian in making a certain finding; prohibiting a court, in~~  
9 ~~making a disposition on a CINA petition, from finding that a child is in need of~~  
10 ~~assistance for the sole reason that the parent, guardian, or custodian of the~~  
11 ~~child is blind; prohibiting a court, in determining whether to grant custody and~~  
12 ~~guardianship of a CINA to a relative or nonrelative, from considering whether~~  
13 ~~the relative or nonrelative is blind; defining “parental disability”, under certain~~  
14 ~~provisions of law relating to guardianship of a child, to exclude blindness;~~  
15 ~~prohibiting a local department of social services, a guardian, or a child~~

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#### EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.

Underlining indicates amendments to bill.

~~Strike out~~ indicates matter stricken from the bill by amendment or deleted from the law by amendment.

*Italics* indicate opposite chamber / conference committee amendments.



1 ~~placement agency, in certain adoption proceedings, from withholding consent on~~  
 2 ~~an adoption petition solely because a prospective adoptive parent is blind;~~  
 3 ~~prohibiting a court, in ruling on a certain adoption petition, from denying the~~  
 4 ~~petition solely because the petitioner is blind; prohibiting a child from being~~  
 5 ~~committed to a local department of social services and placed in an out-of-home~~  
 6 ~~placement solely because the child's parent or guardian is blind; requiring the~~  
 7 ~~Social Services Administration to adopt certain regulations prohibiting a local~~  
 8 ~~department from taking certain actions solely because a child's parent or~~  
 9 ~~guardian is blind; prohibiting a court, in making a decision regarding custody or~~  
 10 ~~visitation, from considering whether a party to the proceeding is blind; and~~  
 11 ~~generally relating to the blindness of a child's parent, guardian, custodian,~~  
 12 ~~relative, nonrelative, or prospective adoptive parent in a CINA, guardianship,~~  
 13 ~~adoption, custody, or visitation proceeding in determining whether to grant~~  
 14 ~~custody and guardianship of a child in need of assistance to a relative or a~~  
 15 ~~nonrelative, from considering a disability of the relative or nonrelative, except~~  
 16 ~~under certain circumstances; prohibiting a court, in making a decision~~  
 17 ~~regarding child custody or visitation, from considering a disability of a party,~~  
 18 ~~except under certain circumstances; and generally relating to child custody,~~  
 19 ~~guardianship, and visitation; defining a certain term; and generally relating to~~  
 20 ~~children in need of assistance.~~

21 BY repealing and reenacting, with amendments,  
 22 Article – Courts and Judicial Proceedings  
 23 Section ~~3-816.1(d), 3-819(b), and 3-819.2(a)~~ 3-819.2  
 24 Annotated Code of Maryland  
 25 (2006 Replacement Volume and 2007 Supplement)

26 ~~BY repealing and reenacting, without amendments,~~  
 27 ~~Article – Courts and Judicial Proceedings~~  
 28 ~~Section 3-819.2(c)(1)~~  
 29 ~~Annotated Code of Maryland~~  
 30 ~~(2006 Replacement Volume and 2007 Supplement)~~

31 ~~BY repealing and reenacting, with amendments,~~  
 32 ~~Article – Family Law~~  
 33 ~~Section 5-323(a), 5-338(b), 5-350(b), 5-3A-35(b), 5-3B-19(b), and 5-525(e)(2)(i)~~  
 34 ~~and (i)(2)~~  
 35 ~~Annotated Code of Maryland~~  
 36 ~~(2006 Replacement Volume and 2007 Supplement)~~

37 ~~BY repealing and reenacting, without amendments,~~  
 38 ~~Article – Family Law~~  
 39 ~~Section 5-323(d)(2)(iii)~~  
 40 ~~Annotated Code of Maryland~~  
 41 ~~(2006 Replacement Volume and 2007 Supplement)~~

42 BY adding to



1                   A. ~~Find that the child is not in need of assistance and~~  
2 ~~order the local department to offer to place the child in accordance with a voluntary~~  
3 ~~placement agreement under § 5-525(a)(1)(i) of the Family Law Article;~~

4                   B. ~~Find that the child is in need of assistance; or~~

5                   C. ~~Dismiss the case; or~~

6                   (iii) ~~Subject to paragraph (2) of this subsection, find that the~~  
7 ~~child is in need of assistance and:~~

8                   1. ~~Not change the child's custody status; or~~

9                   2. ~~Commit the child on terms the court considers~~  
10 ~~appropriate to the custody of:~~

11                   A. ~~A parent;~~

12                   B. ~~Subject to § 3-819.2 of this subtitle, a relative, or~~  
13 ~~other individual; or~~

14                   C. ~~A local department, the Department of Health and~~  
15 ~~Mental Hygiene, or both, including designation of the type of facility where the child is~~  
16 ~~to be placed.~~

17                   **~~(2) IN MAKING A DISPOSITION ON A CINA PETITION UNDER THIS~~**  
18 **~~SUBTITLE, THE COURT MAY NOT FIND THAT A CHILD IS IN NEED OF ASSISTANCE~~**  
19 **~~FOR THE SOLE REASON THAT THE PARENT, GUARDIAN, OR CUSTODIAN OF THE~~**  
20 **~~CHILD IS BLIND.~~**

21                   ~~[(2)] (3) Unless good cause is shown, a court shall give priority to the~~  
22 ~~child's relatives over nonrelatives when committing the child to the custody of an~~  
23 ~~individual other than a parent.~~

24 ~~§ 819.2.~~

25                   (a) ~~(1) Subject to subsection (c) of this section, the court may grant~~  
26 ~~custody and guardianship to a relative or a nonrelative under this subtitle.~~

27                   **~~(2) IN DETERMINING WHETHER TO GRANT CUSTODY AND~~**  
28 **~~GUARDIANSHIP UNDER PARAGRAPH (1) OF THIS SUBSECTION, THE COURT MAY~~**  
29 **~~NOT CONSIDER WHETHER THE RELATIVE OR NONRELATIVE IS BLIND.~~**

30                   (e) ~~(1) Before granting custody and guardianship under this section, the~~  
31 ~~court shall consider:~~

1 ~~(i) Any assurance by the local department that it will provide~~  
2 ~~funds for necessary support and maintenance for the child;~~

3 ~~(ii) All factors necessary to determine the best interests of the~~  
4 ~~child; and~~

5 ~~(iii) A report by a local department or a licensed child placement~~  
6 ~~agency, completed in compliance with regulations adopted by the Department of~~  
7 ~~Human Resources, on the suitability of the individual to be the guardian of the child.~~

8 3-819.2.

9 **(A) (1) IN THIS SECTION, “DISABILITY” MEANS A PHYSICAL**  
10 **IMPAIRMENT THAT SUBSTANTIALLY LIMITS ONE OR MORE OF THE MAJOR LIFE**  
11 **ACTIVITIES OF AN INDIVIDUAL.**

12 **(2) “DISABILITY” DOES NOT INCLUDE ILLEGAL USE OF OR**  
13 **ADDICTION TO:**

14 **(I) A CONTROLLED DANGEROUS SUBSTANCE AS DEFINED**  
15 **IN § 5-101 OF THE CRIMINAL LAW ARTICLE; OR**

16 **(II) A CONTROLLED SUBSTANCE AS DEFINED IN § 102 OF**  
17 **THE FEDERAL CONTROLLED SUBSTANCES ACT.**

18 **[(a)] (B) Subject to subsection [(e)] (F) of this section, the court may grant**  
19 **custody and guardianship to a relative or a nonrelative under this subtitle.**

20 **[(b)] (C) An order granting custody and guardianship to an individual**  
21 **under this section terminates the local department’s legal obligations and**  
22 **responsibilities to the child.**

23 **[(c)] (D) A guardian appointed under this subtitle has legal custody of the**  
24 **child unless the court that appoints the guardian gives legal custody to another**  
25 **person.**

26 **[(d)] (E) After granting custody and guardianship to an individual under**  
27 **this section, the court may order any further reviews that the court determines to be**  
28 **in the child’s best interests, consistent with § 3-823(h)(1)(iii) of this subtitle.**

29 **[(e)] (F) (1) Before granting custody and guardianship under this**  
30 **section, the court shall consider:**

31 **(i) Any assurance by the local department that it will provide**  
32 **funds for necessary support and maintenance for the child;**

1                           (ii) All factors necessary to determine the best interests of the  
2 child; and

3                           (iii) A report by a local department or a licensed child placement  
4 agency, completed in compliance with regulations adopted by the Department of  
5 Human Resources, on the suitability of the individual to be the guardian of the child.

6                   (2) The report under paragraph (1)(iii) of this subsection shall include  
7 a:

8                           (i) Home study;

9                           (ii) Child protective services history;

10                          (iii) Criminal history records check; and

11                          (iv) Review of the proposed guardian's physical and mental  
12 health history.

13                   (3) If the local department has not produced the report described in  
14 paragraph (1)(iii) of this subsection within 120 days after the date that the court  
15 issued the order to the local department to produce the report, the court shall:

16                           (i) Hold an immediate hearing to determine the causes of the  
17 delay;

18                           (ii) State on the record the determined causes of the delay; and

19                           (iii) Make a determination as to whether the progress of the local  
20 department is acceptable.

21                   (4) Following the hearing required under paragraph (3) of this  
22 subsection, the court shall:

23                           (i) Grant the local department an extension of no more than 90  
24 days; or

25                           (ii) Order production of the report by a licensed child placement  
26 agency, within a reasonable time and order the local department to bear the cost.

27                   **(G) IN DETERMINING WHETHER TO GRANT CUSTODY AND**  
28 **GUARDIANSHIP TO A RELATIVE OR A NONRELATIVE UNDER THIS SECTION, THE**  
29 **COURT MAY NOT CONSIDER A DISABILITY OF THE RELATIVE OR NONRELATIVE,**  
30 **UNLESS THE COURT FINDS THAT THE DISABILITY CAUSES A CONDITION THAT IS**  
31 **DETRIMENTAL TO THE BEST INTERESTS OF THE CHILD.**



1 ~~(2) A PROSPECTIVE ADOPTIVE PARENT IS BLIND.~~

2 ~~5-3A-35.~~

3 ~~(b) A child placement agency may not withhold consent for the sole reason~~  
4 ~~that:~~

5 ~~(1) the race, religion, color, or national origin of a prospective adoptive~~  
6 ~~parent differs from that of the child or parent; OR~~

7 ~~(2) A PROSPECTIVE ADOPTIVE PARENT IS BLIND.~~

8 ~~5-3B-19.~~

9 ~~(b) In ruling on an adoption petition under this subtitle, a court may not~~  
10 ~~deny the petition solely because the petitioner is:~~

11 ~~(1) single or unmarried; OR~~

12 ~~(2) BLIND.~~

13 ~~5-525.~~

14 ~~(e) (2) (i) A child may not be committed to the custody or~~  
15 ~~guardianship of a local department and placed in an out-of-home placement solely~~  
16 ~~because the child's parent or guardian lacks shelter OR IS BLIND or solely because the~~  
17 ~~child's parents are financially unable to provide treatment or care for a child with a~~  
18 ~~developmental disability or mental illness.~~

19 ~~(i) The Administration shall adopt regulations that:~~

20 ~~(2) prohibit a local department from seeking the custody or~~  
21 ~~guardianship of a child for placement in foster care solely because the child's parent or~~  
22 ~~guardian lacks shelter OR IS BLIND or solely because the child's parents are~~  
23 ~~financially unable to provide treatment or care for a child with a developmental~~  
24 ~~disability or mental illness;~~

25 ~~9-107.~~

26 ~~IN MAKING A DECISION REGARDING CUSTODY OR VISITATION, THE COURT~~  
27 ~~MAY NOT CONSIDER WHETHER A PARTY TO THE PROCEEDING IS BLIND.~~



1           ~~(A) (1) IN THIS SECTION, "DISABILITY" MEANS A PHYSICAL~~  
2 ~~IMPAIRMENT THAT SUBSTANTIALLY LIMITS ONE OR MORE OF THE MAJOR LIFE~~  
3 ~~ACTIVITIES OF AN INDIVIDUAL.~~

4           ~~(2) "DISABILITY" DOES NOT INCLUDE ILLEGAL USE OF OR~~  
5 ~~ADDICTION TO:~~

6                     ~~(I) A CONTROLLED DANGEROUS SUBSTANCE AS DEFINED IN~~  
7 ~~§ 5-101 OF THE CRIMINAL LAW ARTICLE; OR~~

8                     ~~(II) A CONTROLLED SUBSTANCE AS DEFINED IN § 102 OF~~  
9 ~~THE FEDERAL CONTROLLED SUBSTANCES ACT.~~

10           ~~(B) IN MAKING A DECISION REGARDING CUSTODY OR VISITATION, THE~~  
11 ~~COURT MAY NOT CONSIDER A DISABILITY OF A PARTY, UNLESS THE COURT~~  
12 ~~FINDS THAT THE DISABILITY CAUSES A CONDITION THAT IS DETRIMENTAL TO~~  
13 ~~THE BEST INTERESTS OF THE CHILD.~~

14           SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect  
15           October 1, 2008.

Approved:

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Governor.

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President of the Senate.

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Speaker of the House of Delegates.