

SENATE BILL 551

D4, E3

8lr1624

By: **Senator Gladden**

Introduced and read first time: February 1, 2008

Assigned to: Judicial Proceedings

Committee Report: Favorable with amendments

Senate action: Adopted

Read second time: March 21, 2008

CHAPTER _____

1 AN ACT concerning

2 **Family Law - CINA, Guardianship, Adoption, and Custody Proceedings -**
3 **~~Blindness of Parent, Guardian, or Custodian~~ Child Custody Determinations -**
4 **Prohibition Against Consideration of Disabilities**

5 FOR the purpose of prohibiting a court, ~~in a certain hearing concerning a child in need~~
6 ~~of assistance (CINA), from considering the blindness of the child's parent,~~
7 ~~guardian, or custodian in making a certain finding; prohibiting a court, in~~
8 ~~making a disposition on a CINA petition, from finding that a child is in need of~~
9 ~~assistance for the sole reason that the parent, guardian, or custodian of the~~
10 ~~child is blind; prohibiting a court, in determining whether to grant custody and~~
11 ~~guardianship of a CINA to a relative or nonrelative, from considering whether~~
12 ~~the relative or nonrelative is blind; defining "parental disability", under certain~~
13 ~~provisions of law relating to guardianship of a child, to exclude blindness;~~
14 ~~prohibiting a local department of social services, a guardian, or a child~~
15 ~~placement agency, in certain adoption proceedings, from withholding consent on~~
16 ~~an adoption petition solely because a prospective adoptive parent is blind;~~
17 ~~prohibiting a court, in ruling on a certain adoption petition, from denying the~~
18 ~~petition solely because the petitioner is blind; prohibiting a child from being~~
19 ~~committed to a local department of social services and placed in an out-of-home~~
20 ~~placement solely because the child's parent or guardian is blind; requiring the~~
21 ~~Social Services Administration to adopt certain regulations prohibiting a local~~
22 ~~department from taking certain actions solely because a child's parent or~~
23 ~~guardian is blind; prohibiting a court, in making a decision regarding custody or~~
24 ~~visitation, from considering whether a party to the proceeding is blind; and~~
25 ~~generally relating to the blindness of a child's parent, guardian, custodian,~~
26 ~~relative, nonrelative, or prospective adoptive parent in a CINA, guardianship,~~

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.



adoption, custody, or visitation proceeding in determining whether to grant custody and guardianship of a child in need of assistance to a relative or a nonrelative, from considering a disability of the relative or nonrelative, except under certain circumstances; prohibiting a court, in making a decision regarding child custody or visitation, from considering a disability of a party, except under certain circumstances; and generally relating to child custody, guardianship, and visitation.

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

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

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

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

BY adding to
 Article – Family Law
 Section 9-107
 Annotated Code of Maryland
 (2006 Replacement Volume and 2007 Supplement)

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND, That the Laws of Maryland read as follows:

Article – Courts and Judicial Proceedings

~~3-816.1.~~

1 ~~(d) In making a finding in accordance with subsection (b) of this section, a~~
 2 ~~court may not consider [a]:~~

3 ~~(1) A potential loss of federal funding for placement of a child that~~
 4 ~~may result from a determination that reasonable efforts were not made; OR~~

5 ~~(2) THE BLINDNESS OF A CHILD'S PARENT, GUARDIAN, OR~~
 6 ~~CUSTODIAN.~~

7 ~~§ 819.~~

8 ~~(b) (1) In making a disposition on a CINA petition under this subtitle, the~~
 9 ~~court shall:~~

10 ~~(i) Find that the child is not in need of assistance and, except as~~
 11 ~~provided in subsection (c) of this section, dismiss the case;~~

12 ~~(ii) Hold in abeyance a finding on whether a child with a~~
 13 ~~developmental disability or a mental illness is a child in need of assistance and:~~

14 ~~1. Order the local department to assess or reassess the~~
 15 ~~family and child's eligibility for placement of the child in accordance with a voluntary~~
 16 ~~placement agreement under § 5-525(a)(1)(i) of the Family Law Article;~~

17 ~~2. Order the local department to report back to the court~~
 18 ~~in writing within 30 days unless the court extends the time period for good cause~~
 19 ~~shown;~~

20 ~~3. If the local department does not find the child eligible~~
 21 ~~for placement in accordance with a voluntary placement agreement, hold a hearing to~~
 22 ~~determine whether the family and child are eligible for placement of the child in~~
 23 ~~accordance with a voluntary placement agreement; and~~

24 ~~4. After the hearing:~~

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

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

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

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

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

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

3 ~~A. A parent;~~

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

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

9 ~~(2) IN MAKING A DISPOSITION ON A CINA PETITION UNDER THIS~~
10 ~~SUBTITLE, THE COURT MAY NOT FIND THAT A CHILD IS IN NEED OF ASSISTANCE~~
11 ~~FOR THE SOLE REASON THAT THE PARENT, GUARDIAN, OR CUSTODIAN OF THE~~
12 ~~CHILD IS BLIND.~~

13 ~~[(2)] (3) Unless good cause is shown, a court shall give priority to the~~
14 ~~child's relatives over nonrelatives when committing the child to the custody of an~~
15 ~~individual other than a parent.~~

16 ~~3-819.2.~~

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

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

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

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

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

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

31 3-819.2.

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

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

15 [(c)] (D) A guardian appointed under this subtitle has legal custody of the
16 child unless the court that appoints the guardian gives legal custody to another
17 person.

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

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

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

25 (ii) All factors necessary to determine the best interests of the
26 child; and

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

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

32 (i) Home study;

- 1 (ii) Child protective services history;
 2 (iii) Criminal history records check; and
 3 (iv) Review of the proposed guardian’s physical and mental
 4 health history.

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

8 (i) Hold an immediate hearing to determine the causes of the
 9 delay;

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

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

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

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

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

19 **(G) IN DETERMINING WHETHER TO GRANT CUSTODY AND**
 20 **GUARDIANSHIP TO A RELATIVE OR A NONRELATIVE UNDER THIS SECTION, THE**
 21 **COURT MAY NOT CONSIDER A DISABILITY OF THE RELATIVE OR NONRELATIVE,**
 22 **UNLESS THE COURT FINDS THAT THE DISABILITY CAUSES A CONDITION THAT IS**
 23 **DETRIMENTAL TO THE BEST INTERESTS OF THE CHILD.**

24 **[(f)] (H) A court may not enter an order granting custody and guardianship**
 25 **under this section until the report under subsection [(e)(1)(iii)] (F)(1)(III) of this**
 26 **section is submitted to and considered by the court.**

27 Article – Family Law

28 ~~5-323.~~

29 ~~(a) (1) In this section, [“drug”] THE FOLLOWING WORDS HAVE THE~~
 30 ~~MEANINGS INDICATED.~~

31 ~~(2) “DRUG” means cocaine, heroin, methamphetamine, or a~~
 32 ~~derivative of cocaine, heroin, or methamphetamine.~~

1 ~~(3) "PARENTAL DISABILITY" DOES NOT INCLUDE BLINDNESS.~~

2 ~~(d) Except as provided in subsection (c) of this section, in ruling on a petition~~
3 ~~for guardianship of a child, a juvenile court shall give primary consideration to the~~
4 ~~health and safety of the child and consideration to all other factors needed to~~
5 ~~determine whether terminating a parent's rights is in the child's best interests,~~
6 ~~including:~~

7 ~~(2) the results of the parent's effort to adjust the parent's~~
8 ~~circumstances, condition, or conduct to make it in the child's best interests for the~~
9 ~~child to be returned to the parent's home, including:~~

10 ~~(iii) the existence of a parental disability that makes the parent~~
11 ~~consistently unable to care for the child's immediate and ongoing physical or~~
12 ~~psychological needs for long periods of time; and~~

13 ~~5-338.~~

14 ~~(b) A local department may not withhold consent for the sole reason that:~~

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

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

18 ~~5-350.~~

19 ~~(b) A guardian may not withhold consent for the sole reason that:~~

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

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

23 ~~5-3A-35.~~

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

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

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

29 ~~5-3B-10.~~

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

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

4 ~~(2) BLIND.~~

5 ~~5-525.~~

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

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

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

17 **9-107.**

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

20 **(A) (1) IN THIS SECTION, "DISABILITY" MEANS A PHYSICAL**
21 **IMPAIRMENT THAT SUBSTANTIALLY LIMITS ONE OR MORE OF THE MAJOR LIFE**
22 **ACTIVITIES OF AN INDIVIDUAL.**

23 **(2) "DISABILITY" DOES NOT INCLUDE ILLEGAL USE OF OR**
24 **ADDICTION TO:**

25 **(I) A CONTROLLED DANGEROUS SUBSTANCE AS DEFINED IN**
26 **§ 5-101 OF THE CRIMINAL LAW ARTICLE; OR**

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

29 **(B) IN MAKING A DECISION REGARDING CUSTODY OR VISITATION, THE**
30 **COURT MAY NOT CONSIDER A DISABILITY OF A PARTY, UNLESS THE COURT**
31 **FINDS THAT THE DISABILITY CAUSES A CONDITION THAT IS DETRIMENTAL TO**
32 **THE BEST INTERESTS OF THE CHILD.**

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

Approved:

Governor.

President of the Senate.

Speaker of the House of Delegates.