

HOUSE BILL 689

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CF SB 613

By: **Delegates Rosenberg, Boteler, Bronrott, Doory, Elmore, Healey, Kramer, Levy, Mathias, McHale, and Montgomery**
Introduced and read first time: February 9, 2009
Assigned to: Judiciary

A BILL ENTITLED

1 AN ACT concerning

2 **CINA, Guardianship, Adoption, Custody, and Visitation – Disability of**
3 **Parent, Guardian, Custodian, or Party**

4 FOR the purpose of prohibiting a court, in making a disposition on a child in need of
5 assistance (CINA) petition, from considering a disability of a parent, guardian,
6 or custodian of a child except under certain circumstances; prohibiting a local
7 department of social services, a guardian, or a child placement agency, in
8 certain adoption proceedings, from withholding consent to an adoption solely
9 because a prospective adoptive parent has a disability; prohibiting a court, in
10 ruling on a certain adoption petition, from denying the petition solely because
11 the petitioner has a disability; prohibiting a child from being committed to the
12 custody or guardianship of a local department and placed in an out-of-home
13 placement solely because the child's parent or guardian has a disability;
14 requiring the Social Services Administration to adopt certain regulations
15 prohibiting a local department from taking certain actions solely because a
16 child's parent or guardian has a disability; prohibiting a court, in any custody or
17 visitation proceeding, from considering a disability of a party, except under
18 certain circumstances; defining a certain term; and generally relating to the
19 disability of certain individuals in certain CINA, guardianship, adoption,
20 custody, or visitation proceedings.

21 BY repealing and reenacting, without amendments,
22 Article – Courts and Judicial Proceedings
23 Section 3–801(a), (f), and (g) and 3–819.2(a)
24 Annotated Code of Maryland
25 (2006 Replacement Volume and 2008 Supplement)

26 BY repealing and reenacting, with amendments,
27 Article – Courts and Judicial Proceedings
28 Section 3–819(b) and 3–819.2(g)

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.
[Brackets] indicate matter deleted from existing law.



1 Annotated Code of Maryland
2 (2006 Replacement Volume and 2008 Supplement)

3 BY repealing and reenacting, with amendments,
4 Article – Family Law
5 Section 5–338(b), 5–350(b), 5–3A–35(b), 5–3B–19(b), and 5–525
6 Annotated Code of Maryland
7 (2006 Replacement Volume and 2008 Supplement)

8 BY adding to
9 Article – Family Law
10 Section 9–107
11 Annotated Code of Maryland
12 (2006 Replacement Volume and 2008 Supplement)

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

15 **Article – Courts and Judicial Proceedings**

16 3–801.

17 (a) In this subtitle the following words have the meanings indicated.

18 (f) “Child in need of assistance” means a child who requires court
19 intervention because:

20 (1) The child has been abused, has been neglected, has a
21 developmental disability, or has a mental disorder; and

22 (2) The child’s parents, guardian, or custodian are unable or unwilling
23 to give proper care and attention to the child and the child’s needs.

24 (g) “CINA” means a child in need of assistance.

25 3–819.

26 (b) (1) In making a disposition on a CINA petition under this subtitle, the
27 court shall:

28 (i) Find that the child is not in need of assistance and, except as
29 provided in subsection (e) of this section, dismiss the case;

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

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

4 2. Order the local department to report back to the court
5 in writing within 30 days unless the court extends the time period for good cause
6 shown;

7 3. If the local department does not find the child eligible
8 for placement in accordance with a voluntary placement agreement, hold a hearing to
9 determine whether the family and child are eligible for placement of the child in
10 accordance with a voluntary placement agreement; and

11 4. After the hearing:

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

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

16 C. Dismiss the case; or

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

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

20 2. Commit the child on terms the court considers
21 appropriate to the custody of:

22 A. A parent;

23 B. Subject to § 3-819.2 of this subtitle, a relative, or
24 other individual; or

25 C. A local department, the Department of Health and
26 Mental Hygiene, or both, including designation of the type of facility where the child is
27 to be placed.

28 **(2) (I) 1. IN THIS PARAGRAPH, "DISABILITY" MEANS A**
29 **PHYSICAL IMPAIRMENT THAT SUBSTANTIALLY LIMITS ONE OR MORE OF THE**
30 **MAJOR LIFE ACTIVITIES OF AN INDIVIDUAL.**

31 **2. "DISABILITY" DOES NOT INCLUDE ILLEGAL USE**
32 **OF OR ADDICTION TO:**

1 **A. A CONTROLLED DANGEROUS SUBSTANCE AS**
2 **DEFINED IN § 5–101 OF THE CRIMINAL LAW ARTICLE; OR**

3 **B. A CONTROLLED SUBSTANCE AS DEFINED IN § 102**
4 **OF THE FEDERAL CONTROLLED SUBSTANCES ACT.**

5 **(II) IN MAKING A DISPOSITION ON A CINA PETITION UNDER**
6 **THIS SUBTITLE, THE COURT MAY NOT CONSIDER A DISABILITY OF A CHILD’S**
7 **PARENT, GUARDIAN, OR CUSTODIAN, UNLESS THE COURT SPECIFICALLY FINDS**
8 **THAT THE DISABILITY CAUSES THE PARENT, GUARDIAN, OR CUSTODIAN TO BE**
9 **UNABLE TO GIVE PROPER CARE AND ATTENTION TO THE CHILD AND THE**
10 **CHILD’S NEEDS.**

11 **[(2)] (3)** Unless good cause is shown, a court shall give priority to the
12 child’s relatives over nonrelatives when committing the child to the custody of an
13 individual other than a parent.

14 3–819.2.

15 (a) (1) In this section, “disability” means a physical impairment that
16 substantially limits one or more of the major life activities of an individual.

17 (2) “Disability” does not include illegal use of or addiction to:

18 (i) A controlled dangerous substance as defined in § 5–101 of
19 the Criminal Law Article; or

20 (ii) A controlled substance as defined in § 102 of the federal
21 Controlled Substances Act.

22 (g) In determining whether to grant custody and guardianship to a relative
23 or a nonrelative under this section, the court may not consider a disability of the
24 relative or nonrelative, unless the court **SPECIFICALLY** finds that the disability
25 causes a condition that is detrimental to the best interests of the child.

26 **Article – Family Law**

27 5–338.

28 (b) (1) (I) **IN THIS SUBSECTION, “DISABILITY” MEANS A PHYSICAL**
29 **IMPAIRMENT THAT SUBSTANTIALLY LIMITS ONE OR MORE OF THE MAJOR LIFE**
30 **ACTIVITIES OF AN INDIVIDUAL.**

31 (II) **“DISABILITY” DOES NOT INCLUDE ILLEGAL USE OF OR**
32 **ADDICTION TO:**

1 **1. A CONTROLLED DANGEROUS SUBSTANCE AS**
2 **DEFINED IN § 5–101 OF THE CRIMINAL LAW ARTICLE; OR**

3 **2. A CONTROLLED SUBSTANCE AS DEFINED IN § 102**
4 **OF THE FEDERAL CONTROLLED SUBSTANCES ACT.**

5 (2) A local department may not withhold consent for the sole reason
6 that:

7 (I) the race, religion, color, or national origin of a prospective
8 adoptive parent differs from that of the child or parent; **OR**

9 (II) A PROSPECTIVE ADOPTIVE PARENT HAS A DISABILITY.
10 5–350.

11 (b) (1) (I) IN THIS SUBSECTION, “DISABILITY” MEANS A PHYSICAL
12 IMPAIRMENT THAT SUBSTANTIALLY LIMITS ONE OR MORE OF THE MAJOR LIFE
13 ACTIVITIES OF AN INDIVIDUAL.

14 (II) “DISABILITY” DOES NOT INCLUDE ILLEGAL USE OF OR
15 ADDICTION TO:

16 1. A CONTROLLED DANGEROUS SUBSTANCE AS
17 DEFINED IN § 5–101 OF THE CRIMINAL LAW ARTICLE; OR

18 2. A CONTROLLED SUBSTANCE AS DEFINED IN § 102
19 OF THE FEDERAL CONTROLLED SUBSTANCES ACT.

20 (2) A guardian may not withhold consent for the sole reason that:

21 (I) the race, religion, color, or national origin of a prospective
22 adoptive parent differs from that of the child or parent; **OR**

23 (II) A PROSPECTIVE ADOPTIVE PARENT HAS A DISABILITY.
24 5–3A–35.

25 (b) (1) (I) IN THIS SUBSECTION, “DISABILITY” MEANS A PHYSICAL
26 IMPAIRMENT THAT SUBSTANTIALLY LIMITS ONE OR MORE OF THE MAJOR LIFE
27 ACTIVITIES OF AN INDIVIDUAL.

28 (II) “DISABILITY” DOES NOT INCLUDE ILLEGAL USE OF OR
29 ADDICTION TO:

1 **1. A CONTROLLED DANGEROUS SUBSTANCE AS**
2 **DEFINED IN § 5–101 OF THE CRIMINAL LAW ARTICLE; OR**

3 **2. A CONTROLLED SUBSTANCE AS DEFINED IN § 102**
4 **OF THE FEDERAL CONTROLLED SUBSTANCES ACT.**

5 **(2)** A child placement agency may not withhold consent for the sole
6 reason that:

7 **(I)** the race, religion, color, or national origin of a prospective
8 adoptive parent differs from that of the child or parent; **OR**

9 **(II) A PROSPECTIVE ADOPTIVE PARENT HAS A DISABILITY.**

10 5–3B–19.

11 (b) **(1) (I) IN THIS SUBSECTION, “DISABILITY” MEANS A PHYSICAL**
12 **IMPAIRMENT THAT SUBSTANTIALLY LIMITS ONE OR MORE OF THE MAJOR LIFE**
13 **ACTIVITIES OF AN INDIVIDUAL.**

14 **(II) “DISABILITY” DOES NOT INCLUDE ILLEGAL USE OF OR**
15 **ADDICTION TO:**

16 **1. A CONTROLLED DANGEROUS SUBSTANCE AS**
17 **DEFINED IN § 5–101 OF THE CRIMINAL LAW ARTICLE; OR**

18 **2. A CONTROLLED SUBSTANCE AS DEFINED IN § 102**
19 **OF THE FEDERAL CONTROLLED SUBSTANCES ACT.**

20 **(2)** In ruling on an adoption petition under this subtitle, a court may
21 not deny the petition solely because the petitioner:

22 **(I)** is single or unmarried; **OR**

23 **(II) HAS A DISABILITY.**

24 5–525.

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

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

3 (I) **A CONTROLLED DANGEROUS SUBSTANCE AS DEFINED IN**
4 **§ 5-101 OF THE CRIMINAL LAW ARTICLE; OR**

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

7 [(a)] (B) (1) The Administration shall establish a program of
8 out-of-home placement for minor children:

9 (i) who are placed in the custody of a local department, for a
10 period of not more than 180 days, by a parent or legal guardian under a voluntary
11 placement agreement;

12 (ii) who are abused, abandoned, neglected, or dependent, if a
13 juvenile court:

14 1. has determined that continued residence in the child's
15 home is contrary to the child's welfare; and

16 2. has committed the child to the custody or
17 guardianship of a local department; or

18 (iii) who, with the approval of the Administration, are placed in
19 an out-of-home placement by a local department under a voluntary placement
20 agreement subject to paragraph (2) of this subsection.

21 (2) (i) A local department may not seek legal custody of a child
22 under a voluntary placement agreement if the child has a developmental disability or
23 a mental illness and the purpose of the voluntary placement agreement is to obtain
24 treatment or care related to the child's disability that the parent is unable to provide.

25 (ii) A child described in subparagraph (i) of this paragraph may
26 remain in an out-of-home placement under a voluntary placement agreement for
27 more than 180 days if the child's disability necessitates care or treatment in the
28 out-of-home placement and a juvenile court makes a finding that continuation of the
29 placement is in the best interests of the child.

30 (iii) Each local department shall designate, from existing staff, a
31 staff person to administer requests for voluntary placement agreements for children
32 with developmental disabilities or mental illnesses.

33 (iv) Each local department shall report annually to the
34 Administration on the number of requests for voluntary placement agreements for

1 children with developmental disabilities or mental illnesses that have been received,
2 the outcome of each request, and the reason for each denial.

3 (v) On receipt of a request for a voluntary placement agreement
4 for a child with a developmental disability or a mental illness, a local department shall
5 discuss the child's case at the next meeting of the local coordinating council for the
6 purpose of determining whether any alternative or interim services for the child and
7 family may be provided by any agency.

8 [(b)] (C) In establishing the out-of-home placement program the
9 Administration shall:

10 (1) provide time-limited family reunification services to a child placed
11 in an out-of-home placement and to the parents or guardian of the child, in order to
12 facilitate the child's safe and appropriate reunification within a timely manner;

13 (2) concurrently develop and implement a permanency plan that is in
14 the best interests of the child; and

15 (3) provide training on an annual basis for the staff at each local
16 department who administer requests for voluntary placement agreements for children
17 with developmental disabilities or mental illnesses under subsection [(a)] (B) of this
18 section.

19 [(c)] (D) (1) The local department shall provide 24-hour a day care and
20 supportive services for a child who is committed to its custody or guardianship in an
21 out-of-home placement on a short-term basis or placed in accordance with a
22 voluntary placement agreement.

23 (2) (i) A child may not be committed to the custody or
24 guardianship of a local department and placed in an out-of-home placement solely
25 because the child's parent or guardian lacks shelter **OR HAS A DISABILITY** or solely
26 because the child's parents are financially unable to provide treatment or care for a
27 child with a developmental disability or mental illness.

28 (ii) The local department shall make appropriate referrals to
29 emergency shelter services and other services for the homeless family with a child
30 which lacks shelter.

31 [(d)] (E) (1) Unless a court orders that reasonable efforts are not
32 required under § 3-812 of the Courts Article or § 5-323 of this title, reasonable efforts
33 shall be made to preserve and reunify families:

34 (i) prior to the placement of a child in an out-of-home
35 placement, to prevent or eliminate the need for removing the child from the child's
36 home; and

(ii) to make it possible for a child to safely return to the child's home.

(2) In determining the reasonable efforts to be made and in making the reasonable efforts described under paragraph (1) of this subsection, the child's safety and health shall be the primary concern.

(3) Reasonable efforts to place a child for adoption or with a legal guardian may be made concurrently with the reasonable efforts described under paragraph (1) of this subsection.

(4) If continuation of reasonable efforts to reunify the child with the child's parents or guardian is determined to be inconsistent with the permanency plan for the child, reasonable efforts shall be made to place the child in a timely manner in accordance with the permanency plan, including consideration of both in-State and out-of-state placements, and to complete the steps to finalize the permanent placement of the child.

[(e)] (F) (1) In developing a permanency plan for a child in an out-of-home placement, the local department shall give primary consideration to the best interests of the child, including consideration of both in-State and out-of-state placements. The local department shall consider the following factors in determining the permanency plan that is in the best interests of the child:

(i) the child's ability to be safe and healthy in the home of the child's parent;

(ii) the child's attachment and emotional ties to the child's natural parents and siblings;

(iii) the child's emotional attachment to the child's current caregiver and the caregiver's family;

(iv) the length of time the child has resided with the current caregiver;

(v) the potential emotional, developmental, and educational harm to the child if moved from the child's current placement; and

(vi) the potential harm to the child by remaining in State custody for an excessive period of time.

(2) To the extent consistent with the best interests of the child in an out-of-home placement, the local department shall consider the following permanency plans, in descending order of priority:

(i) returning the child to the child's parent or guardian, unless the local department is the guardian;

(ii) placing the child with relatives to whom adoption, custody and guardianship, or care and custody, in descending order of priority, are planned to be granted;

(iii) adoption in the following descending order of priority:

1. by a current foster parent with whom the child has resided continually for at least the 12 months prior to developing the permanency plan or for a sufficient length of time to have established positive relationships and family ties; or

2. by another approved adoptive family; or

(iv) another planned permanent living arrangement that:

1. addresses the individualized needs of the child, including the child's educational plan, emotional stability, physical placement, and socialization needs; and

2. includes goals that promote the continuity of relations with individuals who will fill a lasting and significant role in the child's life.

(3) Subject to paragraphs (1) and (2) of this subsection and to the extent consistent with the best interests of a child in an out-of-home placement, in determining a permanency plan, the local department shall consider the following in descending order of priority:

(i) placement of the child in the local jurisdiction where the child's parent or guardian resides; or

(ii) if the local department finds, based on a compelling reason, that placement of the child as described in item (i) of this paragraph is not in the best interest of the child, placement of the child in another jurisdiction in the State after considering:

1. the availability of resources to provide necessary services to the child;

2. the accessibility to family treatment, if appropriate; and

3. the effect on the local school system.

[(f)] (G) (1) The local department shall:

(i) prepare the permanency plan in writing within 60 days of the date the child comes into care;

(ii) if the child is under the jurisdiction of the juvenile court, furnish the plan to the child's parents, the child or the child's counsel, and to the juvenile court; and

(iii) maintain the plan in the agency's case record.

(2) The local department shall amend the plan promptly as necessary in light of the child's situation and any court orders which affect the child.

[(g)] **(H)** Unless a child has received a review from the local board of review of foster care under § 5-544 of this subtitle, the local department shall perform an administrative review every 6 months to determine the success of the efforts to meet the goals set out in the permanency plan or the agreement with the parents or guardians in voluntary placements.

[(h)] **(I)** (1) Foster parents who wish to adopt a foster child in their care and who wish to contest the agency's decision to place the child with another adoptive family may, within 30 days from the removal of the child, file with the agency a request for a hearing.

(2) Within 10 days after receipt of a request for a hearing under paragraph (1) of this subsection, the agency shall notify the Office of Administrative Hearings, which shall hold the hearing and issue a decision within 45 days of the receipt of the request.

[(i)] **(J)** The Administration shall adopt regulations that:

(1) establish goals and specify permanency planning procedures that:

(i) maximize the prospect for reducing length of stay in out-of-home placement in the best interests of children; and

(ii) implement the intent of this section;

(2) prohibit a local department from seeking the custody or guardianship of a child for placement in foster care solely because the child's parent or guardian lacks shelter **OR HAS A DISABILITY** or solely because the child's parents are financially unable to provide treatment or care for a child with a developmental disability or mental illness;

(3) specify the compelling reasons for placing a child in a local jurisdiction other than the local jurisdiction where the child's parent or guardian resides, under subsection [(e)(3)(ii)] **(F)(3)(II)** of this section;

(4) require the local department to make appropriate referrals to emergency shelter and other services for families with children who lack shelter;

(5) establish criteria for investigating and approving foster homes; and

(6) for cases in which the permanency plan recommended by the local department or under consideration by the court includes appointment of a guardian and rescission of the local department's custody or guardianship of a child:

(i) establish criteria for investigating and determining the suitability of prospective relative or nonrelative guardians; and

(ii) require the filing of a report with the court as provided in § 3-819.2 of the Courts Article.

9-107.

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

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

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

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

(B) IN ANY CUSTODY OR VISITATION PROCEEDING, THE COURT MAY NOT CONSIDER A DISABILITY OF A PARTY, UNLESS THE COURT SPECIFICALLY FINDS THAT THE DISABILITY CAUSES A CONDITION THAT IS DETRIMENTAL TO THE BEST INTERESTS OF THE CHILD.

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect October 1, 2009.