

SENATE BILL 58

D4

9lr0073

(PRE-FILED)

By: **Chair, Judicial Proceedings Committee (By Request – Departmental – Human Resources)**

Requested: October 6, 2008

Introduced and read first time: January 14, 2009

Assigned to: Judicial Proceedings

A BILL ENTITLED

1 AN ACT concerning

2 **Family Law – Termination of Parental Rights**

3 FOR the purpose of requiring that, before a juvenile court may grant guardianship of a
4 child in a certain guardianship proceeding without certain consent and over the
5 child's objection, the juvenile court must find by clear and convincing evidence
6 that a parent is unfit or that exceptional circumstances exist such that
7 terminating the rights of the parent is in the child's best interests; providing for
8 the application of this Act; and generally relating to guardianship of a child and
9 termination of parental rights.

10 BY repealing and reenacting, with amendments,
11 Article – Family Law
12 Section 5–323
13 Annotated Code of Maryland
14 (2006 Replacement Volume and 2008 Supplement)

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

17 **Article – Family Law**

18 5–323.

19 (a) In this section, “drug” means cocaine, heroin, methamphetamine, or a
20 derivative of cocaine, heroin, or methamphetamine.

21 (b) If, after consideration of factors as required in this section, a juvenile
22 court finds by clear and convincing evidence that **A PARENT IS UNFIT OR THAT**
23 **EXCEPTIONAL CIRCUMSTANCES EXIST SUCH THAT** terminating the rights of [a]

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 **THE** parent is in a child's best interests, the juvenile court may grant guardianship of
2 the child without consent otherwise required under this subtitle and over the child's
3 objection.

4 (c) A juvenile court need not consider any factor listed in subsection (d) of
5 this section in determining a child's best interests if, after a thorough investigation by
6 a local department, the juvenile court finds that:

7 (1) the identities of the child's parents are unknown; and

8 (2) during the 60 days immediately after the child's adjudication as a
9 child in need of assistance, no one has claimed to be the child's parent.

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

15 (1) (i) all services offered to the parent before the child's
16 placement, whether offered by a local department, another agency, or a professional;

17 (ii) the extent, nature, and timeliness of services offered by a
18 local department to facilitate reunion of the child and parent; and

19 (iii) the extent to which a local department and parent have
20 fulfilled their obligations under a social services agreement, if any;

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

24 (i) the extent to which the parent has maintained regular
25 contact with:

26 1. the child;

27 2. the local department to which the child is committed;

28 and

29 3. if feasible, the child's caregiver;

30 (ii) the parent's contribution to a reasonable part of the child's
31 care and support, if the parent is financially able to do so;

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

1 (iv) whether additional services would be likely to bring about a
2 lasting parental adjustment so that the child could be returned to the parent within an
3 ascertainable time not to exceed 18 months from the date of placement unless the
4 juvenile court makes a specific finding that it is in the child's best interests to extend
5 the time for a specified period;

6 (3) whether:

7 (i) the parent has abused or neglected the child or a minor and
8 the seriousness of the abuse or neglect;

9 (ii) 1. A. on admission to a hospital for the child's
10 delivery, the mother tested positive for a drug as evidenced by a positive toxicology
11 test; or

12 B. upon the birth of the child, the child tested positive
13 for a drug as evidenced by a positive toxicology test; and

14 2. the mother refused the level of drug treatment
15 recommended by a qualified addictions specialist, as defined in § 5-1201 of this title,
16 or by a physician or psychologist, as defined in the Health Occupations Article;

17 (iii) the parent subjected the child to:

18 1. chronic abuse;

19 2. chronic and life-threatening neglect;

20 3. sexual abuse; or

21 4. torture;

22 (iv) the parent has been convicted, in any state or any court of
23 the United States, of:

24 1. a crime of violence against:

25 A. a minor offspring of the parent;

26 B. the child; or

27 C. another parent of the child; or

28 2. aiding or abetting, conspiring, or soliciting to commit
29 a crime described in subitem 1 of this item; and

(v) the parent has involuntarily lost parental rights to a sibling of the child; and

(4) (i) the child's emotional ties with and feelings toward the child's parents, the child's siblings, and others who may affect the child's best interests significantly;

(ii) the child's adjustment to:

1. community;

2. home;

3. placement; and

4. school;

(iii) the child's feelings about severance of the parent-child relationship; and

(iv) the likely impact of terminating parental rights on the child's well-being.

(e) (1) A juvenile court shall consider the evidence under subsection (d)(3)(i) and (ii) of this section as to a continuing or serious act or condition and may waive a local department's obligations for services described in subsection (d)(1) of this section if, after appropriate evaluation of efforts made and services offered, the juvenile court finds by clear and convincing evidence that a waiver is in the child's best interests.

(2) A juvenile court may waive a local department's obligations for services described in subsection (d)(1) of this section if the juvenile court finds by clear and convincing evidence that one or more of the acts or circumstances listed in subsection (d)(3)(iii), (iv), or (v) of this section exists.

(3) If a juvenile court waives reunification efforts under § 3-812(d) of the Courts Article, the juvenile court may not consider any factor under subsection (d)(1) of this section.

(f) If a juvenile court finds that an act or circumstance listed in subsection (d)(3)(iii), (iv), or (v) of this section exists, the juvenile court shall make a specific finding, based on facts in the record, whether return of the child to a parent's custody poses an unacceptable risk to the child's future safety.

(g) If a parent has consented to guardianship in accordance with § 5-320(a)(1)(iii)1 of this subtitle, the loss of parental rights shall be considered voluntary.

1 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall apply only
2 to petitions for guardianship pending on or filed on or after the effective date of this
3 Act.

4 SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect
5 October 1, 2009.