

# SENATE BILL 613

D4

9lr0914  
CF HB 689

---

By: **Senators Gladden, Brochin, Conway, Dyson, Kramer, Madaleno, Munson, Muse, Peters, Pipkin, Raskin, Robey, Rosapepe, Stone, ~~and Zirkin~~ Zirkin, and Simonaire**

Introduced and read first time: February 6, 2009

Assigned to: Judicial Proceedings

---

Committee Report: Favorable with amendments

Senate action: Adopted

Read second time: March 27, 2009

---

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

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)

---

### 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.



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

3 BY repealing and reenacting, with amendments,  
4 Article – Courts and Judicial Proceedings  
5 Section 3–819(b) and 3–819.2(g)  
6 Annotated Code of Maryland  
7 (2006 Replacement Volume and 2008 Supplement)

8 BY repealing and reenacting, with amendments,  
9 Article – Family Law  
10 Section 5–338(b), 5–350(b), 5–3A–35(b), 5–3B–19(b), and 5–525  
11 Annotated Code of Maryland  
12 (2006 Replacement Volume and 2008 Supplement)

13 BY adding to  
14 Article – Family Law  
15 Section 9–107  
16 Annotated Code of Maryland  
17 (2006 Replacement Volume and 2008 Supplement)

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

20 **Article – Courts and Judicial Proceedings**

21 3–801.

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

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

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

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

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

30 3–819.

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

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

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

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

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

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

13 4. After the hearing:

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

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

18 C. Dismiss the case; or

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

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

22 2. Commit the child on terms the court considers  
23 appropriate to the custody of:

24 A. A parent;

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

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

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

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

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

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

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

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

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

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

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

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

28                                   **Article – Family Law**

29 5–338.

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

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

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

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

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

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

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

12 5–350.

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

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

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

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

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

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

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

26 5–3A–35.

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

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

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

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

10                   (2)   A child placement agency may not withhold consent for the sole  
11 reason that:

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

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

15 5–3B–19.

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

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

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

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

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

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

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

29 5–525.

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

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

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

17                           1. has determined that continued residence in the child’s  
18 home is contrary to the child’s welfare; and

19                           2. has committed the child to the custody or  
20 guardianship of a local department; or

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

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

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

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

4 (iv) Each local department shall report annually to the  
5 Administration on the number of requests for voluntary placement agreements for  
6 children with developmental disabilities or mental illnesses that have been received,  
7 the outcome of each request, and the reason for each denial.

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

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

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

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

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

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

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

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

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

4                            (i)    prior to the placement of a child in an out-of-home  
5 placement, to prevent or eliminate the need for removing the child from the child’s  
6 home; and

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

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

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

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

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

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

28                            (ii)    the child’s attachment and emotional ties to the child’s  
29 natural parents and siblings;

30                            (iii)    the child’s emotional attachment to the child’s current  
31 caregiver and the caregiver’s family;

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

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

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

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

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

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

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

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

16 2. by another approved adoptive family; or

17 (iv) another planned permanent living arrangement that:

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

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

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

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

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

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



1 financially unable to provide treatment or care for a child with a developmental  
2 disability or mental illness;

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

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

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

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

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

14 (ii) require the filing of a report with the court as provided in §  
15 3-819.2 of the Courts Article.

16 **9-107.**

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

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

22 **(I) A CONTROLLED DANGEROUS SUBSTANCE AS DEFINED IN**  
23 **§ 5-101 OF THE CRIMINAL LAW ARTICLE; OR**

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

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

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