

SENATE BILL 681

D4, N2

4lr1602

By: **Senator Conway**

Introduced and read first time: January 31, 2014

Assigned to: Judicial Proceedings

A BILL ENTITLED

1 AN ACT concerning

2 **Department of Human Resources – Contracts for Legal Services**

3 FOR the purpose of requiring the Secretary of Human Resources to enter into a
4 contract with a nonprofit legal service delivery organization based in the State
5 meeting certain criteria to represent certain individuals in certain proceedings;
6 authorizing the organization to subcontract not more than a certain percentage
7 of the cases the organization receives under the contract under certain
8 circumstances; making conforming changes; and generally relating to the
9 Department of Human Resources and contracts for legal services.

10 BY repealing and reenacting, with amendments,
11 Article – Courts and Judicial Proceedings
12 Section 3–813(d)
13 Annotated Code of Maryland
14 (2013 Replacement Volume and 2013 Supplement)

15 BY repealing and reenacting, with amendments,
16 Article – Estates and Trusts
17 Section 13–705(d) and 13–709(f)(2)
18 Annotated Code of Maryland
19 (2011 Replacement Volume and 2013 Supplement)

20 BY repealing and reenacting, without amendments,
21 Article – Family Law
22 Section 5–323 and 14–404
23 Annotated Code of Maryland
24 (2012 Replacement Volume and 2013 Supplement)

25 BY adding to
26 Article – Human Services
27 Section 2–214

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 Annotated Code of Maryland
2 (2007 Volume and 2013 Supplement)

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

5 **Article – Courts and Judicial Proceedings**

6 3–813.

7 (d) (1) A child who is the subject of a CINA petition shall be represented
8 by counsel.

9 (2) Unless the court finds that it would not be in the best interests of
10 the child, the court shall:

11 (i) Appoint an attorney with whom the Department of Human
12 Resources has contracted to provide those services **UNDER § 2–214 OF THE HUMAN**
13 **SERVICES ARTICLE**, in accordance with the terms of the contract; and

14 (ii) If another attorney has previously been appointed, strike the
15 appearance of that attorney.

16 **Article – Estates and Trusts**

17 13–705.

18 (d) (1) Subject to paragraph (2) of this subsection, unless the alleged
19 disabled person has counsel of his own choice, the court shall appoint an attorney to
20 represent him in the proceeding. If the person is indigent, the State shall pay a
21 reasonable attorney's fee.

22 (2) In any action in which payment for the services of a
23 court-appointed attorney for the alleged disabled person is the responsibility of the
24 local department of social services, unless the court finds that it would not be in the
25 best interests of the alleged disabled person, the court shall:

26 (i) Appoint an attorney who has contracted with the
27 Department of Human Resources to provide those services **UNDER § 2–214 OF THE**
28 **HUMAN SERVICES ARTICLE**, in accordance with the terms of the contract; and

29 (ii) In an action in which an attorney has previously been
30 appointed, strike the appearance of the attorney previously appointed and appoint the
31 attorney who is currently under contract with the Department of Human Resources, in
32 accordance with the terms of the contract.

33 13–709.

1 (f) (2) In any action in which payment for the services of a
2 court-appointed attorney for the person is the responsibility of the local department of
3 social services, unless the court finds that it would not be in the best interests of the
4 person, the court shall:

5 (i) Appoint an attorney who has contracted with the
6 Department of Human Resources to provide those services **UNDER § 2-214 OF THE**
7 **HUMAN SERVICES ARTICLE**, in accordance with the terms of the contract; and

8 (ii) In an action in which an attorney has previously been
9 appointed, strike the appearance of the attorney previously appointed and appoint the
10 attorney who is currently under contract with the Department of Human Resources, in
11 accordance with the terms of the contract.

12 Article – Family Law

13 5-323.

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

16 (b) If, after consideration of factors as required in this section, a juvenile
17 court finds by clear and convincing evidence that a parent is unfit to remain in a
18 parental relationship with the child or that exceptional circumstances exist that would
19 make a continuation of the parental relationship detrimental to the best interests of
20 the child such that terminating the rights of the parent is in a child’s best interests,
21 the juvenile court may grant guardianship of the child without consent otherwise
22 required under this subtitle and over the child’s objection.

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

26 (1) the identities of the child’s parents are unknown; and

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

29 (d) Except as provided in subsection (c) of this section, in ruling on a petition
30 for guardianship of a child, a juvenile court shall give primary consideration to the
31 health and safety of the child and consideration to all other factors needed to
32 determine whether terminating a parent’s rights is in the child’s best interests,
33 including:

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

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

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

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

8 (i) the extent to which the parent has maintained regular
9 contact with:

- 10 1. the child;
- 11 2. the local department to which the child is committed;
- 12 and
- 13 3. if feasible, the child's caregiver;

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

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

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

24 (3) whether:

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

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

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

- 1 2. the mother refused the level of drug treatment
2 recommended by a qualified addictions specialist, as defined in § 5–1201 of this title,
3 or by a physician or psychologist, as defined in the Health Occupations Article;
- 4 (iii) the parent subjected the child to:
- 5 1. chronic abuse;
- 6 2. chronic and life–threatening neglect;
- 7 3. sexual abuse; or
- 8 4. torture;
- 9 (iv) the parent has been convicted, in any state or any court of
10 the United States, of:
- 11 1. a crime of violence against:
- 12 A. a minor offspring of the parent;
- 13 B. the child; or
- 14 C. another parent of the child; or
- 15 2. aiding or abetting, conspiring, or soliciting to commit
16 a crime described in item 1 of this item; and
- 17 (v) the parent has involuntarily lost parental rights to a sibling
18 of the child; and
- 19 (4) (i) the child’s emotional ties with and feelings toward the
20 child’s parents, the child’s siblings, and others who may affect the child’s best interests
21 significantly;
- 22 (ii) the child’s adjustment to:
- 23 1. community;
- 24 2. home;
- 25 3. placement; and
- 26 4. school;
- 27 (iii) the child’s feelings about severance of the parent–child
28 relationship; and

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

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

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

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

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

20 (g) If a parent has consented to guardianship in accordance with §
21 5-320(a)(1)(iii)1 of this subtitle, the loss of parental rights shall be considered
22 voluntary.

23 14-404.

24 (a) (1) (i) Except as provided in subparagraph (ii) of this paragraph, at
25 least every 6 months the review board shall review each guardianship that a public
26 agency holds.

27 (ii) At least once a year the review board shall review each
28 guardianship that a public agency has held for more than 1 year.

29 (iii) At least every 6 months the review board shall conduct a file
30 review of each guardianship that a public agency has held for more than 1 year based
31 on a written report to the board including the present place of residence and health
32 status of the ward, the guardian's plan for preserving and maintaining the future
33 well-being of the ward, the need for continuation or cessation of the guardianship or
34 for any plans in altering the powers of the guardian, and the most recent dates of
35 visits by the guardian or the guardian's designee.

36 (2) The review board may review a case more frequently if:

1 (i) the disabled individual, the disabled individual's guardian,
2 or the disabled individual's attorney files a petition for review; or

3 (ii) the review board, on its own motion, schedules a review.

4 (b) (1) Notwithstanding the provisions of § 13-708(b)(7) of the Estates
5 and Trusts Article, each time that the review board reviews a guardianship, the
6 review board shall recommend that the guardianship be:

7 (i) continued;

8 (ii) modified; or

9 (iii) terminated.

10 (2) Notwithstanding that the review board recommends that a
11 guardianship be continued, the court may order that the guardianship be modified or
12 terminated.

13 (c) The disabled individual shall:

14 (1) attend each review board hearing if the disabled individual is able
15 to attend; and

16 (2) be represented at each review board hearing by:

17 (i) the lawyer that the disabled individual chooses; or

18 (ii) a lawyer who is appointed by the court.

19 (d) Except for purposes of a judicial proceeding under this title, all records of
20 the review board are confidential.

21 **Article – Human Services**

22 **2-214.**

23 **(A) THE SECRETARY SHALL ENTER INTO A CONTRACT WITH A**
24 **NONPROFIT LEGAL SERVICE DELIVERY ORGANIZATION BASED IN THE STATE**
25 **THAT HAS AN OFFICE, A PHYSICAL PRESENCE, OR A DEMONSTRATED CAPACITY**
26 **TO OPERATE IN EACH COUNTY AND BALTIMORE CITY TO REPRESENT CHILDREN**
27 **AND INDIGENT ADULTS IN:**

28 **(1) CHILD ADOPTIONS OR GUARDIANSHIPS UNDER § 5-323 OF**
29 **THE FAMILY LAW ARTICLE;**

1 **(2) PROCEEDINGS INVOLVING CHILDREN UNDER § 3-813 OF THE**
2 **COURTS ARTICLE;**

3 **(3) ADULT GUARDIANSHIPS OR PROTECTIVE SERVICES**
4 **PROCEEDINGS UNDER §§ 13-705 AND 13-709 OF THE ESTATES AND TRUSTS**
5 **ARTICLE;**

6 **(4) ADULT GUARDIANSHIP REVIEW HEARINGS UNDER § 14-404 OF**
7 **THE FAMILY LAW ARTICLE IN WHICH THE DEPARTMENT OR THE DEPARTMENT**
8 **OF AGING IS INVOLVED; OR**

9 **(5) CASES REQUIRING LEGAL SERVICES BE PROVIDED FOR A**
10 **CHILD OR VULNERABLE ADULT IN WHICH THE DEPARTMENT OF HEALTH AND**
11 **MENTAL HYGIENE IS INVOLVED.**

12 **(B) THE ORGANIZATION CONTRACTED UNDER SUBSECTION (A) OF THIS**
13 **SECTION MAY SUBCONTRACT NOT MORE THAN 50% OF THE CASES THE**
14 **ORGANIZATION RECEIVES UNDER THE CONTRACT TO PRIVATE ATTORNEYS**
15 **SUBJECT TO THE APPROVAL OF THE DEPARTMENT.**

16 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
17 October 1, 2014.