

SENATE BILL 448

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CF HB 683

By: **Senators Kelley, Astle, Benson, Currie, Guzzone, Jennings, Kagan, King, Klausmeier, Lee, Madaleno, Manno, McFadden, Middleton, Muse, Nathan-Pulliam, Peters, Pinsky, Ramirez, Raskin, Rosapepe, Young, and Zirkin**

Introduced and read first time: February 2, 2016

Assigned to: Judicial Proceedings

Committee Report: Favorable with amendments

Senate action: Adopted

Read second time: March 15, 2016

CHAPTER _____

1 AN ACT concerning

2 **Guardianship and Child in Need of Assistance Proceedings – Jurisdiction and**
3 **Authority of Juvenile Court**

4 FOR the purpose of authorizing the juvenile court to direct the provision of certain services
5 ~~or the taking of certain actions with respect to a certain child's education, health,~~
6 ~~and welfare~~ to a certain child during a certain disposition hearing; requiring the
7 juvenile court to direct the provision of certain services ~~or the taking of certain~~
8 ~~actions with respect to a certain child's education, health, and welfare~~ to a certain
9 child during a certain permanency planning hearing or guardianship hearing;
10 providing that, if the juvenile court enters an order directing the provision of certain
11 services to a certain child, the juvenile court shall retain jurisdiction over the child
12 for a certain time period and for a certain purpose, notwithstanding certain
13 provisions of law; providing that a certain order shall remain effective for a certain
14 period of time; and generally relating to the jurisdiction and authority of the juvenile
15 court.

16 BY repealing and reenacting, without amendments,
17 Article – Courts and Judicial Proceedings
18 Section 3–801(a) and (l)
19 Annotated Code of Maryland
20 (2013 Replacement Volume and 2015 Supplement)

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 BY repealing and reenacting, with amendments,
2 Article – Courts and Judicial Proceedings
3 Section 3–804, 3–819(c), and 3–823(h)
4 Annotated Code of Maryland
5 (2013 Replacement Volume and 2015 Supplement)

6 BY adding to
7 Article – Courts and Judicial Proceedings
8 Section 3–819(m) and 3–823(k)
9 Annotated Code of Maryland
10 (2013 Replacement Volume and 2015 Supplement)

11 BY repealing and reenacting, without amendments,
12 Article – Family Law
13 Section 5–324(b)
14 Annotated Code of Maryland
15 (2012 Replacement Volume and 2015 Supplement)

16 BY repealing and reenacting, with amendments,
17 Article – Family Law
18 Section ~~5–324(b)~~ and 5–328
19 Annotated Code of Maryland
20 (2012 Replacement Volume and 2015 Supplement)

21 BY adding to
22 Article – Family Law
23 Section 5–324(d)
24 Annotated Code of Maryland
25 (2012 Replacement Volume and 2015 Supplement)

26 Preamble

27 WHEREAS, § 5–324(b)(1)(ii)7B of the Family Law Article provides that, for children
28 placed under an order of guardianship by the juvenile court following the termination of
29 parental rights, the juvenile court shall direct the provision of certain services or the taking
30 of certain actions as to the child’s education, health, and welfare, including, for a child with
31 a disability, services to obtain ongoing care, if any, needed after the guardianship case ends;
32 and

33 WHEREAS, In the recent case of *In re Adoption/Guardianship of Dustin R.*, No. 24,
34 September Term, 2015, the Maryland Court of Appeals affirmed that these provisions
35 empower the juvenile court to order a State agency to provide services needed to obtain
36 ongoing care for a child under an order of guardianship after the child reaches age 21 and
37 the guardianship ends and that these provisions do not violate the separation of powers
38 doctrine enshrined in Article 8 of the Maryland Declaration of Rights; and

1 WHEREAS, The Court of Appeals further held that the juvenile court has inherent
2 parens patriae powers to order these services for the protection of the child; and

3 WHEREAS, The Court of Appeals further held that these services should act as a
4 bridge for a child with a disability to provide continuity as the child transitions to the adult
5 guardianship system; and

6 WHEREAS, The Court of Appeals further stated that, if a State agency challenges
7 the necessity of these services, the juvenile court has the authority to enforce an order
8 directing the provision of these services until the child's adult guardian files a request for
9 a judicial or administrative hearing on the challenge; and

10 WHEREAS, Children in foster care face significant challenges when they age out of
11 the child welfare system and transition to adulthood, including a lack of access to necessary
12 services, resources, and support; and

13 WHEREAS, Children who are under the CINA jurisdiction of the juvenile court ~~or~~
14 ~~who are under the guardianship jurisdiction of the juvenile court but who do not have a~~
15 ~~disability~~ are not eligible for the protection provided by § 5-324(b)(1)(ii)7B of the Family
16 Law Article, yet would benefit from that protection; now, therefore,

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

19 **Article – Courts and Judicial Proceedings**

20 3-801.

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

22 (l) “Developmental disability” means a severe chronic disability of an individual
23 that:

24 (1) Is attributable to a physical or mental impairment, other than the sole
25 diagnosis of mental illness, or to a combination of mental and physical impairments;

26 (2) Is likely to continue indefinitely;

27 (3) Results in an inability to live independently without external support
28 or continuing and regular assistance; and

29 (4) Reflects the need for a combination and sequence of special,
30 interdisciplinary, or generic care, treatment, or other services that are individually planned
31 and coordinated for the individual.

32 3-804.

1 (a) (1) Except as provided in paragraph (2) of this subsection, the court has
2 jurisdiction under this subtitle only if the alleged CINA or child in a voluntary placement
3 is under the age of 18 years when the petition is filed.

4 (2) The court has jurisdiction under this subtitle over a former CINA:

5 (i) Whose commitment to the local department was rescinded after
6 the individual reached the age of 18 years but before the individual reached the age of 20
7 years and 6 months; and

8 (ii) Who did not exit foster care due to reunification, adoption,
9 guardianship, marriage, or military duty.

10 (b) If the court obtains jurisdiction over a child, that jurisdiction continues in that
11 case until the child reaches the age of 21 years, unless the court terminates the case.

12 (c) After the court terminates jurisdiction, a custody order issued by the court in
13 a CINA case:

14 (1) Remains in effect; and

15 (2) May be revised or superseded only by another court of competent
16 jurisdiction.

17 **(D) NOTWITHSTANDING SUBSECTION (B) OF THIS SECTION, IF THE COURT**
18 **ENTERS AN ORDER DIRECTING THE PROVISION OF SERVICES TO A CHILD UNDER §**
19 **3-819(C)(3) OR § 3-823(H)(2)(VII) OF THIS SUBTITLE, THE COURT SHALL RETAIN**
20 **JURISDICTION OVER THE CHILD:**

21 **(1) FOR AS LONG AS THE ORDER IS EFFECTIVE; AND**

22 **(2) FOR THE LIMITED PURPOSE OF RULING ON ANY MOTION RELATED**
23 **TO THE ENFORCEMENT, MODIFICATION, OR TERMINATION OF THE ORDER.**

24 3-819.

25 (c) In addition to any action under subsection (b)(1)(iii) of this section, the court
26 may:

27 (1) (i) Place a child under the protective supervision of the local
28 department on terms the court considers appropriate;

29 (ii) Grant limited guardianship to the department or an individual
30 or both for specific purposes including medical and educational purposes or for other
31 appropriate services if a parent is unavailable, unwilling, or unable to consent to services
32 that are in the best interest of the child; or

1 (iii) Order the child and the child's parent, guardian, or custodian to
 2 participate in rehabilitative services that are in the best interest of the child and family;
 3 [and]

4 (2) Determine custody, visitation, support, or paternity of a child in
 5 accordance with § 3-803(b) of this subtitle; AND

6 ~~(3) DIRECT THE PROVISION OF ANY OTHER SERVICE OR TAKING OF~~
 7 ~~ANY OTHER ACTION WITH RESPECT TO THE CHILD'S EDUCATION, HEALTH, AND~~
 8 ~~WELFARE, INCLUDING FOR A CHILD WITH A DISABILITY, DIRECT THE PROVISION OF~~
 9 ~~SERVICES TO OBTAIN ONGOING CARE, IF ANY, NEEDED AFTER THE COURT'S~~
 10 ~~JURISDICTION ENDS.~~

11 (M) AN ORDER DIRECTING THE PROVISION OF SERVICES TO A CHILD UNDER
 12 SUBSECTION (C)(3) OF THIS SECTION IS EFFECTIVE UNTIL:

13 ~~(1) FOR A CHILD WITH A DEVELOPMENTAL DISABILITY, UNTIL:~~

14 ~~(1)~~ (1) THE CHILD IS TRANSITIONED TO ADULT GUARDIANSHIP
 15 CARE IF ADULT GUARDIANSHIP IS NECESSARY AND THERE IS NO LESS RESTRICTIVE
 16 ALTERNATIVE THAT MEETS THE NEEDS OF THE CHILD; AND

17 ~~(2)~~ (1) THE DEPARTMENT OR A LOCAL DEPARTMENT
 18 ENTERS INTO AN AGREEMENT TO PROVIDE OR OBTAIN THE SERVICES ORDERED BY
 19 THE COURT; OR

20 ~~(2)~~ (II) IF THE DEPARTMENT OR A LOCAL
 21 DEPARTMENT CHALLENGES THE NECESSITY OF THE SERVICES ORDERED BY THE
 22 COURT, THE CONCLUSION OF ANY ADMINISTRATIVE OR JUDICIAL REVIEW
 23 PROCEEDING REGARDING THE CHALLENGE; ~~AND~~

24 ~~(2) FOR ANY OTHER CHILD, FOR A PERIOD NOT EXCEEDING 6 MONTHS~~
 25 ~~AFTER THE COURT'S JURISDICTION ENDS.~~

26 3-823.

27 (h) (1) (i) Except as provided in subparagraphs (ii) and (iii) of this
 28 paragraph, the court shall conduct a hearing to review the permanency plan at least every
 29 6 months until commitment is rescinded or a voluntary placement is terminated.

30 (ii) The court shall conduct a review hearing every 12 months after
 31 the court determines that the child shall be continued in out-of-home placement with a
 32 specific caregiver who agrees to care for the child on a permanent basis.

(iii) 1. Unless the court finds good cause, a case shall be terminated after the court grants custody and guardianship of the child to a relative or other individual.

2. If the court finds good cause not to terminate a case, the court shall conduct a review hearing every 12 months until the case is terminated.

3. The court may not conclude a review hearing under subsection 2 of this subsection unless the court has seen the child in person.

(2) At the review hearing, the court shall:

(i) Determine the continuing necessity for and appropriateness of the commitment;

(ii) Determine and document in its order whether reasonable efforts have been made to finalize the permanency plan that is in effect;

(iii) Determine the extent of progress that has been made toward alleviating or mitigating the causes necessitating commitment;

(iv) Project a reasonable date by which a child in placement may be returned home, placed in a preadoptive home, or placed under a legal guardianship;

(v) Evaluate the safety of the child and take necessary measures to protect the child; [and]

(vi) Change the permanency plan if a change in the permanency plan would be in the child's best interest; AND

(VII) ~~DIRECT THE PROVISION OF ANY OTHER SERVICE OR TAKING OF ANY OTHER ACTION WITH RESPECT TO THE CHILD'S EDUCATION, HEALTH, AND WELFARE, INCLUDING~~ FOR A CHILD WITH A DISABILITY, DIRECT THE PROVISION OF SERVICES TO OBTAIN ONGOING CARE, IF ANY, NEEDED AFTER THE COURT'S JURISDICTION ENDS.

(3) Every reasonable effort shall be made to effectuate a permanent placement for the child within 24 months after the date of initial placement.

(K) AN ORDER DIRECTING THE PROVISION OF SERVICES TO A CHILD UNDER SUBSECTION (H)(2)(VII) OF THIS SECTION IS EFFECTIVE UNTIL:

~~(1) FOR A CHILD WITH A DEVELOPMENTAL DISABILITY, UNTIL:~~

~~(1)~~ **(1) THE CHILD IS TRANSITIONED TO ADULT GUARDIANSHIP CARE IF ADULT GUARDIANSHIP IS NECESSARY AND THERE IS NO LESS RESTRICTIVE ALTERNATIVE THAT MEETS THE NEEDS OF THE CHILD; AND**

~~(2)~~ **(1) THE DEPARTMENT OR A LOCAL DEPARTMENT ENTERS INTO AN AGREEMENT TO PROVIDE OR OBTAIN THE SERVICES ORDERED BY THE COURT; OR**

~~(2)~~ **(II) IF THE DEPARTMENT OR A LOCAL DEPARTMENT CHALLENGES THE NECESSITY OF THE SERVICES ORDERED BY THE COURT, THE CONCLUSION OF ANY ADMINISTRATIVE OR JUDICIAL REVIEW PROCEEDING REGARDING THE CHALLENGE; AND**

~~(2) FOR ANY OTHER CHILD, FOR A PERIOD NOT EXCEEDING 6 MONTHS AFTER THE COURT'S JURISDICTION ENDS.~~

Article – Family Law

5–324.

(b) (1) In a separate order accompanying an order granting guardianship of a child, a juvenile court:

(i) shall include a directive terminating the child’s CINA case;

(ii) consistent with the child’s best interests:

1. may place the child:

A. subject to paragraph (2) of this subsection, in a specific type of facility; or

B. with a specific individual;

2. may direct provision of services by a local department to:

A. the child; or

B. the child’s caregiver;

3. subject to a local department retaining legal guardianship, may award to a caregiver limited authority to make an emergency or ordinary decision as to the child’s care, education, mental or physical health, or welfare;

4. may allow access to a medical or other record of the child;

1 5. may allow visitation for the child with a specific
2 individual;

3 6. may appoint, or continue the appointment of, a
4 court-appointed special advocate for any purpose set forth under § 3-830 of the Courts
5 Article;

6 7. shall direct the provision of any other service or taking of
7 any other action as to the child's education, health, and welfare, including:

8 A. for a child who is at least 16 years old, services needed to
9 help the child's transition from guardianship to independence; ~~{or}~~

10 B. for a child with a disability, services to obtain ongoing
11 care, if any, needed after the guardianship case ends; ~~{and} OR~~

12 ~~C. FOR A CHILD WITHOUT A DISABILITY, SERVICES TO
13 OBTAIN ONGOING CARE, IF ANY, NEEDED FOR UP TO 6 MONTHS AFTER THE
14 GUARDIANSHIP CASE ENDS; AND~~

15 8. may co-commit the child to the custody of the Department
16 of Health and Mental Hygiene and order the Department of Health and Mental Hygiene to
17 provide a plan for the child of clinically appropriate services in the least restrictive setting,
18 in accordance with federal and State law;

19 (iii) if entered under § 5-322 of this subtitle, shall state each party's
20 response to the petition;

21 (iv) shall state a specific factual finding on whether reasonable
22 efforts have been made to finalize the child's permanency plan;

23 (v) shall state whether the child's parent has waived the right to
24 notice; and

25 (vi) shall set a date, no later than 180 days after the date of the order,
26 for the initial guardianship review hearing under § 5-326 of this subtitle.

27 (2) (i) Except for emergency commitment in accordance with § 10-617
28 of the Health – General Article or as expressly authorized by a juvenile court in accordance
29 with the standards in § 3-819(h) or (i) of the Courts Article, a child may not be committed
30 or otherwise placed for inpatient care or treatment in a psychiatric facility or a facility for
31 the developmentally disabled.

32 (ii) A juvenile court shall include in a commitment order under this
33 paragraph a requirement that the guardian:

1 1. file a progress report with the juvenile court at least every
2 180 days; and

3 2. provide a copy of each report to each person entitled to
4 notice of a review hearing under § 5–326 of this subtitle.

5 (iii) Every 180 days during a commitment or placement under this
6 paragraph, a juvenile court shall hold a hearing to determine whether the standards in §
7 3–819(h) or (i) of the Courts Article continue to be met.

8 **(D) AN ORDER DIRECTING THE PROVISION OF SERVICES TO A CHILD WITH A**
9 **DISABILITY UNDER SUBSECTION (B)(II)(2)7B OF THIS SECTION IS EFFECTIVE UNTIL:**

10 **(1) THE CHILD IS TRANSITIONED TO ADULT GUARDIANSHIP CARE IF**
11 **ADULT GUARDIANSHIP IS NECESSARY AND THERE IS NO LESS RESTRICTIVE**
12 **ALTERNATIVE THAT MEETS THE NEEDS OF THE CHILD; AND**

13 **(2) (i) THE DEPARTMENT OR A LOCAL DEPARTMENT ENTERS INTO**
14 **AN AGREEMENT TO PROVIDE OR OBTAIN THE SERVICES ORDERED BY THE COURT;**
15 **OR**

16 **(ii) IF THE DEPARTMENT OR A LOCAL DEPARTMENT**
17 **CHALLENGES THE NECESSITY OF THE SERVICES ORDERED BY THE COURT, THE**
18 **CONCLUSION OF ANY ADMINISTRATIVE OR JUDICIAL REVIEW PROCEEDING**
19 **REGARDING THE CHALLENGE.**

20 5–328.

21 (a) If a local department is a child’s guardian under this subtitle, a juvenile court:

22 (1) retains jurisdiction until:

23 (i) the child attains 18 years of age; or

24 (ii) the juvenile court finds the child to be eligible for emancipation;

25 and

26 (2) may continue jurisdiction until the child attains 21 years of age.

27 (b) If a juvenile court designates an individual as a child’s guardian, the juvenile
28 court:

29 (1) may retain jurisdiction until the child attains 18 years of age; or

30 (2) on finding further review unnecessary to maintain the child’s health
31 and welfare, may terminate the case before the child attains 18 years of age.

1 (c) An order for adoption of a child terminates the child’s guardianship case.

2 (d) On termination of a guardianship case, a juvenile court shall close the case.

3 (E) NOTWITHSTANDING SUBSECTIONS (A) AND (B) OF THIS SECTION, IF THE
4 COURT ENTERS AN ORDER DIRECTING THE PROVISION OF SERVICES TO A CHILD
5 UNDER § 5-324(B)(II)(2)7B ~~OR C~~ OF THIS SUBTITLE, THE COURT SHALL RETAIN
6 JURISDICTION OVER THE CHILD:

7 (1) FOR AS LONG AS THE ORDER IS EFFECTIVE; AND

8 (2) FOR THE LIMITED PURPOSE OF RULING ON ANY MOTION RELATED
9 TO THE ENFORCEMENT, MODIFICATION, OR TERMINATION OF THE ORDER.

10 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
11 October 1, 2016.

Approved:

Governor.

President of the Senate.

Speaker of the House of Delegates.