

# HOUSE BILL 324

D4

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By: **Delegate Lopez**

Introduced and read first time: January 25, 2023

Assigned to: Judiciary

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## A BILL ENTITLED

1 AN ACT concerning

2 **Child Abuse and Neglect – Domestic Violence**

3 FOR the purpose of establishing a rebuttable presumption that “neglect” in provisions of  
4 law relating to child abuse and neglect and children in need of assistance does not  
5 include certain behaviors on the part of a victim of domestic violence; prohibiting a  
6 court from considering certain behaviors in determining whether a child is a child in  
7 need of assistance under certain circumstances; and generally relating to child abuse  
8 and neglect and children in need of assistance.

9 BY repealing and reenacting, without amendments,  
10 Article – Courts and Judicial Proceedings  
11 Section 3–801(e), (f), (g), and (s)  
12 Annotated Code of Maryland  
13 (2020 Replacement Volume and 2022 Supplement)

14 BY adding to  
15 Article – Courts and Judicial Proceedings  
16 Section 3–801.1  
17 Annotated Code of Maryland  
18 (2020 Replacement Volume and 2022 Supplement)

19 BY repealing and reenacting, with amendments,  
20 Article – Courts and Judicial Proceedings  
21 Section 3–819(b)  
22 Annotated Code of Maryland  
23 (2020 Replacement Volume and 2022 Supplement)

24 BY repealing and reenacting, without amendments,  
25 Article – Family Law  
26 Section 5–701(s)  
27 Annotated Code of Maryland

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EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



(2019 Replacement Volume and 2022 Supplement)

BY adding to

Article – Family Law

Section 5–701.1

Annotated Code of Maryland

(2019 Replacement Volume and 2022 Supplement)

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

**Article – Courts and Judicial Proceedings**

3–801.

(e) “Child” means an individual under the age of 18 years.

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

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

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

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

(s) “Neglect” means the leaving of a child unattended or other failure to give  
proper care and attention to a child by any parent or individual who has permanent or  
temporary care or custody or responsibility for supervision of the child under circumstances  
that indicate:

(1) That the child’s health or welfare is harmed or placed at substantial  
risk of harm; or

(2) That the child has suffered mental injury or been placed at substantial  
risk of mental injury.

**3–801.1.**

**THERE IS A REBUTTABLE PRESUMPTION THAT NEGLECT DOES NOT INCLUDE  
A FAILURE OF A VICTIM OF DOMESTIC VIOLENCE TO:**

**(1) PREVENT A CHILD FROM WITNESSING THE DOMESTIC VIOLENCE;**

1           **(2) LEAVE THE HOME IN WHICH THE ALLEGED PERPETRATOR**  
2 **RESIDES;**

3           **(3) END A RELATIONSHIP WITH THE ALLEGED PERPETRATOR;**

4           **(4) REPORT THE DOMESTIC VIOLENCE TO LAW ENFORCEMENT OR**  
5 **THE LOCAL DEPARTMENT OF SOCIAL SERVICES; OR**

6           **(5) SEEK AN ORDER OF PROTECTION AGAINST THE ALLEGED**  
7 **PERPETRATOR.**

8 3–819.

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

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

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

15                           1. Order the local department to assess or reassess the  
16 family’s and child’s eligibility for placement of the child in accordance with a voluntary  
17 placement agreement under § 5–525(b)(1)(i) of the Family Law Article;

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

20                           3. If the local department does not find the child eligible for  
21 placement in accordance with a voluntary placement agreement, hold a hearing to  
22 determine whether the family and child are eligible for placement of the child in accordance  
23 with a voluntary placement agreement; and

24                           4. After the hearing:

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

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

29                                   C. Dismiss the case; or

30                           (iii) Subject to [paragraph] **PARAGRAPHS (2) AND (4)** of this  
31 subsection, find that the child is in need of assistance and:

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- 1 1. Not change the child’s custody status; or
- 2 2. Commit the child on terms the court considers appropriate
- 3 to the custody of:
  - 4 A. A parent;
  - 5 B. Subject to § 3–819.2 of this subtitle, a relative, or other
  - 6 individual; or
  - 7 C. A local department, the Maryland Department of Health,
  - 8 or both, including designation of the type of facility where the child is to be placed.

(2) (i) 1. In this paragraph, “disability” means:

- 10 A. A physical or mental impairment that substantially limits
- 11 one or more of an individual’s major life activities;
- 12 B. A record of having a physical or mental impairment that
- 13 substantially limits one or more of an individual’s major life activities; or
- 14 C. Being regarded as having a physical or mental
- 15 impairment that substantially limits one or more of an individual’s major life activities.

2. “Disability” shall be construed in accordance with the ADA Amendments Act of 2008, P.L. 110–325.

(ii) In making a disposition on a CINA petition under this subtitle, a disability of the child’s parent, guardian, or custodian is relevant only to the extent that the court finds, based on evidence in the record, that the disability affects the ability of the parent, guardian, or custodian to give proper care and attention to the child and the child’s needs.

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

**(4) UNLESS THE REBUTTABLE PRESUMPTION SPECIFIED IN § 3–801.1 OF THIS SUBTITLE HAS BEEN OVERCOME, THE COURT MAY NOT GIVE ANY WEIGHT TO EVIDENCE THAT A VICTIM OF DOMESTIC VIOLENCE HAS NOT TAKEN THE ACTIONS DESCRIBED IN THAT SECTION WHEN ASSESSING THE TOTALITY OF THE CIRCUMSTANCES IN DETERMINING WHETHER A CHILD IS A CHILD IN NEED OF ASSISTANCE.**

1 5-701.

2 (s) "Neglect" means the leaving of a child unattended or other failure to give  
3 proper care and attention to a child by any parent or other person who has permanent or  
4 temporary care or custody or responsibility for supervision of the child under circumstances  
5 that indicate:

6 (1) that the child's health or welfare is harmed or placed at substantial risk  
7 of harm; or

8 (2) mental injury to the child or a substantial risk of mental injury.

9 **5-701.1.**

10 **THERE IS A REBUTTABLE PRESUMPTION THAT NEGLECT DOES NOT INCLUDE**  
11 **A FAILURE OF A VICTIM OF DOMESTIC VIOLENCE TO:**

12 **(1) PREVENT A CHILD FROM WITNESSING THE DOMESTIC VIOLENCE;**

13 **(2) LEAVE THE HOME IN WHICH THE ALLEGED PERPETRATOR**  
14 **RESIDES;**

15 **(3) END A RELATIONSHIP WITH THE ALLEGED PERPETRATOR;**

16 **(4) REPORT THE DOMESTIC VIOLENCE TO LAW ENFORCEMENT OR**  
17 **THE LOCAL DEPARTMENT OF SOCIAL SERVICES; OR**

18 **(5) SEEK AN ORDER OF PROTECTION AGAINST THE ALLEGED**  
19 **PERPETRATOR.**

20 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect  
21 October 1, 2023.