

Department of Legislative Services
Maryland General Assembly
2025 Session

FISCAL AND POLICY NOTE
First Reader

Senate Bill 191
Judicial Proceedings

Family Law - Children in Need of Assistance - Unlicensed Settings

This departmental bill prohibits placing a child in need of assistance (CINA) in an “unlicensed setting” and using State funds to pay for the placement or support of a child in such a setting except under limited circumstances. The bill’s prohibition is not applicable to a child for whom the juvenile court has determined that reunification is not in the child’s best interests or for whom the juvenile court has not yet made certain required findings under § 9-101 of the Family Law Article.

Fiscal Summary

State Effect: State finances may be impacted to the extent the bill results in reduced out-of-home placements in unlicensed settings, as discussed below. The bill does not materially affect the operations or finances of the Judiciary.

Local Effect: The bill does not materially affect local government operations or finances.

Small Business Effect: The Department of Human Services (DHS) has determined that this bill has minimal or no impact on small business (attached). The Department of Legislative Services concurs with this assessment.

Analysis

Bill Summary: A CINA may be placed in an unlicensed setting and State funds may be used to pay for the placement or support of the child if the agency responsible for the placement and care of the child documents and demonstrates by clear and convincing evidence that:

- proactive, thorough, and timely efforts were made to provide services and supports to the child and the child’s family to safely reunify the family, and those efforts were unsuccessful due to reasons within the control of the child or family;
- the agency exhausted all reasonable resources to make proactive, thorough, and timely efforts to locate a kinship caregiver and identified necessary services and supports to provide a kinship caregiver with an equal opportunity to care for the child and those efforts were unsuccessful due to reasons within the control of the child or kinship caregiver;
- there is no licensed family-based care available that meets the child’s needs; and
- the agency has employed all available incentives and disincentives to obtain a licensed placement that is in the least restrictive setting and that most approximates a family and meets the child’s needs, or the unlicensed setting is a reasonable accommodation, as specified by federal law regarding disabilities.

A child’s placement in an unlicensed setting may not exceed 10 calendar days unless authorized by the Secretary of Human Services. DHS may adopt necessary regulations to implement the bill.

“Unlicensed setting” means a setting for the placement of a CINA that is not licensed. An unlicensed setting includes a hotel or motel, a shelter designed to meet the needs of a child who has run away or who is homeless, and an overnight stay in an office of DHS. An unlicensed setting does not include (1) the voluntary placement of a former CINA; (2) the placement of a child with an individual who is in the process of applying to be a kinship caregiver or foster parent; or (3) the placement of a child with a parent, including in a family-based residential treatment setting.

Current Law:

Child in Need of Assistance – Generally

A CINA is a child who requires court intervention because (1) the child has been abused or neglected, has a developmental disability, or has a mental disorder and (2) the child’s parents, guardian, or custodian is unable or unwilling to give proper care and attention to the child and the child’s needs.

Generally, in making a disposition on a CINA petition in which the child is found to be a CINA, the court must either not change the child’s custody status or commit the child on terms the court considers appropriate to the custody of (1) a parent; (2) a relative or other individual; or (3) a local department of social services, the Maryland Department of Health, or both, including designation of the type of facility where the child is to be placed.

Statutory provisions outline numerous requirements for CINA proceedings and circumstances under which a child may be placed in out-of-home care prior to or after being adjudicated as a CINA. Generally, subject to limited exceptions, reasonable efforts must be made to preserve and reunify families (1) prior to the placement of a child in an out-of-home placement, to prevent or eliminate the need for removing the child from the child's home and (2) to make it possible for a child to return safely to the child's home. In determining the reasonable efforts to be made (and in making the reasonable efforts), the child's safety and health must be the primary concern.

Kinship Caregiver

Chapter 429 of 2024 altered statutory provisions relating to the kinship care program within DHS to further prioritize placing children in need of out-of-home placement with kinship caregivers. A "kinship caregiver" includes (1) a kinship parent; (2) an individual who is related to the child through blood or marriage, adoption, tribal law or custom, or cultural custom or practice; and (3) an individual who is unrelated to the child but has a strong familial or other significant bond with the child, or is a person identified by the child's parent. A kinship caregiver may not be younger than age 18.

A local department, in selecting a placement that is in the best interests of a child in need of out-of-home placement, must give preference to placement with a kinship caregiver, unless there is good cause to the contrary. If a local department cannot locate a kinship caregiver at the time of initial placement, preference must be given to a placement that most approximates a family in which the child's special needs, if any, may be met, taking into account (1) the proximity of the placement to the child's home, extended family, or siblings; (2) the child's culture or language continuity; (3) the child's age; and (4) the child's developmental and educational needs.

If a kinship caregiver is located *after* the placement of a child in a foster care setting, a local department must, in the best interest of the child, place the child with the kinship caregiver. A local department must approve an individual as a kinship caregiver if (1) the individual is related to the child through blood or marriage, adoption, tribal law or custom, or cultural custom or practice; (2) the individual has a strong familial or other significant bond to the child or the child's family, or is a person identified by the child's parent; and (3) placement with the individual is in the child's best interest.

Section § 9-101 of the Family Law Article

Pursuant to § 9-101 of the Family Law Article, in any custody or visitation proceeding, if the court has reasonable grounds to believe that a child has been abused or neglected by a party to the proceeding, the court must determine whether abuse or neglect is likely to occur if custody or visitation rights are granted to the party. Unless the court specifically

finds that there is no likelihood of further child abuse or neglect by the party, the court must deny custody or visitation rights to that party. However, the court is authorized to approve a supervised visitation arrangement that assures the safety and physiological, psychological, and emotional well-being of the child.

Background: DHS advises that out-of-home placements in unlicensed settings are presumed not to be in the best interest of the child and may be appropriate only in rare, time-limited circumstances after proactive, thorough, and timely efforts have been made to place a child in the least restrictive setting. According to DHS, 235 children were placed in hotels or similar unlicensed settings during fiscal 2024; the average length of stay was 73 days. Although children are placed in unlicensed settings as a last resort, DHS notes that the children are often those with complex care needs for which limited alternative placements may be available. According to DHS, it is optimistic that an increased use of kinship resources as a result of Chapter 429 (along with increased case management and community resources) will assist in reducing the reliance of placements in unlicensed settings.

State Fiscal Effect: State finances may be impacted if the bill's prohibition against using unlicensed settings except in limited circumstances alters out-of-home placement practices utilized by local departments. Because placement needs and circumstances vary considerably for each case, a precise impact cannot be reliably estimated in advance and is dependent on the extent to which local departments reduce placements in unlicensed settings that would have been utilized absent the bill. For context, DHS notes that potential annual costs associated with unlicensed placement contracts can range from \$2.3 million to \$7.9 million, depending on the provider and utilization. If the bill increases the use of alternative, less expensive options (such as kinship caregivers), State expenditures decrease. However, as local departments are already generally assumed to utilize unlicensed placements only after all other options have been exhausted, any impact on State finances directly attributable to the bill may be immaterial.

Additional Information

Recent Prior Introductions: Similar legislation has not been introduced within the last three years.

Designated Cross File: None.

Information Source(s): Department of Human Services; Judiciary (Administrative Office of the Courts); Department of Legislative Services

Fiscal Note History: First Reader - January 10, 2025
km/jkb

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ANALYSIS OF ECONOMIC IMPACT ON SMALL BUSINESSES

TITLE OF BILL: Family Law – Children in Need of Assistance – Unlicensed Settings

BILL NUMBER: SB 191

PREPARED BY: Daniel Cohen

PART A. ECONOMIC IMPACT RATING

This agency estimates that the proposed bill:

X WILL HAVE MINIMAL OR NO ECONOMIC IMPACT ON MARYLAND
SMALL BUSINESS

OR

 WILL HAVE MEANINGFUL ECONOMIC IMPACT ON MARYLAND
SMALL BUSINESSES

PART B. ECONOMIC IMPACT ANALYSIS

N/A