



POSITION ON PROPOSED LEGISLATION

BILL: SB 586 - Juvenile – Foster Parents, Preadoptive Parents, and Caregivers
– Right to Intervene

POSITION: OPPOSE

DATE: February 6, 2020

This bill grants foster parents, preadoptive parents, and caretakers the right to receive notice of a proceeding concerning a child and intervene and the right to mandatory intervention in any proceeding involving the welfare or placement of the child, as well as the right to receive full information about the child and the family members. The Office of the Public Defender opposes this bill for the following reasons:

(1) This change in the juvenile statute would harm the very families that the juvenile statute was meant to preserve and assist.

- Children who are depending on their foster care providers to take care of them during a traumatic time in their lives may be caught in an adversarial relationship between the foster and natural parents. Custody battles are harmful to children.
- Allowing caretakers to be parties could have a chilling effect on children complaining about their treatment by the foster parent if the child knows the foster parent is a party, is going to get court reports and other documents, and could retaliate against the child. Conversely, once the foster parent feels empowered as a party, the foster parent could seek to influence the child against the parent(s).
- It creates an antagonistic relationship between parents and caretakers.
- The addition of other parties erodes the Constitutional right of parents by including individuals whose interests may be in conflict with the interests of the parents and children to reunify their families.
- It incentivizes the Department of Social Services to remove children from a caretaker who intervenes and takes a position different from the Department.

(over)

(2) The State would face an additional fiscal burden because it will be required to provide counsel at State expense for indigent parties.

- According to Md. Rule 11-106 (b)(3), a party in a CINA case is entitled to counsel. According to Md. Code, Courts & Judicial Proceedings § 3-813, a party is entitled to counsel at every stage of the proceeding at state expense if the party is indigent. Public Defenders are only required to provide representation to parents and guardians, which means funding for counsel for indigent foster and relative caretakers must necessarily come from the judiciary's coffers.

(3) Mandatory intervention will cause delay in attaining permanency for children in foster care.

- There are already at least 4 parties, each with separate counsel, in each CINA case. Allowing intervention means that for every hearing there could be one or more caretakers for each child included as a party even if there were no special circumstances that necessitated the involvement of the caretakers.
- Courts must take into account the schedule of the parties and counsel when scheduling cases.
- Foster care providers who are aggrieved by a court's ruling would have the right to note an appeal, which would delay the progress in the case.
- Even in the middle of litigation, if a child is moved to another foster home, the new foster care providers would have the right to intervene, and the case would have to start anew. Family separation would be prolonged by complicating the litigation, ultimately to the detriment of the children.

(4) The Rules and statutes already in effect provide a clear avenue for intervention by third parties.

- Pursuant to Courts & Judicial Proceedings § 3-816.3, foster care providers have the right to notice of proceedings and the right to be heard at the proceedings. Md. Rule 11-122 permits an individual leave to seek intervention, obtain certain records, and participate in dispositional hearings.