

DATE: February 18, 2021

BILL NUMBER: House Bill 748

COMMITTEE: Judiciary

BILL TITLE: Family Law – Child Custody and Visitation

DHS POSITION: Letter of Information

The Department of Human Services (DHS) respectfully offers this letter of information regarding House Bill 748 (HB 748). This bill significantly changes provisions of Family Law (FL) §§ 9-101 and 9-101.1, and their applicability to Child in Need of Assistance (CINA) proceedings.

HB 748 changes long-standing juvenile court practice by eliminating the application of FL §§ 9-101 and 9-101.1 to CINA proceedings altogether. Since 2000, the Maryland Court of Appeals and Maryland Court of Special Appeals have required that juvenile courts follow FL §§ 9-101 and 9-101.1 in all CINA proceedings before awarding custody or visitation to an abusive or neglectful parent.¹ Furthermore, the requirement to consider FL § 9-101 is set forth in the model CINA orders. With CINA proceedings being excluded from FL §§ 9-101 and 9-101.1, permanency could be delayed for foster youth until there is clear guidance from the appellate courts to replace the parameters set out in these code sections. This may result in additional costs for foster care placement, as well as additional case work service and supervision.

HB 748 adds a new section, FL §9-109, that details which specific factors a court must consider, which factors the court may consider, and which factors must be accorded more weight in determining the child's best interest. While the bill excludes CINA proceedings from FL §§ 9-101 and FL 9-101.1, the bill does not exclude CINA proceedings from the newly proposed FL § 9-109. The bill imposes new factors to determine the best interest of the child, that are not applicable in the context of a CINA proceeding.

Custody and visitation decisions are serious and complex, and each case hinges on a plethora of unique facts relating to each case. As such, current law directs the court to apply a non-exhaustive set of long-established factors when making determinations on custody and visitation.²

Thank you for the opportunity to offer this information. The Department hopes it is helpful in your deliberations regarding HB 748.

¹ See e.g., *In re Justin D.*, 357 Md. 431, 445 (2000); *In re Yve S.*, 373 Md. 551, 587–88 (2003); *In re Andre J.*, 223 Md. App. 305, 325–26 (2015). These cases explain that FL 9-101 gives the juvenile court clear direction-- it cannot award custody or unsupervised visitation to an abusive or neglectful parent without making a proper FL 9-101 finding.

² See *Arizova V. Suleymanov*, 243 Md. App. 340, 345-47 (2019), Appellate courts, however, have recognized that “no single list of criteria will satisfy the demands of every case.” *Taylor v. Taylor*, 306 Md. 290, 303 (1986).

