

Department of Legislative Services
 Maryland General Assembly
 2021 Session

FISCAL AND POLICY NOTE
 First Reader

House Bill 893
 Judiciary

(Delegate Dumais)

Foster Parents, Kinship Parents, Preadoptive Parents, and Caregivers – Right to Intervene

This bill establishes the right for foster parents, kinship parents, preadoptive parents, or caregivers to intervene as a party in any child abuse or neglect, termination of parental rights, or adoption proceeding. The bill also requires the circuit court to provide specified notice regarding such proceedings to a child’s foster parent, kinship parent, preadoptive parent, or caregiver and provides additional rights to foster parents and kinship parents.

Fiscal Summary

State Effect: General fund expenditures increase by a minimum of \$233,000 in FY 2022. Future years reflect annualization and ongoing costs. Revenues are not affected.

(in dollars)	FY 2022	FY 2023	FY 2024	FY 2025	FY 2026
Revenues	\$0	\$0	\$0	\$0	\$0
GF Expenditure	233,000	282,100	291,100	301,300	311,800
Net Effect	(\$233,000)	(\$282,100)	(\$291,100)	(\$301,300)	(\$311,800)

Note: () = decrease; GF = general funds; FF = federal funds; SF = special funds; - = indeterminate increase; (-) = indeterminate decrease

Local Effect: Potential minimal notification costs for the circuit courts, as discussed below. Local revenues are not affected.

Small Business Effect: None.

Analysis

Bill Summary/Current Law: Under current law, before any proceeding concerning a child, the local department of social services must give at least 10 days’ notice in writing

to the child's foster parent, preadoptive parent, or caregiver of the date, time, and place of the proceeding and the right to be heard at the proceeding. Pursuant to the bill, these individuals, as well as kinship parents, must also be provided notice regarding the right to intervene as a party in the specified proceedings. The bill also adds that the circuit court (in addition to the local department) must provide the required notice to these individuals.

Under current law, a "party" does not include a foster parent. The bill specifies that a party does not include a foster parent, kinship parent, preadoptive parent, or caregiver unless that individual has exercised the right to intervene.

Under the bill, a foster parent, kinship parent, preadoptive parent, or caregiver with whom the child has been living for at least 12 months must, on request, be designated as a party to any child abuse or neglect, termination of parental rights, or adoption proceeding. If a child has been living with any of these individuals for less than 12 months, the individuals, at the discretion of the court *may* be designated as a party.

Under current law, foster parents are afforded numerous rights, including:

- the right to obtain full information from the caseworker, subject to exceptions regarding privileged or confidential matters, on the physical, social, emotional, educational, and mental history of a child, which would possibly affect the care provided by a foster parent;
- with regard to local department case planning, the right to be informed of decisions made by the courts or a child welfare agency concerning a child and the right to provide input, among other rights; and
- the right to be given reasonable written notice of plans to terminate the placement of a child with a foster parent, subject to specified exceptions.

The bill extends these rights to kinship parents and also adds that foster parents and kinship parents have the right to intervene in specified proceedings, subject to the bill's provisions. Furthermore, a foster parent or kinship parent must have the right to obtain all nonprivileged information in documents pertaining to the placement of a child. A party who asserts that information in a document is privileged must identify the privilege, prove its applicability, and produce the document with the information for which the privilege is claimed redacted.

Statute defines a kinship parent as an individual who is related by blood or marriage within five degrees of consanguinity or affinity to a child who is in the care, custody, or guardianship of a local department and with whom the child may be placed for temporary or long-term care other than adoption.

State/Local Fiscal Effect: General fund expenditures for the Department of Human Services increase by a minimum of \$232,983 in fiscal 2022, which accounts for the bill's October 1, 2021 effective date. This estimate reflects the cost of hiring two assistant attorneys general to accommodate an anticipated increase in workload associated with child in need of assistance (CINA) matters. It includes salaries, fringe benefits, one-time start-up costs, and ongoing operating expenses.

Positions	2.0
Salaries and Fringe Benefits	\$221,820
Operating Expenses	<u>11,163</u>
Total FY 2022 State Expenditures	\$232,983

Future year expenditures reflect full salaries with annual increases and employee turnover and ongoing operating expenses.

The extent to which the authorization for additional individuals to intervene/be designated as a party in proceedings may impact decisions regarding a child's welfare or placement (and associated State funding related to such services) cannot be reliably predicted beforehand, and is therefore not accounted for in this fiscal and policy note.

General fund expenditures for the Judiciary and the circuit courts may increase minimally to provide written notice of proceedings as required by the bill. Although unable to quantify a precise fiscal estimate, the Judiciary notes that foster parents and caregivers change frequently in CINA cases, and making the circuit courts jointly responsible for meeting the notice requirement places an additional burden on the courts.

Furthermore, under § 3-813 of the Courts and Judicial Proceedings Article, a party is entitled to the assistance of counsel in CINA proceedings. Except as otherwise provided, a party is not entitled to the assistance of counsel at State expense unless the party is indigent. The Office of the Public Defender may only represent parents or guardians of the child alleged to be a CINA; therefore, it is assumed that another entity, such as the Judiciary, will need to develop and use other resources to ensure that eligible individuals are represented. A reliable estimate of the number of individuals who may request to be a party (and who are also indigent and, therefore, eligible for State-funded representation) is not available beforehand. However, to the extent that additional individuals who are indigent exercise the right of intervention and are deemed to be a "party" in such proceedings, State expenditures (assumed to be general funds) likely increase.