

SENATE BILL 272

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SB 448/16 – JPR

7lr1403

By: **Senators Kelley, Benson, Guzzone, Jennings, King, Lee, Madaleno, Manno,
Muse, Peters, Pinsky, Ramirez, Ready, Smith, Young, and Zucker**

Introduced and read first time: January 20, 2017

Assigned to: Judicial Proceedings

A BILL ENTITLED

1 AN ACT concerning

2 **Guardianship and Child in Need of Assistance Proceedings – Jurisdiction and**
3 **Authority of Juvenile Court**

4 FOR the purpose of authorizing the juvenile court to direct the provision of certain services
5 to a certain child during a certain disposition hearing; requiring the juvenile court
6 to direct the provision of certain services to a certain child during a certain
7 permanency planning hearing or guardianship hearing; providing that, if the
8 juvenile court enters an order directing the provision of certain services to a certain
9 child, the juvenile court retains jurisdiction for a certain time period and for a certain
10 purpose, notwithstanding certain provisions of law; providing that a certain order
11 shall remain effective for a certain period of time; and generally relating to the
12 jurisdiction and authority of the juvenile court.

13 BY repealing and reenacting, without amendments,
14 Article – Courts and Judicial Proceedings
15 Section 3–801(a) and (l)
16 Annotated Code of Maryland
17 (2013 Replacement Volume and 2016 Supplement)

18 BY repealing and reenacting, with amendments,
19 Article – Courts and Judicial Proceedings
20 Section 3–804, 3–819(c), and 3–823(h)
21 Annotated Code of Maryland
22 (2013 Replacement Volume and 2016 Supplement)

23 BY adding to
24 Article – Courts and Judicial Proceedings
25 Section 3–819(m) and 3–823(k)
26 Annotated Code of Maryland
27 (2013 Replacement Volume and 2016 Supplement)

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



BY repealing and reenacting, with amendments,
Article – Family Law
Section 5–301, 5–324(b), and 5–328
Annotated Code of Maryland
(2012 Replacement Volume and 2016 Supplement)

BY adding to
Article – Family Law
Section 5–324(d)
Annotated Code of Maryland
(2012 Replacement Volume and 2016 Supplement)

Preamble

WHEREAS, § 5–324(b)(1)(ii)7B of the Family Law Article provides that, for children placed under an order of guardianship by the juvenile court following the termination of parental rights, the juvenile court shall direct the provision of certain services or the taking of certain actions as to the child’s education, health, and welfare, including, for a child with a disability, services to obtain ongoing care, if any, needed after the guardianship case ends; and

WHEREAS, In the recent case of *In re Adoption/Guardianship of Dustin R.*, No. 24, September Term, 2015, the Maryland Court of Appeals affirmed that these provisions empower the juvenile court to order a State agency to provide services needed to obtain ongoing care for a child under an order of guardianship after the child reaches the age of 21 years and the guardianship ends and that these provisions do not violate the separation of powers doctrine enshrined in Article 8 of the Maryland Declaration of Rights; and

WHEREAS, The Court of Appeals further held that the juvenile court has inherent *parens patriae* powers to order these services for the protection of the child; and

WHEREAS, The Court of Appeals further held that these services should act as a bridge for a child with a disability to provide continuity as the child transitions to the adult guardianship system; and

WHEREAS, The Court of Appeals further stated that, if a State agency challenges the necessity of these services, the juvenile court has the authority to enforce an order directing the provision of these services until the child’s adult guardian files a request for a judicial or administrative hearing on the challenge; and

WHEREAS, Children in foster care face significant challenges when they age out of the child welfare system and transition to adulthood, including a lack of access to necessary services, resources, and support; and

WHEREAS, Children who are under the CINA jurisdiction of the juvenile court are not eligible for the protection provided by § 5–324(b)(1)(ii)7B of the Family Law Article, yet would benefit from that protection; now, therefore,

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.

(a) In this subtitle the following words have the meanings indicated.

(l) “Developmental disability” means a severe chronic disability of an individual that:

(1) Is attributable to a physical or mental impairment, other than the sole diagnosis of mental illness, or to a combination of mental and physical impairments;

(2) Is likely to continue indefinitely;

(3) Results in an inability to live independently without external support or continuing and regular assistance; and

(4) Reflects the need for a combination and sequence of special, interdisciplinary, or generic care, treatment, or other services that are individually planned and coordinated for the individual.

3–804.

(a) (1) Except as provided in paragraph (2) of this subsection, the court has jurisdiction under this subtitle only if the alleged CINA or child in a voluntary placement is under the age of 18 years when the petition is filed.

(2) The court has jurisdiction under this subtitle over a former CINA:

(i) Whose commitment to the local department was rescinded after the individual reached the age of 18 years but before the individual reached the age of 20 years and 6 months; and

(ii) Who did not exit foster care due to reunification, adoption, guardianship, marriage, or military duty.

(b) If the court obtains jurisdiction over a child, that jurisdiction continues in that case until the child reaches the age of 21 years, unless the court terminates the case.

(c) After the court terminates jurisdiction, a custody order issued by the court in a CINA case:

(1) Remains in effect; and

(2) May be revised or superseded only by another court of competent jurisdiction.

(D) NOTWITHSTANDING SUBSECTION (B) OF THIS SECTION, IF THE COURT ENTERS AN ORDER DIRECTING THE PROVISION OF SERVICES TO A CHILD UNDER § 3–823(H)(2)(VII) OF THIS SUBTITLE, THE COURT RETAINS JURISDICTION TO RULE ON ANY MOTION RELATED TO THE ENFORCEMENT, MODIFICATION, OR TERMINATION OF THE ORDER, FOR AS LONG AS THE ORDER IS EFFECTIVE.
3–819.

(c) In addition to any action under subsection (b)(1)(iii) of this section, the court may:

(1) (i) Place a child under the protective supervision of the local department on terms the court considers appropriate;

(ii) Grant limited guardianship to the department or an individual or both for specific purposes including medical and educational purposes or for other appropriate services if a parent is unavailable, unwilling, or unable to consent to services that are in the best interest of the child; or

(iii) Order the child and the child's parent, guardian, or custodian to participate in rehabilitative services that are in the best interest of the child and family; [and]

(2) Determine custody, visitation, support, or paternity of a child in accordance with § 3–803(b) of this subtitle; AND

(3) FOR A CHILD WITH A DEVELOPMENTAL DISABILITY, DIRECT THE PROVISION OF SERVICES TO OBTAIN ONGOING CARE, IF ANY, NEEDED AFTER THE COURT'S JURISDICTION ENDS.

(M) AN ORDER DIRECTING THE PROVISION OF SERVICES TO A CHILD UNDER SUBSECTION (C)(3) OF THIS SECTION IS EFFECTIVE UNTIL:

(1) THE CHILD IS TRANSITIONED TO ADULT GUARDIANSHIP CARE IF ADULT GUARDIANSHIP IS NECESSARY AND THERE IS NO LESS RESTRICTIVE ALTERNATIVE THAT MEETS THE NEEDS OF THE CHILD; AND

1 **(2) (i) THE DEPARTMENT OF HEALTH AND MENTAL HYGIENE**
2 **ENTERS INTO AN AGREEMENT TO PROVIDE OR OBTAIN THE SERVICES ORDERED BY**
3 **THE COURT; OR**

4 **(ii) IF THE DEPARTMENT OF HEALTH AND MENTAL HYGIENE**
5 **CHALLENGES THE NECESSITY OF THE SERVICES ORDERED BY THE COURT, THE**
6 **CONCLUSION OF ANY ADMINISTRATIVE OR JUDICIAL REVIEW PROCEEDING**
7 **REGARDING THE CHALLENGE.**

8 3–823.

9 (h) (1) (i) Except as provided in subparagraphs (ii) and (iii) of this
10 paragraph, the court shall conduct a hearing to review the permanency plan at least every
11 6 months until commitment is rescinded or a voluntary placement is terminated.

12 (ii) The court shall conduct a review hearing every 12 months after
13 the court determines that the child shall be continued in out-of-home placement with a
14 specific caregiver who agrees to care for the child on a permanent basis.

15 (iii) 1. Unless the court finds good cause, a case shall be
16 terminated after the court grants custody and guardianship of the child to a relative or
17 other individual.

18 2. If the court finds good cause not to terminate a case, the
19 court shall conduct a review hearing every 12 months until the case is terminated.

20 3. The court may not conclude a review hearing under
21 subsubparagraph 2 of this subparagraph unless the court has seen the child in person.

22 (2) At the review hearing, the court shall:

23 (i) Determine the continuing necessity for and appropriateness of
24 the commitment;

25 (ii) Determine and document in its order whether reasonable efforts
26 have been made to finalize the permanency plan that is in effect;

27 (iii) Determine the extent of progress that has been made toward
28 alleviating or mitigating the causes necessitating commitment;

29 (iv) Project a reasonable date by which a child in placement may be
30 returned home, placed in a preadoptive home, or placed under a legal guardianship;

31 (v) Evaluate the safety of the child and take necessary measures to
32 protect the child; [and]

(vi) Change the permanency plan if a change in the permanency plan would be in the child's best interest; AND

(VII) FOR A CHILD WITH A DEVELOPMENTAL DISABILITY, DIRECT THE PROVISION OF SERVICES TO OBTAIN ONGOING CARE, IF ANY, NEEDED AFTER THE COURT'S JURISDICTION ENDS.

(3) Every reasonable effort shall be made to effectuate a permanent placement for the child within 24 months after the date of initial placement.

(K) AN ORDER DIRECTING THE PROVISION OF SERVICES TO A CHILD UNDER SUBSECTION (H)(2)(VII) OF THIS SECTION IS EFFECTIVE UNTIL:

(1) THE CHILD IS TRANSITIONED TO ADULT GUARDIANSHIP CARE IF ADULT GUARDIANSHIP IS NECESSARY AND THERE IS NO LESS RESTRICTIVE ALTERNATIVE THAT MEETS THE NEEDS OF THE CHILD; AND

(2) (I) THE DEPARTMENT OF HEALTH AND MENTAL HYGIENE ENTERS INTO AN AGREEMENT TO PROVIDE OR OBTAIN THE SERVICES ORDERED BY THE COURT; OR

(II) IF THE DEPARTMENT OF HEALTH AND MENTAL HYGIENE CHALLENGES THE NECESSITY OF THE SERVICES ORDERED BY THE COURT, THE CONCLUSION OF ANY ADMINISTRATIVE OR JUDICIAL REVIEW PROCEEDING REGARDING THE CHALLENGE.

Article – Family Law

5–301.

(a) In this subtitle the following words have the meanings indicated.

(b) “Caregiver” means a person with whom a child resides and who exercises responsibility for the welfare of the child.

(c) “Child” means an individual who is the subject of a guardianship or adoption petition under this subtitle.

(D) “DEVELOPMENTAL DISABILITY” HAS THE MEANING STATED IN § 3–801 OF THE COURTS ARTICLE.

[(d)] (E) “Guardianship” means an award, under this subtitle, of any power of a guardian.

1 [(e)] (F) “Identifying information” means information that reveals the identity
2 or location of an individual.

3 [(f)] (G) (1) “Parent” means an individual who, at the time a petition for
4 guardianship is filed under this subtitle or at any time before a court terminates the
5 individual’s parental rights:

6 (i) meets a criterion in § 5–306(a) of this subtitle; or

7 (ii) is the mother.

8 (2) “Parent” does not include an individual whom a court has adjudicated
9 not to be a father or mother of a child.

10 [(g)] (H) “Party” means:

11 (1) in a guardianship case under this subtitle:

12 (i) the child;

13 (ii) except as provided in § 5–326(a)(3)(iii) of this subtitle, the child’s
14 parent; and

15 (iii) the local department to which the child is committed;

16 (2) in an adoption case under Part III of this subtitle:

17 (i) the child;

18 (ii) the child’s parent; and

19 (iii) the individual seeking adoption;

20 (3) in an adoption case under Part IV of this subtitle:

21 (i) the child; and

22 (ii) the individual seeking adoption; and

23 (4) if express reference is made to a CINA case, a governmental unit or
24 person defined as a party in § 3–801 of the Courts Article.

25 5–324.

26 (b) (1) In a separate order accompanying an order granting guardianship of a
27 child, a juvenile court:

- 1 (i) shall include a directive terminating the child's CINA case;
- 2 (ii) consistent with the child's best interests:
- 3 1. may place the child:
- 4 A. subject to paragraph (2) of this subsection, in a specific
- 5 type of facility; or
- 6 B. with a specific individual;
- 7 2. may direct provision of services by a local department to:
- 8 A. the child; or
- 9 B. the child's caregiver;
- 10 3. subject to a local department retaining legal guardianship,
- 11 may award to a caregiver limited authority to make an emergency or ordinary decision as
- 12 to the child's care, education, mental or physical health, or welfare;
- 13 4. may allow access to a medical or other record of the child;
- 14 5. may allow visitation for the child with a specific
- 15 individual;
- 16 6. may appoint, or continue the appointment of, a
- 17 court-appointed special advocate for any purpose set forth under § 3-830 of the Courts
- 18 Article;
- 19 7. shall direct the provision of any other service or taking of
- 20 any other action as to the child's education, health, and welfare, including:
- 21 A. for a child who is at least 16 years old, services needed to
- 22 help the child's transition from guardianship to independence; or
- 23 B. for a child with a **DEVELOPMENTAL** disability, services
- 24 to obtain ongoing care, if any, needed after the guardianship case ends; and
- 25 8. may co-commit the child to the custody of the Department
- 26 of Health and Mental Hygiene and order the Department of Health and Mental Hygiene to
- 27 provide a plan for the child of clinically appropriate services in the least restrictive setting,
- 28 in accordance with federal and State law;
- 29 (iii) if entered under § 5-322 of this subtitle, shall state each party's
- 30 response to the petition;

(iv) shall state a specific factual finding on whether reasonable efforts have been made to finalize the child's permanency plan;

(v) shall state whether the child's parent has waived the right to notice; and

(vi) shall set a date, no later than 180 days after the date of the order, for the initial guardianship review hearing under § 5–326 of this subtitle.

(2) (i) Except for emergency commitment in accordance with § 10–617 of the Health – General Article or as expressly authorized by a juvenile court in accordance with the standards in § 3–819(h) or (i) of the Courts Article, a child may not be committed or otherwise placed for inpatient care or treatment in a psychiatric facility or a facility for the developmentally disabled.

(ii) A juvenile court shall include in a commitment order under this paragraph a requirement that the guardian:

1. file a progress report with the juvenile court at least every 180 days; and

2. provide a copy of each report to each person entitled to notice of a review hearing under § 5–326 of this subtitle.

(iii) Every 180 days during a commitment or placement under this paragraph, a juvenile court shall hold a hearing to determine whether the standards in § 3–819(h) or (i) of the Courts Article continue to be met.

(D) AN ORDER DIRECTING THE PROVISION OF SERVICES TO A CHILD WITH A DEVELOPMENTAL DISABILITY UNDER SUBSECTION (B)(1)(II)7B OF THIS SECTION IS EFFECTIVE UNTIL:

(1) THE CHILD IS TRANSITIONED TO ADULT GUARDIANSHIP CARE IF ADULT GUARDIANSHIP IS NECESSARY AND THERE IS NO LESS RESTRICTIVE ALTERNATIVE THAT MEETS THE NEEDS OF THE CHILD; AND

(2) (I) THE DEPARTMENT OF HEALTH AND MENTAL HYGIENE ENTERS INTO AN AGREEMENT TO PROVIDE OR OBTAIN THE SERVICES ORDERED BY THE COURT; OR

(II) IF THE DEPARTMENT OF HEALTH AND MENTAL HYGIENE CHALLENGES THE NECESSITY OF THE SERVICES ORDERED BY THE COURT, THE CONCLUSION OF ANY ADMINISTRATIVE OR JUDICIAL REVIEW PROCEEDING REGARDING THE CHALLENGE.

5–328.

(a) If a local department is a child's guardian under this subtitle, a juvenile court:

(1) retains jurisdiction until:

(i) the child attains 18 years of age; or

(ii) the juvenile court finds the child to be eligible for emancipation;

and

(2) may continue jurisdiction until the child attains 21 years of age.

(b) If a juvenile court designates an individual as a child's guardian, the juvenile court:

(1) may retain jurisdiction until the child attains 18 years of age; or

(2) on finding further review unnecessary to maintain the child's health and welfare, may terminate the case before the child attains 18 years of age.

(c) An order for adoption of a child terminates the child's guardianship case.

(d) On termination of a guardianship case, a juvenile court shall close the case.

(E) NOTWITHSTANDING SUBSECTIONS (A) AND (B) OF THIS SECTION, IF THE COURT ENTERS AN ORDER DIRECTING THE PROVISION OF SERVICES TO A CHILD UNDER § 5-324(B)(1)(II)7B OF THIS SUBTITLE, THE COURT RETAINS JURISDICTION TO RULE ON ANY MOTION RELATED TO THE ENFORCEMENT, MODIFICATION, OR TERMINATION OF THE ORDER, FOR AS LONG AS THE ORDER IS EFFECTIVE.

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect October 1, 2017.