

SENATE BILL 448

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By: **Senators Kelley, Astle, Benson, Currie, Guzzone, Jennings, Kagan, King, Klausmeier, Lee, Madaleno, Manno, McFadden, Middleton, Muse, Nathan–Pulliam, Peters, Pinsky, Ramirez, Raskin, Rosapepe, Young, and Zirkin**

Introduced and read first time: February 2, 2016

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 or the taking of certain actions with respect to a certain child’s education, health,
6 and welfare during a certain disposition hearing; requiring the juvenile court to
7 direct the provision of certain services or the taking of certain actions with respect
8 to a certain child’s education, health, and welfare during a certain permanency
9 planning hearing or guardianship hearing; providing that, if the juvenile court
10 enters an order directing the provision of certain services to a certain child, the
11 juvenile court shall retain jurisdiction over the child for a certain time period and for
12 a certain purpose, notwithstanding certain provisions of law; providing that a certain
13 order shall remain effective for a certain period of time; and generally relating to the
14 jurisdiction and authority of the juvenile court.

15 BY repealing and reenacting, without amendments,
16 Article – Courts and Judicial Proceedings
17 Section 3–801(a) and (l)
18 Annotated Code of Maryland
19 (2013 Replacement Volume and 2015 Supplement)

20 BY repealing and reenacting, with amendments,
21 Article – Courts and Judicial Proceedings
22 Section 3–804, 3–819(c), and 3–823(h)
23 Annotated Code of Maryland
24 (2013 Replacement Volume and 2015 Supplement)

25 BY adding to

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 Article – Courts and Judicial Proceedings
2 Section 3–819(m) and 3–823(k)
3 Annotated Code of Maryland
4 (2013 Replacement Volume and 2015 Supplement)

5 BY repealing and reenacting, with amendments,
6 Article – Family Law
7 Section 5–324(b) and 5–328
8 Annotated Code of Maryland
9 (2012 Replacement Volume and 2015 Supplement)

10 BY adding to
11 Article – Family Law
12 Section 5–324(d)
13 Annotated Code of Maryland
14 (2012 Replacement Volume and 2015 Supplement)

15 Preamble

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

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

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

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

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

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

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

8 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND,
9 That the Laws of Maryland read as follows:

10 **Article – Courts and Judicial Proceedings**

11 3–801.

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

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

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

17 (2) Is likely to continue indefinitely;

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

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

23 3–804.

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

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

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

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

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

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

5 (1) Remains in effect; and

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

8 **(D) NOTWITHSTANDING SUBSECTION (B) OF THIS SECTION, IF THE COURT**
9 **ENTERS AN ORDER DIRECTING THE PROVISION OF SERVICES TO A CHILD UNDER §**
10 **3-819(C)(3) OR § 3-823(H)(2)(VII) OF THIS SUBTITLE, THE COURT SHALL RETAIN**
11 **JURISDICTION OVER THE CHILD:**

12 **(1) FOR AS LONG AS THE ORDER IS EFFECTIVE; AND**

13 **(2) FOR THE LIMITED PURPOSE OF RULING ON ANY MOTION RELATED**
14 **TO THE ENFORCEMENT, MODIFICATION, OR TERMINATION OF THE ORDER.**

15 3-819.

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

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

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

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

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

29 **(3) DIRECT THE PROVISION OF ANY OTHER SERVICE OR TAKING OF**
30 **ANY OTHER ACTION WITH RESPECT TO THE CHILD'S EDUCATION, HEALTH, AND**
31 **WELFARE, INCLUDING SERVICES TO OBTAIN ONGOING CARE, IF ANY, NEEDED AFTER**
32 **THE COURT'S JURISDICTION ENDS.**

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

3 (1) FOR A CHILD WITH A DEVELOPMENTAL DISABILITY, UNTIL:

4 (I) THE CHILD IS TRANSITIONED TO ADULT GUARDIANSHIP
5 CARE; AND

6 (II) 1. THE DEPARTMENT OR A LOCAL DEPARTMENT
7 ENTERS INTO AN AGREEMENT TO PROVIDE OR OBTAIN THE SERVICES ORDERED BY
8 THE COURT; OR

9 2. IF THE DEPARTMENT OR A LOCAL DEPARTMENT
10 CHALLENGES THE NECESSITY OF THE SERVICES ORDERED BY THE COURT, THE
11 CONCLUSION OF ANY ADMINISTRATIVE OR JUDICIAL REVIEW PROCEEDING
12 REGARDING THE CHALLENGE; AND

13 (2) FOR ANY OTHER CHILD, FOR A PERIOD NOT EXCEEDING 6 MONTHS
14 AFTER THE COURT'S JURISDICTION ENDS.

15 3-823.

16 (h) (1) (i) Except as provided in subparagraphs (ii) and (iii) of this
17 paragraph, the court shall conduct a hearing to review the permanency plan at least every
18 6 months until commitment is rescinded or a voluntary placement is terminated.

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

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

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

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

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

30 (i) Determine the continuing necessity for and appropriateness of
31 the commitment;

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

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

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

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

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

11 **(VII) DIRECT THE PROVISION OF ANY OTHER SERVICE OR TAKING**
12 **OF ANY OTHER ACTION WITH RESPECT TO THE CHILD'S EDUCATION, HEALTH, AND**
13 **WELFARE, INCLUDING SERVICES TO OBTAIN ONGOING CARE, IF ANY, NEEDED AFTER**
14 **THE COURT'S JURISDICTION ENDS.**

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

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

19 **(1) FOR A CHILD WITH A DEVELOPMENTAL DISABILITY, UNTIL:**

20 **(I) THE CHILD IS TRANSITIONED TO ADULT GUARDIANSHIP**
21 **CARE; AND**

22 **(II) 1. THE DEPARTMENT OR A LOCAL DEPARTMENT**
23 **ENTERS INTO AN AGREEMENT TO PROVIDE OR OBTAIN THE SERVICES ORDERED BY**
24 **THE COURT; OR**

25 **2. IF THE DEPARTMENT OR A LOCAL DEPARTMENT**
26 **CHALLENGES THE NECESSITY OF THE SERVICES ORDERED BY THE COURT, THE**
27 **CONCLUSION OF ANY ADMINISTRATIVE OR JUDICIAL REVIEW PROCEEDING**
28 **REGARDING THE CHALLENGE; AND**

29 **(2) FOR ANY OTHER CHILD, FOR A PERIOD NOT EXCEEDING 6 MONTHS**
30 **AFTER THE COURT'S JURISDICTION ENDS.**

1 5-324.

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

4 (i) shall include a directive terminating the child's CINA case;

5 (ii) consistent with the child's best interests:

6 1. may place the child:

7 A. subject to paragraph (2) of this subsection, in a specific
8 type of facility; or

9 B. with a specific individual;

10 2. may direct provision of services by a local department to:

11 A. the child; or

12 B. the child's caregiver;

13 3. subject to a local department retaining legal guardianship,
14 may award to a caregiver limited authority to make an emergency or ordinary decision as
15 to the child's care, education, mental or physical health, or welfare;

16 4. may allow access to a medical or other record of the child;

17 5. may allow visitation for the child with a specific
18 individual;

19 6. may appoint, or continue the appointment of, a
20 court-appointed special advocate for any purpose set forth under § 3-830 of the Courts
21 Article;

22 7. shall direct the provision of any other service or taking of
23 any other action as to the child's education, health, and welfare, including:

24 A. for a child who is at least 16 years old, services needed to
25 help the child's transition from guardianship to independence; [or]

26 B. for a child with a disability, services to obtain ongoing
27 care, if any, needed after the guardianship case ends; [and] **OR**

1 **C. FOR A CHILD WITHOUT A DISABILITY, SERVICES TO**
2 **OBTAIN ONGOING CARE, IF ANY, NEEDED FOR UP TO 6 MONTHS AFTER THE**
3 **GUARDIANSHIP CASE ENDS; AND**

4 8. may co-commit the child to the custody of the Department
5 of Health and Mental Hygiene and order the Department of Health and Mental Hygiene to
6 provide a plan for the child of clinically appropriate services in the least restrictive setting,
7 in accordance with federal and State law;

8 (iii) if entered under § 5-322 of this subtitle, shall state each party's
9 response to the petition;

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

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

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

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

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

23 1. file a progress report with the juvenile court at least every
24 180 days; and

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

27 (iii) Every 180 days during a commitment or placement under this
28 paragraph, a juvenile court shall hold a hearing to determine whether the standards in §
29 3-819(h) or (i) of the Courts Article continue to be met.

30 **(D) AN ORDER DIRECTING THE PROVISION OF SERVICES TO A CHILD WITH A**
31 **DISABILITY UNDER SUBSECTION (B)(II)(2)7B OF THIS SECTION IS EFFECTIVE UNTIL:**

32 **(1) THE CHILD IS TRANSITIONED TO ADULT GUARDIANSHIP CARE;**
33 **AND**

1 **(2) (I) THE DEPARTMENT OR A LOCAL DEPARTMENT ENTERS INTO**
 2 **AN AGREEMENT TO PROVIDE OR OBTAIN THE SERVICES ORDERED BY THE COURT;**
 3 **OR**

4 **(II) IF THE DEPARTMENT OR A LOCAL DEPARTMENT**
 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 5-328.

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

10 (1) retains jurisdiction until:

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

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

13 and

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

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

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

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

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

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

22 **(E) NOTWITHSTANDING SUBSECTIONS (A) AND (B) OF THIS SECTION, IF THE**
 23 **COURT ENTERS AN ORDER DIRECTING THE PROVISION OF SERVICES TO A CHILD**
 24 **UNDER § 5-324(B)(II)(2)7B OR C OF THIS SUBTITLE, THE COURT SHALL RETAIN**
 25 **JURISDICTION OVER THE CHILD:**

26 **(1) FOR AS LONG AS THE ORDER IS EFFECTIVE; AND**

27 **(2) FOR THE LIMITED PURPOSE OF RULING ON ANY MOTION RELATED**
 28 **TO THE ENFORCEMENT, MODIFICATION, OR TERMINATION OF THE ORDER.**

29 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
 30 October 1, 2016.