

Department of Legislative Services
Maryland General Assembly
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FISCAL AND POLICY NOTE
Third Reader - Revised

Senate Bill 448

(Senator Kelley, *et al.*)

Judicial Proceedings

Judiciary

Guardianship and Child in Need of Assistance Proceedings - Jurisdiction and Authority of Juvenile Court

This bill authorizes, at a disposition hearing in a child in need of assistance (CINA) proceeding, and requires, at a permanency planning hearing, for the juvenile court, in regards to a child with a disability, to direct the provision of services to obtain ongoing care, if any, needed after the court's jurisdiction ends. The court retains jurisdiction over the child as long as the order is effective and for the limited purpose of ruling on any motion related to the enforcement, modification, or termination of the order. The bill adds related requirements to provisions regarding guardianships.

Fiscal Summary

State Effect: General fund expenditures increase, potentially significantly, for the Department of Human Resources (DHR) to provide extended services to disabled youth pursuant to an order issued by the juvenile court. Any potential minimal increase in expenditures for the Judiciary due to the extended jurisdiction and expanded authority of the juvenile courts is not anticipated to materially impact State finances. Potential increase in general and federal fund expenditures for the Department of Health and Mental Hygiene (DHMH) to the extent that additional services are ordered for children enrolled in Medical Assistance; federal fund revenues increase correspondingly.

Local Effect: Any potential minimal increase in expenditures for circuit courts due to the extended jurisdiction and expanded authority of the juvenile courts is not anticipated to materially impact circuit court finances.

Small Business Effect: None.

Analysis

Bill Summary: An order directing the provision of services to a child 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) DHR or a local department of social services enters into an agreement to provide or obtain the services ordered by the court or any administrative or judicial review proceeding regarding any potential challenge to the necessity of the services ordered is concluded.

In a guardianship order for a child with a disability, the bill specifies that an order directing the provision of services to a child, as authorized under current law, is effective for the time periods as specified above. If the court enters an order regarding a guardianship case, the court retains jurisdiction over the child for as long as the order is effective and for the limited purpose of ruling on any motion related to the enforcement, modification, or termination of the order.

Current Law: A child in need of assistance is a child who requires court intervention because (1) the child has been abused or neglected or has a developmental disability or a mental disorder and (2) the child's parents, guardian, or custodian are unable or unwilling to provide proper care and attention to the child.

In making a disposition on a CINA petition, a juvenile court may take numerous actions, including (1) placing a child under the protective supervision of the local department of social services, granting limited guardianship to DHR and/or an individual for specific purposes, or ordering rehabilitative services, as specified and (2) determining custody, visitation, support, or paternity in accordance with statutory procedures. If a child enters an out-of-home placement, a juvenile court must also take specified actions to review the permanency plan of a child in an out-of-home placement.

A juvenile court has jurisdiction over CINA cases only if the alleged CINA or child in a voluntary placement is younger than age 18 when the petition is filed. A juvenile court has jurisdiction over a former CINA, as specified. Once jurisdiction is obtained, it continues in that case until the child reaches age 21, unless the court terminates the case. After the court terminates jurisdiction, a custody order issued by the court in a CINA case remains in effect and may be revised or superseded only by another court of competent jurisdiction.

Consistent with the child's best interests, if a juvenile court grants guardianship of a child, the court must take specified actions, including directing the provision of any service or taking of any other action as to the child's education, health, and welfare, including (1) services needed to help the child's transition from guardianship to independence, if a child is at least age 16 or (2) for a child with a disability, services to obtain ongoing care, if any, that are needed after the guardianship case ends.

If a local department is a child's guardian, a juvenile court retains jurisdiction until the child reaches age 18 or the juvenile court finds the child to be eligible for emancipation. The court may continue jurisdiction until the child reaches age 21. If an individual is designated as a child's guardian, the juvenile court may retain jurisdiction until the child reaches age 18. If the juvenile court makes a finding that further review is unnecessary to maintain the child's health and welfare, it may terminate the case before the child turns age 18.

Background: As noted in the preamble, the Court of Appeals, in *In re Adoption/Guardianship of Dustin R.*, No. 24, September Term, 2015, affirmed that statutory provisions empower a 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 age 21 and the guardianship ends without violating the separation of powers doctrine within the Maryland Declaration of Rights. According to the Court of Appeals, 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. The preamble also notes that although children under the CINA jurisdiction of the juvenile court as well as children without a disability under the guardianship jurisdiction of the juvenile court would benefit from provisions enabling a juvenile court to order services or actions regarding a child's education, health, and welfare, they are not currently eligible for this protection.

State Fiscal Effect: State expenditures increase, potentially significantly, due to the extended jurisdiction of the juvenile court for CINA and guardianship cases involving a child with a disability and the expanded authority of the court to direct services to obtain ongoing care, if any, needed after the court's jurisdiction ends. An exact fiscal estimate of the costs associated with these provisions depends on numerous factors, including the number of children who are deemed to have a disability, the extent to which the juvenile court enters orders directing the provision of services, the services required pursuant to those orders, and how quickly children with disabilities are transitioned to adult guardianship care, if necessary, or another less restrictive alternative.

DHR advises that in fiscal 2015, 260 youth aged out of the foster care system. Of these youth, 28 were designated as medically fragile or having a developmental disability. Pursuant to the decision in *Dustin R.*, if any of these 28 youth were under a guardianship, the juvenile court would already have the authority to order services to obtain ongoing care, if any, needed after the guardianship case ends. However, because this bill includes any child with a disability (which is not defined) and includes those under the CINA jurisdiction of the court, DHR indicates that additional children may be designated as having a disability pursuant to the bill. *For illustrative purposes only* and assuming that the number of children aging out of care remains constant, if even 10% (23) of the remaining individuals who age out of the foster care system annually are considered to

have a disability and incur additional costs while transitioning to adult guardianship care, if necessary, general fund expenditures increase by \$110,883 per month, or \$1.3 million annually. This estimate is based on the average monthly cost of care for in-state children who are not medically fragile/developmentally disabled (\$4,821). DHR also advises that additional caseworkers may be required to the extent that the juvenile court imposes additional requirements for the provision of services for an extended period of time for children with a disability.

While the Department of Legislative Services agrees that additional caseworkers may be needed, any specific staffing estimates cannot be reliably estimated without actual experience under the bill. *For illustrative purposes only*, for every additional caseworker needed, general fund expenditures increase by a minimum of \$75,000 annually.

In addition to the costs described above, the bill requires extensive one-time computer programming changes. A reliable estimate of expenditures related to the programming changes is not available in time for inclusion in this fiscal and policy note.

Judiciary

Any fiscal impact depends on the level of the court's involvement in specific cases regarding children with disabilities. To the extent that a juvenile court's order is not challenged and the child is successfully transitioned to the adult guardianship system or a suitable alternative, the extended jurisdiction does not have an impact. If, however, orders are challenged, additional hearings are likely required to resolve the issue. However, because the provisions regarding extended jurisdiction are limited to children with a disability, it is anticipated that any potential minimal expenditures to accommodate additional hearings do not materially impact the workload or finances of the Judiciary or the circuit courts.

Department of Health and Mental Hygiene

General and federal fund expenditures may increase to the extent that the juvenile courts direct the provision of services to children with disabilities who are enrolled in the Medical Assistance Program. Any such impact cannot be quantified beforehand. Federal revenues increase correspondingly.

Additional Information

Prior Introductions: None.

Cross File: HB 683 (Delegate Moon, *et al.*) - Judiciary.

Information Source(s): Montgomery County, Judiciary (Administrative Office of the Courts), Maryland State Department of Education, Department of Disabilities, Department of Health and Mental Hygiene, Department of Human Resources, Department of Juvenile Services, Department of Legislative Services

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