

MARYLAND



CHILD
WELFARE
BENCHBOOK

MARYLAND FOSTER CARE
COURT IMPROVEMENT PROJECT
ADMINISTRATIVE OFFICE OF THE COURTS

ACKNOWLEDGMENTS

The Foster Care Court Improvement Project (FCCIP) is a federal, grant-based project directed to improve how the court system handles its foster care cases. This Child Welfare Benchbook is a result of a recommendation that emanated from an assessment completed in 1997 by the Foster Care Court Improvement Project Advisory Committee.

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SUMMARY

Start with the contents or alphabetical index to find your topic. For a citation, check the statute or case index. Go to the section number listed. Skim the headings to zero-in on the information you need.

GOAL

To get child welfare legal information quickly and easily. As a judge or master, you need to have the relevant state and federal law at your fingertips. Whether you handle one or hundreds of child in need of assistance (CINA) or guardianship (termination of parental rights – TPR) cases a year, you'll find this benchbook a useful tool.

FINDING INFORMATION

Start with the indexes. We start this benchbook with indexes because that's where you begin your search. If you'd like to see how the benchbook is organized, use the Contents Index. You can look up your topic in the Alphabetical Index. If you know the statute, go to the Statute Index. Looking for a reported decision? Try the Case Index.

Chapters:

- 00 Indexes
- 100 Juvenile Court
- 200 Child in Need of Assistance
- 300 Reviews
- 400 Guardianship (TPR)
- 500 Adoption

Go to the section number. Just look at the tables to find the right chapter. The chapters are numbered 00, 100, 200, etc. Within each chapter are numbered sections (all starting with CL for Child Law): CL-101, CL-102, CL-103, etc. Each section begins with a summary.

Skim the headings. The headings in the left margin tell you the topics covered in that section. Each paragraph also begins with a sentence summary. Get right to the information you need.

Need more? Try the Related Topics at the end of each section. You can look up statutes and cases using the citations in the margin. Other Resources for Judges are listed in CL-06.

SPECIAL FEATURES

Checklists – Make sure all the bases are covered with our legal requirement checklists for different proceedings.



Questions – Sometimes the parties do not tell you what you need to know. We offer suggested queries from the bench.

Special Topics – We'll cover difficult and unresolved issues in more detail in boxed summaries.

Icons – a few symbols will highlight special information:



Time–Deadlines set by statute or court rule.



Order–What legally must be in your written order.



Reversed–Cases in which the trial judge was reversed.



Ambiguous–Unresolved legal issues.



Forms–A form pleading or order required by the Maryland Rules and available at www.lawlib.state.md.us

Abbreviations	
C. & J.P. §	Md. Code Ann., Court and Judicial Proceedings
F.L. §	Md. Code Ann., Family Law
C.L. §	Md. Code Ann., Criminal Law
C.P. §	Md. Code Ann., Criminal Procedure
CASA	Court Appointed Special Advocate
CINA	Child in Need of Assistance
DHMH	Department of Mental Health and Hygiene
DHR	Department of Human Resources
DSS	Department of Social Services
ICPC	Interstate Compact for the Placement of Children
ICWA	Indian Child Welfare Act
MAJIC	Maryland Automated Judicial Information for Children
OCC	Order Controlling the Conduct of Persons Before the Court
OPS	Order of Protective Supervision
PKPA	Parental Kidnapping Prevention Act
TPR	Termination of Parental Rights
UCCJA	Uniform Child Custody Jurisdiction Act
Note: The “In re” preface has been dropped in case citations.	

A FINAL WORD

This benchbook will make your tough job a little easier. As Maryland judges and masters, you do the best you can for children, given all the obstacles. We know you want to do even more and we designed this resource to help you meet the statutory goals for children.

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Instructions: Find your citation. The number to the left is the section number you should refer to for information on the statute. If the statute is cited more than once, the section listed is the one most often searched for. Below the citation are specific topics for each statute.

Abbreviations: C. & J.P. Md. Code Ann., Courts and Judicial Proceedings
 F.L. Md. Code Ann., Family Law
 C.P. Md. Code Ann., Criminal Procedure

Section Topic	204	placement preferences
	107	Indian Child Welfare Act
United States Code Annotated	107	25 U.S.C.A. § 1916
	107	25 U.S.C.A. § 1917
107 25 U.S.C.A. § 1901	505	adoption records
107 25 U.S.C.A. § 1902	107	Indian Child Welfare Act
107 25 U.S.C.A. § 1903	107	25 U.S.C.A. § 1920
107 Indian Child Welfare Act	107	25 U.S.C.A. § 1921
108 paternity	107	25 U.S.C.A. § 1922
107 25 U.S.C.A. § 1911	104	28 U.S.C.A. § 1738A
107 Indian Child Welfare Act	101	42 U.S.C.A. § 621
102 intervene as party	104	42 U.S.C.A. § 622
104 jurisdiction	101	42 U.S.C.A. § 625
107 25 U.S.C.A. § 1912	101	42 U.S.C.A. § 629
102 access to court records	203	42 U.S.C.A. § 671
203 active efforts	501	adoptive placement (after TPR)
206 adjudication	503	adoptive placement (without prior TPR)
503 adoption, Part III	202	CINA petition
103 appointment of attorneys	208	commitment
202 CINA petition	303	guardianship review
208 commitment	104	interstate placements
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107 Indian Child Welfare Act	203	reasonable efforts
105 notice & service	302	review hearing
108 paternity	101	42 U.S.C.A. § 672
403 termination of parental rights	101	juvenile court goals
107 25 U.S.C.A. § 1913	203	reasonable efforts
502 consent to adoption (after TPR)	210	voluntary placements
504 consent to adoption (without prior TPR)	101	42 U.S.C.A. § 673
402 consent to guardianship	101	42 U.S.C.A. § 673b
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210 voluntary placement	208	commitment
107 25 U.S.C.A. § 1914	401	guardianship petition
107 25 U.S.C.A. § 1915	101	juvenile court goals
501 adoption	105	notice & service
208 commitment	301	permanency planning hearing

101 42 U.S.C.A. § 677
 101 independent living
 301 permanency planning hearing
 203 42 U.S.C.A. § 678
 501 42 U.S.C.A. § 1901
 503 42 U.S.C.A. § 1901
 103 42 U.S.C.A. § 1983
 101 42 U.S.C.A. § 1996b
 501 adoptive placement (after TPR)
 503 adoptive placement (without prior TPR)
 101 Interethnic Placement Act
 103 42 U.S.C.A. § 5106a
 103 child's representation
 203 reasonable efforts
 403 termination of parental rights

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207 C. & J.P. § 3-801
 206 adjudicatory hearings
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 104 jurisdiction & venue
 105 notice & service
 106 parties
 204 shelter care
 101 C. & J.P. § 3-802
 104 C. & J.P. § 3-803
 209 contributing to a CINA
 104 jurisdiction
 401 C. & J.P. § 3-804
 503 adoption petition
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 104 tribal court jurisdiction
 104 C. & J.P. § 3-805
 104 venue
 209 contributing to a CINA
 102 C. & J.P. § 3-806
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 103 C. & J.P. § 3-807
 109 appeals
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103 masters
 102 C. & J.P. § 3-808
 201 C. & J.P. § 3-809
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 102 excluding the public
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 202 C. & J.P. § 3-811
 203 C. & J.P. § 3-812
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 103 C. & J.P. § 3-813
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 204 C. & J.P. § 3-815
 206 adjudication
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 206 adjudication
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 207 disposition
 205 study and evaluation of child
 403 termination of parental rights
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 205 order controlling conduct
 105 C. & J.P. § 3-822
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301	permanency planning hearing	207	disposition
302	review hearings	301	permanency hearing
205	C. & J.P. § 3-824	104	F.L. §§ 5-4A-01 to 5-4A-08
102	procedures	505	F.L. §§ 5-4B-01 to 5-4B-12
205	order controlling conduct	505	F.L. §§ 5-4C-01 to 5-4C-07
208	C. & J.P. § 3-825	402	F.L. § 5-301
208	C. & J.P. § 3-826	503	adoption petition (without prior TPR)
102	C. & J.P. § 3-827	402	consent to guardianship
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104	C. & J.P. § 3-828	401	F.L. § 5-302
209	contributing to CINA	101	F.L. § 5-303
104	jurisdiction & venue	402	consent to guardianship
105	notice & service	401	guardianship
106	C.& J.P. § 9-105	101	legislative goals
106	C. & J.P. §	402	F.L. § 5-306
103	C. & J.P. § 3-830	402	consent to guardianship
106	C. & J.P. § 9-109	108	paternity
106	privilege	501	F.L. § 5-307
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106	privilege	504	adoption (without prior TPR)
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106	privilege	401	F.L. § 5-313
302	review hearing	105	F.L. § 5-314
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109	C. & J.P. § 12-201	105	notice & service
109	C. & J.P. § 12-203	401	guardianship petition
109	C. & J.P. § 12-301	105	F.L. § 5-316
109	C. & J.P. § 12-303	401	guardianship petition
109	C. & J.P. § 12-304	105	notice
109	C. & J.P. § 12-305	403	F.L. § 5-317
109	C. & J.P. § 12-307	105	F.L. § 5-318
109	C. & J.P. § 12-308	401	F.L. § 5-319
109	C. & J.P. § 12-701	402	F.L. § 5-320
203	C.L. § 14-101	402	F.L. § 5-321
108	Const., Decl. of Rights, Art. 46	402	consent to guardianship
106	C.P. § 11-303	401	revocation of consent
106	C.P. § 11-304	105	F.L. § 5-322
203	C.P. § 14-101	402	consent to guardianship
203	reasonable efforts	401	guardianship petition
404	guardianship factors	105	notice & service
207	Est. & Trusts §§ 13-701 to 13-709	403	F.L. § 5-323

402	consent to guardianship	401	guardianship petition
401	guardianship petition	301	permanency planning hearing
403	termination of parental rights	208	F.L. § 5-525.2
404	guardianship factors	208	F.L. § 5-534
401	F.L. § 5-325	208	commitment
105	F.L. § 5-326	207	kinship care
303	guardianship petition	204	shelter care
105	notice & service	302	F.L. §§ 5-535 to 5-547
302	review hearings	302	F.L. § 5-545
503	F.L. § 5-331	104	F.L. §§ 5-601 to 5-611
504	F.L. § 5-334	201	F.L. § 5-701
503	F.L. § 5-333	201	child abuse
504	F.L. § 5-335	106	child's statements
504	F.L. § 5-336	201	F.L. § 5-704
504	F.L. § 5-337	201	F.L. § 5-706
504	F.L. § 5-338	204	F.L. § 5-709
504	F.L. § 5-339	401	F.L. § 5-710
105	F.L. § 5-341	201	F.L. § 5-714
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504	F.L. § 5-342	108	F.L. § 5-1021
501	F.L. § 5-345	108	F.L. § 5-1027
501	F.L. § 5-346	108	F.L. § 5-1028
105	notice & service	108	F.L. § 5-1029
501	adoption petition	104	F.L. §§ 9.5-101 to 9.5-318
502	F.L. § 5-347	404	Health-Gen. § 7-101
502	F.L. § 5-349	208	Health-Gen. § 7-1006
502	F.L. § 5-350	404	Health-Gen. § 10-101
502	F.L. § 5-352	404	Health-Gen. § 8-101
502	F.L. § 5-353	208	Health-Gen § 10-620
505	F.L. § 5-356	207	Health-Gen. § 10-622
502	F.L. § 5-357	208	Health-Gen. § 10-706
502	F.L. § 5-360	104	Human Serv. § 9-303
502	F.L. §§ 5-401 to 5-415		
301	F.L. § 5-501		
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203	F.L. § 5-525		
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210	voluntary placements		
301	F.L. § 5-525.1		

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106	Md. Rule 5-101
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106	Md. Rule 5-803	502	adoption decree (after TPR)
109	Md. Rule 8-122	504	adoption (without prior TPR)
109	Md. Rule 8-131	301	Md. Rule 10-201 to 10-213
109	Md. Rule 8-202	207	disposition
109	Md. Rule 8-207	301	permanency planning hearing
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102	Md. Rule 9-101	201	Md. Rule 11-102
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501	adoption petition (after TPR)	103	Md. Rule 11-106
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503	adoption hearing (after TPR)	202	Md. Rule 11-108
504	adoption hearing (without prior TPR)	202	Md. Rule 11-109
501	adoption petition (after TPR)	209	contributing to a CINA
503	adoption petition (without prior TPR)	202	discovery in CINA cases
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105	Md. Rule 9-105	102	procedures
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401	Md. Rule 9-107	206	adjudication
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403	contested guardianship	206	Md. Rule 11-114
502	Md. Rule 9-110	206	adjudication
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502	adoption judgment (after TPR)	207	Md. Rule 11-115
504	adoption judgment (without prior TPR)	208	commitment
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207 Md. Rule 11-120
102 Md. Rule 11-121
102 Md. Rule 11-122
401 Md. Rule 11-501
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102 Md. Rule 15-201 to 15-208

Bar Admission

103 Bar Admission Rule 14

Instructions: Find your case name (the “In re” preface has been dropped). The number to the left is the section number that refers to information on the case. If the case is cited more than once, the section listed is the one most searched for. Below each case name are relevant topics.

Section	Case Name		
		109	appeals
		105	notice & service
		107	<i>Adoption of Child of Indian Heritage</i>
		208	<i>Ashley E.</i>
A			
403	<i>Abigail C.</i>		
104	<i>Adoption No. 10087</i>		
109	<i>Adoption No. 90072022/CAD</i>		
401	<i>Adoption No. 93321055</i>		
109	appeals		
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402	consent		
101	juvenile court goals		
104	<i>Adoption/Guardianship No. 3598</i>		
109	appeals		
104	Interstate Compact		
108	paternity		
502	<i>Adoption/Guardianship No. 11137</i>		
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303	<i>Adoption/Guardianship No. 11387 & 11388</i>		
401	guardianship petition		
303	guardianship review		
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403	<i>Adoption/Guardianship No. 95195062</i>		
403	termination of parental rights		
404	guardianship factors		
402	<i>Adoption/Guardianship No. 93321055</i>		
404	<i>Adoption/Guardianship No. 94339058</i>		
109	appeals		
403	termination of parental rights		
404	guardianship factors		
403	<i>Adoption/Guardianship No. A91-71A</i>		
404	<i>Adoption/Guardianship No. J9610436 & J9711031</i>		
402	<i>Adoption/Guardianship No. T00032005</i>		
401	<i>Adoption/Guardianship No. T97036005</i>		
402	consent to guardianship		
403	contested guardianship		
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105	<i>Adoption/Guardianship No. TPR970011</i>		
		102	<i>Baltimore Sun v. State</i>
		109	appeals
		102	media in court
		102	<i>Barry E.</i>
		102	child interviews
		208	commitment
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		109	<i>Billy W.</i>
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		104	<i>Bowling v. State</i>
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		108	<i>Caban v. Mohammed</i>
		207	<i>Caya B.</i>
		106	<i>Coy v. Iowa</i>
		106	<i>Craig v. State</i>
		201	<i>C.S. v. Prince George's Cty. DSS</i>
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		204	<i>Damien F.</i>
		109	<i>Damon M.</i>
		302	<i>Deontay J.</i>
		107	<i>Dept. of Human Services v. Finfrock</i>
		202	<i>Dustin T.</i>
		202	CINA petition
		106	evidence
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		502	<i>Hall v. Vallandingham</i>
		504	adoption (without prior TPR)

- 401 *Harold H.*
 401 guardianship petition checklist
 404 types of disabilities
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- 203 *James G.*
 207 *Joseph G.*
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- 104 *Lee v. State*
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 106 *Maryland v. Craig*
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 106 privilege
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 106 *Matthews v. State*
 106 *Michael G.*
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 108 *Michael H. v. Gerald D.*
 206 *Michael W.*
 107 *Mississippi Band of Choctaw Indians v. Hollyfield*
 403 *M.L.B. v. S.L.J.*
 102 *M.P. v. Schwartz*
- 109 *Montgomery Cty. v. Stevens*
 201 *Montgomery Cty. DSS v. L.D.*
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- 404 *Rashawn H.*
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 102 *Reed v. Foley*
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- 109 *Samone H. & Marchay E.*
 403 *Santosky v. Kramer*
 207 *Sophie S.*
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 208 *Sowers v. Reed*
 108 *Stanley v. Illinois*
 102 *State v. Weigmann*
 203 *Suter v. Artist M.*
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- 206 *Thomas H.*
 108 *Toft v. Pimentel*
 109 *Tyrek S.*

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204 *Weller v. Baltimore City DSS*
104 *White v. State*

106 *Wildermuth v. State*
103 *Williams v. Anderson*
208 *Willis v. Jones*
108 *Wisconsin v. Yoder*

Y
301 *Yves S.*

SUMMARY

For more information on the issues in your courtroom, see these publications. This list includes resources on court improvement, legal issues, social science research, technical assistance and internet sites.

COURT IMPROVEMENT

ABA CourtWorks
To receive FREE, contact:
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ABA Child CourtWorks edited by Eva J. Klain (quarterly newsletter).

ADOPTION AND PERMANENCY GUIDELINES: Improving Court Practice in Child Abuse and Neglect Cases. National Council of Juvenile and Family Court Judges (2000).

Child Advocate's Legal Guide: Effective Collaborative Work to Speed Permanence for Children in Foster Care by Debra Rattterman Baker and Charlotte Vick (North American Council on Adoptable Children, 1995).

Children Can't Wait: Reducing Delays for Children in Out-of-home Care edited by Katherine Chan and Paul Johnson (Child Welfare League of America, 1993).

Court Improvement Progress Report edited by Mark Hardin (American Bar Association, 1999).

Ensuring the Healthy Development of Foster Children: A Guide for Judges, Advocates, and Child Welfare Professionals. New York State Permanent Judicial Commission on Justice for Children (2000).

Frequently Asked Questions About the Foster Care Independence Act of 1999 and the John H. Chafee Foster Care Independence Program (I & II). Casey Family Programs, National Foster Care Awareness Project (2000).

Frequently Asked Questions III: About the Foster Care Independence Act of 1999 and the John H. Chafee Foster Care Independence Program. Casey Family Programs, National Foster Care Awareness Project (2005).

Improving Outcomes for Older Youth: What judges and attorneys need to know. McNaught, K. & Onkeles, L. National Resource Center for Youth Services (2004).

Independent Living for Foster Youth. by Eilertson, C., National Conference of State Legislatures (2002).

Judge's Guide to Improving Legal Representation for Children edited by Kathi L. Grasso (American Bar Association, 1998).

NACAC Books
To order, call:
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www.NACAC.org

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resources, contact:
<http://www.casey.org/Resources/>

NRCYS publications:
Call: 1-800-274-2687
www.NRCYS.org

The Juvenile Court and the Role of the Juvenile Court Judge by Judge Leonard P. Edwards, 43 Family Law Journal 1 (National Council of Juvenile and Family Court Judges, 1992).

Making Differences Work: Cultural Context in Abuse and Neglect Practice for Judges and Attorneys by Karen Aileen Howze (American Bar Association, 1996).

Maryland CINA, Related TPR and Adoption Matters - Best Practices Manual (2007 Maryland Foster Care Court Improvement Project).

One Court That Works: Judicial Implementation of Permanency Planning Reforms by Mark Hardin (American Bar Association, 1992).

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Technical Assistance Brief: The Foster Care Independence Act of 1999 and the John H. Chafee Foster Care Independence Program. National Council of Juvenile and Family Court Judges. (2002).

ABA Child Law Practice edited by Claire Sandt (monthly publication).

Adoption and Disclosure: A Review of the Law by Madelyn DeWoody (Child Welfare League of America, 1994).

Children and the Law: Rights and Obligations (Three Volumes) by Thomas A. Jacobs (West Group 1995 & 1998 Supp.)

Evaluating Mental Health Testimony in Child Sexual Abuse Cases by Rosalyn Schultz in 17 ABA Child Law Practice 1 (1998).

Evaluating Medical Testimony in Child Sexual Abuse Cases by Rosalyn Schultz in 17 ABA Child Law Practice 17 (1998).

Evidence in Child Abuse and Neglect (Two Volumes) by John E.B. Myers (3d ed. Aspen Law & Business, 1997).

A Guide to the Multiethnic Placement Act by Joan Heftiz Hollinger (American Bar Association, 1998).

LEGAL ISSUES

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To subscribe or order back issues, call:
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Aspen Books
To order, call:
1-800-638-8437 or
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www.aspenpublishers.com

A Judicial Primer on Drug and Alcohol Issues in Family Cases by Judith Larsen and Robert Horowitz (American Bar Association, 1991).

Indian Child Welfare Act Handbook by B.J. Jones (American Bar Association, 1995).

Interstate Family Practice Guide: A Primer for Judges by June Melvin Mickens, et al. (American Bar Association, 1997).

Making Good Decisions About Kinship Care by June Melvin Mickens and Debra Ratterman Baker (American Bar Association, 1997).

Sharing Information: A Guide to Federal Law on Confidentiality and Disclosure of Information for Child Welfare Agencies by Alice Bussiere, et al. (American Bar Association, 1997).

**SOCIAL SCIENCE
RESEARCH**

Assessing the Long-term Effects of Foster Care: A Research Synthesis by Thomas P. MacDonald, et al. (Child Welfare League of America, 1996).

Child Abuse and Neglect: A Look at the States by Patrick Curtis, et al. (Child Welfare League of America, 1996).

Child Welfare Journal, journal from Child Welfare League of America (bimonthly), www.cwla.org/pub/periodicals.htm.

Handbook on Questioning Children: A Linguistic Perspective by Anne Graffam Walker (2d Ed., American Bar Association, 1999).

Involving Fathers in Decisions Affecting Children by Sharon G. Elstein, in 17 ABA Child Law Practice 145 (1998).

Judges Corner: Straight Talk About Permanence, an interview with Dr. Ann Coyne, in 17 ABA Child Law Practice 187 (1999).

Making Decisions about Siblings in the Child Welfare System by Sharon G. Elstein, in 18 ABA Child Law Practice 187 (1999).

Responding to Alcohol and Other Drug Problems in Child Welfare by Nancy K Young, et al. (Child Welfare League of America, 1998).

Substance Abuse Treatment in Child Welfare: A Guide to Attorneys Representing Children and Families by Janet Chiancone in 17 ABA Child Law Practice 81 (1998).

Teenagers are Adoptable: Strategies for Success by Sharon B. Elstein, in 18 ABA Child Law Practice 49 (1999).

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Treatment for Parents: What Works? by Janet Chiancone in 17 ABA Child Law Practice 10 (1998).

Understanding the Relationship Between Maltreatment and Delinquency by Sharon G. Elstein in 18 ABA Child Law Practice 136 (1999).

What I Wished I Learned in Law School: Social Science Research for Children's Attorneys by Debra Ratterman Baker, et al. (American Bar Association 1997). Includes articles on corporal punishment, domestic violence, emotional abuse, incarcerated parents, fetal alcohol syndrome, use of anatomically-detailed dolls, attachment, kinship care, sex abuse, visitation, parents with disabilities, delinquency, open adoption, permanency planning and adoptability.

When Drug Addicts Have Children: Reorienting Child Welfare's Response edited by Douglas J. Besharov (Child Welfare League of America, 1994).

TECHNICAL ASSISTANCE

Maryland Court Improvement Project

Maryland Judicial Center
580 Taylor Avenue, 2nd Floor
Annapolis, Maryland 21401
(410) 260-1427

National Council of Juvenile and Family Court Judges

P.O. Box 8970, Reno, NV 89507
(775) 784-6012, staff@ncjfcj.org

ABA National Child Welfare Resource Center on Legal and Judicial Issues

740 15th Street, N.W. Washington, DC 20005-1022
(202) 662-1736

INTERNET

The Legal List: Research on the Internet by Diana Botluck (West Group 1999). Maryland sites:

Courts: <http://courts.state.md.us>

Appellate Decisions: <http://courts.state.md.us/opinions.html>

Maryland Local DSS: <http://www.dhr.state.md.us/county.htm>

Legislation & Bills: <http://www.mlis.state.md.us>

State Bar Association: <http://www.msba.org>

MICPEL: <http://www.micpel.edu/>

FORMS - JUDGMENTS/ORDERS

<http://www.courts.state.md.us/family/forms/jo-cinatpr.html>

American Bar Association Center on Children and the Law

<http://www.abanet.org/child>

Child Welfare League of America

<http://www.cwla.org>

Children's Defense Fund

<http://www.childrensdefense.org>

National Council of Juvenile and Family Court Judges

<http://www.ncjfcj.org/>

National CASA Association

<http://www.nationalcasa.org/>

Office of Juvenile Justice and Delinquency Prevention

<http://ojjdp.ncjrs.org/>

U.S. Department of Health and Human Services

<http://www.hhs.gov/>

HEALTHY CHILD CHECKLIST

Case Name: _____ D.O.B. _____ Age _____

Reporting Case Worker: _____

1. Most Recent Well Child Visit: Applicable: ()Yes ()No
 Date: _____ Physician's Name: _____
 Attached Copy: ()Yes ()No
 Comments _____

Immunization Records: Applicable: ()Yes ()No
 Attached Copies: ()Yes ()No
 Comments _____

Most Recent Hearing and Vision Screening: Applicable: ()Yes ()No
 Date: _____ Physician's Name: _____
 Attached Copy Vision: ()Yes ()No
 Date: _____ Physician's Name: _____
 Attached Copy Hearing: ()Yes ()No
 Comments _____

Regular Dental Check-Ups/Services: Applicable: ()Yes ()No
 Date: _____ Physician's Name: _____
 Attached Copy: ()Yes ()No
 Comments _____

2. Most Recent Screening for Lead Poison (Mandatory)
 Date: _____ Physician's Name: _____
 Attached Copy: ()Yes ()No
 Comments _____

100 Juvenile Court



SUMMARY

The juvenile court's goals are to help children in need of assistance, preserve and strengthen families, assure removed children of equivalent care, and provide children with permanent and safe homes.

HELPING CHILDREN

C. & J.P. § 3-802(a)(1-4)

The juvenile court seeks to help children in need of assistance. Its goal is to provide for the care and protection of these children and meet their physical and mental developmental needs. The court achieves these goals through ordering treatment, training, and rehabilitation for children and their families.

42 U.S.C.A. § 629b(a)(9)
42 U.S.C.A. § 621

The child's health and safety are the paramount concerns. The federal Adoption and Safe Families Act of 1997 (ASFA) affirms the primary goal is to protect children from abuse and neglect. Whether the decision is leaving the child in the home or placing the child outside of the home, the aim is the child's safety.

STATUTORY INTERPRETATION

The cardinal rule of statutory construction is to give effect to the legislature's intentions. If the statute is clear and unambiguous, rely on its wording. If the statute is susceptible to more than one interpretation, consider its meaning in light of the statute's purpose. Interpret each of its provisions in the context of the entire statutory scheme. You may also consider the statute's amendment history, relationship to prior and subsequent laws, and structure. Finally, be guided by common sense. *Adoption/Guardianship Nos. 11387 & 11388*, 354 Md. 574 (1999).

The Juvenile Causes subtitle should be liberally construed to effectuate the purpose of the laws. C. & J.P. § 3-802(b). Statutory definitions apply unless the context indicates otherwise. C. & J.P. § 3-801(a).

PRESERVING FAMILIES



C. & J.P. § 3-802(a)(3)&(5)
42 U.S.C.A. § 672(a)(1)

The court endeavors to preserve families. A child's family ties should be preserved and strengthened. Children should only be separated from their parents when their welfare requires it. Before removal, you must find that continuation in the home would be contrary to the child's safety and welfare.

42 U.S.C.A. § 671(a)(15)

To prevent unnecessary separation, the court monitors "reasonable efforts." The federal Adoption Assistance and Child Welfare Act of 1980 added this requirement. In every case in which a child is removed from parents, the court determines whether the Department of Social Services (DSS) has made reasonable efforts to prevent or eliminate the need for placement. Reasonable efforts to prevent placement are only required if the child can be kept safe at home.

F.L. § 5-525(d)
 42 U.S.C.A. § 671(D)(i)
 42 U.S.C.A. § 625(a)(1)(D)

EQUIVALENT CARE

C. & J.P. § 3-802(a)(6)
 42 U.S.C.A. § 625(a)(1)

42 U.S.C.A. § 675(5)(A)



42 U.S.C.A. § 671(a)(19)

42 U.S.C.A. § 671(a)(18)
 42 U.S.C.A. § 1996b
 25 U.S.C.A. § 1915(a)

Nicole B., 175 Md. App.
 450 (2007)

PERMANENCY

F.L. § 5-303(b)(1)
 F.L. § 5-524(3)
 42 U.S.C.A. § 625(a)(1)

F.L. § 5-525(b)(2)
 42 U.S.C.A. § 671(a)(15)(F)

After removal, reasonable efforts are required to reunite the family.

The goal is to restore children to their families by offering services to address the problems that caused their removal. In aggravated circumstances posing serious danger to the child, reasonable efforts to reunite the family are not required.

The court ensures removed children have equivalent care. Children removed from their parents should receive custody, care, and discipline equivalent to that which their parents should have provided. The placement should also be adequate to meet the children's needs.

Children also have a right to the least restrictive placement available. Any placement should be safe, the most family-like, the most appropriate available, and near the child's parents. It also must be consistent with the child's best interests and special needs. Out-of-state placements should be made only if you make written findings that it is in the child's best interests.

To maintain family ties, relatives are preferred as temporary caregivers. A relative who meets all state child protection standards has preference over a foster home.

Children may not have a placement denied or delayed because of race. Under the federal Multiethnic Placement Act - Interethnic Adoption Provisions (MEPA-IEP), the state cannot discriminate in placement based on the child's or foster or adoptive parents' race, color, or national origin. The only exception is under the federal Indian Child Welfare Act (ICWA), which preserves ties to the child's tribe.

“ACTIVE EFFORTS” UNDER ICWA -- Trial court erred, regarding the placement of two Indian children, when it switched the county social services agency's permanency plan from reunification to custody and guardianship with a paternal aunt, and closed the child in need of assistance case. The trial court failed to properly address “active efforts” to prevent the break-up of the family. *Nicole B.*, 175 Md. App. 450 (2007).

The court works toward providing foster children with stable homes. The goal is to protect children's safety and health. Each child should have a permanent family to count on both as child and as a young adult. If the child cannot safely return home, approve another permanency plan. A plan for adoption or guardianship can offer a child a new family.

Where appropriate DSS does concurrent planning for children in care. For example, this means that they work toward family reunification at the same time as developing another permanency plan. Concurrent planning can reduce the time children spend in foster care. It helps

the court to make intelligent final decisions no later than 12 months after removal. This allows a final plan to be achieved within 18 months.

Karl H., 394 Md. 402 (2006)

WHEN BOTH ADOPTION AND REUNIFICATION ARE ORDERED CONCURRENTLY Concurrent permanency plan ordered at the time of the permanency planning hearing, which provides for both reunification and adoption, appealable on an interlocutory basis. Courts should carefully scrutinize this plan if there are diametrically opposite outcomes. *Karl H.*, 394 Md. 402 (2006).

PERMANENCY PLANNING

“[T]he parent [has a] fundamental right to raise his or her children, and there are few, if any, rights more basic than that one. The governmental interest in securing permanent homes for children placed into its custody because of an inability or unwillingness of their parents to care for them properly is also strong and vital, however. These are vulnerable and defenseless children, usually at critical stages of their development and having only the government and its agents to turn to for physical and emotional sustenance. Once it appears that reunification with their parents is not possible or in their best interest, the government has not only a special interest but an urgent duty to obtain a nurturing and permanent placement for them, so they do not continue to drift alone and unattached.” *Adoption No. 93321055*, 344 Md. 458 (1997).

Adoption procedures are socially necessary and desirable. The goals of the TPR statute are to:

F.L. § 5-303

- Provide children with safe homes to protect their safety and health.
- Protect children from unnecessary separation from their parents.
- Permit adoption only by fit individuals.
- Protect parents from hurried or ill-considered decisions to give up a child.
- Protect adoptive parents by giving them background information on the child and preventing future disturbances by the parent.

42 U.S.C.A. § 671(a)(15)(D)
42 U.S.C.A. § 673
42 U.S.C.A. § 673b
42 U.S.C.A. § 677

The court monitors efforts to place a child for adoption. If family reunification is no longer the goal, DSS must take reasonable efforts to find the child another permanent placement and complete steps to finalize it. The federal government offers adoption subsidies for special needs children. It also encourages adoption through incentive payments for states that exceed total number of adoptions from prior years. All children over age 16 are offered independent living services.

JUVENILE COURT GOALS

- Help children in need of court assistance.
- Preserve and strengthen families.
- Offer equivalent care to children removed from the home.
- Place children who are not reunited with safe, permanent families.

RELATED TOPICS

CL-107 Indian Child Welfare Act
CL-203 Reasonable Efforts
CL-207 Rehabilitation Services
CL-207 Relative Placement
CL-208 Commitment
CL-301 Permanency Planning

BEST PRACTICES

RESOURCE
GUIDELINES

A child's sense of time differs from adults. Placement of the child in a permanent home is of paramount concern.



SUMMARY

Juvenile causes are heard in Circuit Court under a separate docket. Judges or masters hold informal hearings and may exclude the public from CINA hearings. Anyone who violates a court order may be held in contempt. Pending case records are confidential and closed records are sealed.

COURTS

C. & J.P. § 3-801(i)

Each county has a court that handles “juvenile causes.” This is the county Circuit Court, including Baltimore City Circuit Court. Throughout this benchbook, the term “juvenile court,” or just “court,” refers to these courts.

DOCKETS

Md. Rule 11-104(a), (b) & (f)

The clerk maintains a separate docket for juvenile causes. A shelter care or CINA petition must be promptly scheduled for a hearing.

C. & J.P. § 3-824(a)



Emergency medical treatment requests are expedited. If the petition seeks an order for emergency medical treatment, the court must hear and rule on it on an expedited basis.

Md. Rule 9-112(a)

The clerk also keeps a separate docket for guardianship and adoption. This includes any revocations of consent for which there are no pending guardianships or adoptions. These dockets are not open to inspection by anyone including the parents.

PARTIES

C. & J.P. § 3-801(u), (1)
C. & J.P. § 3-813

Parties to a CINA Proceeding
Child (respondent)
Child’s parents, guardian, or custodian
Department of Social Services (DSS)
Petitioner (if it is not DSS)

Md. Rule 11-122(a) & (c)

Parent has a right to intervene. You must allow any parent not served with original process to intervene for any purpose. The parent must file a motion with an affidavit stating the applicant is the respondent child’s parent.

25 U.S.C.A. § 1911(c)

The child’s tribe and Indian custodian have rights to intervene. According to the Indian Child Welfare Act, this right applies to any foster care or termination proceeding (both voluntary and involuntary) involving an Indian child. They may request to intervene at any point in the proceeding.

Md. Rule 11-122(b) & (c)(2)

A person seeking custody or guardianship of the child may move to intervene. You may grant the motion to intervene and allow the person to participate at disposition only. This includes hearings to review, modify, or vacate the disposition order. The intervener is entitled to

copies of reports and studies directly relating to the person's request for custody or guardianship. However, the intervener is not entitled to court-appointed counsel or empowered to request physical or mental examinations.

C. & J.P. § 3-801(u)(2)



Is the child's caregiver a party to the CINA proceeding? A child's foster parent, pre-adoptive parent, or relative caregiver is entitled to notice of permanency planning and review hearing. The statute specifically states the child's caregiver is not party to the proceedings. 42 U.S.C.A. 675(5)(G). A caregiver seeking custody or guardianship of the child may move to intervene as a party to participate at the dispositional hearing. Md. Rule 11-122(b) & (c)(2).

42 U.S.C.A. § 671(a)(19)



At each CINA hearing, you must make certain findings concerning the child's parents. Ask the identity and current address of each parent of each child before the court.

PARENTAL ADVISEMENT CHECKLIST

- You have a continuing obligation to assist the court in identifying and locating the child's other parent.
- You must notify the clerk of any changes in your address.
- You may file a paternity action if it has not yet been established.
- You may contact the local child support enforcement agency if you wish to pursue paternity or support.

Please see the "Absent Parent Identification Litany" attached at the end of CL-102 from the FCCIP Maryland Best Practices Manual.

PUBLIC

C. & J.P. § 3-810(b)
Md. Rule 11-110(b)

You may exclude the public from a CINA hearing. You can limit attendance only to those with a direct interest in the case and their attorneys. You may also exclude anyone whose presence is not necessary or desirable. You can temporarily exclude the child if it is in the child's best interest. You shall exclude the general public in proceedings involving the discussion of confidential information from the child abuse and neglect report and record, or any information from a child welfare agency concerning a child or family who is receiving Title IV-B child welfare services or Title IV-E foster care or adoption assistance.

MEDIA

You can place reasonable restrictions on the media's use of information obtained in a confidential juvenile proceeding. However, you cannot limit the media's publication of information obtained from other sources. You also cannot condition access to the juvenile proceedings upon the media's publication of material you specify. *Baltimore Sun v. State*, 340 Md. 437 (1995).

C. & J.P. § 3-808

C. & J.P. § 3-806

C. & J.P. § 3-807

Md. Rule 11-110(a) & (b)

There is no right to a jury trial in juvenile cases. The juvenile court tries these cases without a jury.

Hearings are held before a judge or master. They are held in open court, in chambers, or in another appropriate facility. All proceedings are recorded. Juvenile court hearings are informal.



Meeting with Children in Chambers

If you choose to interview a child in chambers without the attorneys present, make sure all parties have at least five days notice. This gives them an opportunity to object. In addition, make sure the conversation is properly recorded. In *Barry E.*, 107 Md. App. 206 (1995), the appellate court found the juvenile court judge had erred by interviewing the children without the notice to the parent’s attorney or even the child’s attorney. However, such an error did not require reversal.

Russell G., 108 Md. App. 366 (1996)

You may impose reasonable time limits on a trial. This may be done to avoid needless repetitious evidence or argument. However, you may not enforce a limit that prevents parties from presenting their case fully, especially if it gives the appearance you have prejudged the case.

CONTEMPT

Md. Rule 11-110(e)(2)

Md. Rule 15-201 to 15-208

Reed v. Foley, 105 Md. App. 184 (1995)



State v. Weigmann, 350 Md. 585 (1998)



A person before the court who violates an order may be held in contempt. A period of confinement is a potential sanction. The person alleged to have violated the order is entitled to:

- Formal notice of specific violation.
- An opportunity to be heard on the merits.

A judge may hold a person in contempt. A master may only recommend a judge hold a person in contempt. The master, however, may also issue a show cause order for contempt.

RECORDS

C. & J.P. § 3-827

C. & J.P. § 3-810(b)

Md. Rule 11-121(a)

The court record of CINA case is confidential. You may only release it by court order for good cause shown. Access to these court records is authorized by statute to the following professionals:

Who May Access CINA Records
DSS
Agency attorney
Child’s attorney
Child’s CASA
Court personnel

For Indian Child Welfare Act cases, the tribe and Indian custodian may access court records. Once they intervene as parties, they are entitled to all reports and other documents filed with the court upon which any decision will be based.

25 U.S.C.A. § 1912(c)



You may seal a child's court records. On your own motion or petition, you can seal the record for good cause shown. Once the case is closed, these records are sealed. The records must be sealed when the child reaches age 21. Once sealed, the records cannot be opened for any purpose without a court order based on good cause shown.

C. & J.P. § 3-827(b)

Md. Rule 11-121(a) & (b)

SEALING COURT RECORDS VS. PUBLIC RIGHT TO KNOW

In *M.P. v. Schwartz*, 853 F. Supp. 164 (D. Md. 1994), the state court had sealed the court record in a lawsuit against DSS alleging a child had suffered physical and emotional abuse in DSS custody. A local newspaper challenged this decision as a violation of the First Amendment. The federal district court found a compelling governmental interest in protecting the child's confidentiality. It held that releasing the complaint with names removed and initials substituted was sufficiently narrowly tailored to balance these competing interests, as required by the First Amendment. The court did deny the newspaper access to the petition's attachments because they contained hearsay and could potentially be scandalous. It allowed the state court to consider whether to unseal more of the record.

RELATED TOPICS

CL-105 Notice & Service
 CL-105 Missing Parents
 CL-108 Who is a Parent
 CL-107 Indian Child Welfare Act
 CL-205 Emergency Medical Treatment
 CL-505 Adoption Records

ABSENT PARENT IDENTIFICATION LITANY

STEP 1-PARENT IDENTIFICATION:

QUESTIONS FOR PARENT IN ATTENDANCE

PLEASE USE FORM UNTIL ABSENT PARENT (S) ARE IDENTIFIED & LOCATED

1. Who are the child's parent(s)?

_____	_____	_____
Father's Name-First, Middle, Last	Father's Aliases	Date of Birth
_____	_____	_____
Mother's Name-First, Middle, Last	Mother's Aliases	Date of Birth

SOCIAL WORKER INQUIRIES:

Have you obtained the parents' social security numbers? yes no
Have you obtained a copy of the child's birth certificate? yes no

Who is listed on the child's birth certificate? _____
Mother Father

- 2. Have you ever been to any other court for this child? yes no Where did you go to court? _____
Do you have any paperwork from the court hearing? yes no: Has a paternity affidavit been signed? yes no
- 3. Were you ever married? yes no: If yes, were you married to the child's father or someone else at the time you got pregnant with this child? _____. (If yes, to "someone else" make further inquiry as to the identity of the spouse.) Who were you married to at the time of this child's birth? _____
This person is a presumed natural father under F.L. § 5-310 even if mother doesn't think he is the biological father.
- 4. Does "someone else" claim to be the natural father of this child? yes no _____

STEP 2-PARENT WHEREABOUTS:

SOCIAL WORKER INQUIRIES: What efforts have you made to determine the absent parent's whereabouts?
What will be your efforts? When will your efforts be completed?

QUESTIONS FOR PARENT AND/OR CHILD IN ATTENDANCE

- 1. Where is the parent now? _____; What is his/her last known address? _____
Can messages/mail be delivered in c/o someone? _____
What is his/her phone/pager and/or cell number? _____
- 2. Where does he/she work/address? _____ What is his/her work number? _____
Is he/she in the military? yes no What type of work does he/she do? _____
- 3. When was the last time you saw the father/mother? _____ When did you last talk to him/her? _____
- 4. Who are the grandparents? _____ Who are some of your other relatives? _____ Are there any godparents? _____ Who else might know how to locate father/mother? _____ Do you know where your relatives live or how to contact them—address or phone number? _____
- 5. Has the father/mother ever been locked up? yes no If yes, where, when? On probation or parole? yes no
Where, when? _____
- 6. Do you know if the father/mother has any other children? yes no; If yes, have you shared the names of the children with the social worker? yes no



SUMMARY

CINA proceedings are heard by judges and masters. The agency attorney represents DSS. The child is entitled to a court-appointed attorney, as is an indigent parent in most proceedings. You may also appoint a CASA for the child.

JUDGES

C. & J.P. § 3-801(i)

C. & J.P. § 3-806

Circuit Court judges hear “juvenile causes.”

If a county has a large caseload, judges may be specially assigned to juvenile court. The administrative judge of the circuit assigns juvenile court judges. All assignments are subject to the approval of the Chief Judge of the Court of Appeals.

C. & J.P. § 3-806

Preference is given to judges who wish to hear juvenile causes. The statute recommends that juvenile assignments go to judges with the necessary temperament for dealing with the cases and children likely to come before the court. There is also a preference for judges with special experience or training in children’s issues.

LIABILITY

A county cannot be sued in federal court under 42 U.S.C.A § 1983 for a judge’s actions in a custody dispute. The only basis for such a claim would be if the judge had conspired with the county government to deprive the plaintiff of a constitutional right. A DSS director might be liable under § 1983 for failing to follow a valid court order to place a child in foster care. *Williams v. Anderson*, 753 F. Supp. 1306 (D. Md. 1990).

MASTERS

C. & J.P. § 3-807(1) & (3)

C. & J.P. § 3-807(a)(2)

The court may appoint masters to hear juvenile causes. The master must be a member in good standing of the Maryland Bar. The Chief Judge of the Court of Appeals must approve the appointment.

Preference is given to masters who wish to hear juvenile causes. The statute recommends that juvenile assignments go to masters with the necessary temperament for dealing with the cases and children likely to come before the court. There is also a preference for masters with special experience or training in children’s issues.

C. & J.P. § 3-807

Md. Rule 11-111

Masters conduct hearings. Masters may hear shelter care hearings and any other cases assigned by the court. Hearings before a master are recorded.

C. & J.P. § 3-807
Md. Rule 11-111(b)



After the hearing, the master makes written findings. These include:

- Findings of fact.
- Conclusions of law.
- Recommendations for an appropriate order.



These written findings are filed with the court within 10 days. They are also served on each party. The master's findings are not a final order until approved by a judge.

C. & J.P. § 3-807(c)
Md. Rule 11-111(c)
Marcus J., 175 Md. App.
703 (2007)



Any party may file a written exception to the master's findings. It must be filed within five days and object to specific findings. An exception may request a hearing on the record or *de novo*. A hearing is held only on the issues in dispute. A judge may refuse to hear argument on an issue not objected to in the exception.

C. & J.P. § 3-807(d)
Md. Rule 11-111(d)



The judge reviews the master's findings. If no exception is filed, the judge reviews the master's findings within seven days. The judge may adopt them and enter appropriate orders or may take other actions. However, the master may place a child in shelter care pending court review of the findings.

Michael G., 107 Md. App.
257 (1995)
C. & J.P. § 3-807(e)

If not approved, the judge holds a *de novo* hearing. If the judge decides not to adopt any of the master's findings or recommendations, a *de novo* hearing must be held, unless all parties and the court agree to a hearing on the record. The judge may hold a hearing or remand the case to the master for further hearing. The evidence may be supplemented if no party objects.

The judge may determine the master considered evidence that should not have been admitted. If so, the judge decides whether the admissible evidence met the required standard of proof. The judge must defer to the master's factual finding and assessments of witness credibility. Then the judge exercises independent judgment as to the proper outcome based on the facts.

AGENCY ATTORNEY

C. & J.P. § 3-827(a)(2)(iii)

DSS is represented by the agency attorney. The agency attorney is statutorily entitled to access confidential court records concerning the CINA proceedings.

CHILD'S ATTORNEY

42 U.S.C.A. § 5106a(b)(2)(A)(ix)
C. & J.P. § 3-813(d)
Md. Rule 11-106(b)(3)

You must appoint an attorney for a child alleged to be CINA. You need not appoint an attorney if the child already has one. You cannot appoint a court-appointed special advocate (CASA) instead of an attorney. If you wish the Department of Human Resources (DHR) to pay for the attorney, you must appoint or replace an appointment with an attorney approved by DHR for your jurisdiction.

Md. Rules of Proc. Appendix:
Guidelines for Advocacy for
Attorneys Representing Children
in CINA and Related TPR and
Adoption Proceedings



What is the role of the child's attorney in a CINA action? According to federal law, the child's attorney is to obtain a first-hand, clear understanding of the situation and needs of the child. Then, the attorney makes recommendations to the court on the child's best interests. 42 U.S.C.A. § 5106a (b)(2)(A)(ix). In contrast, the ABA Standards of Practice for Lawyers who Represent Children in Abuse and Neglect Cases (1996) urges attorneys to represent the child's wishes as they

would an adult client, allowing only that the attorney's role may vary based on the child's age. A child's attorney is generally expected to advocate for the child's wishes but may on occasion substitute judgment for the child's best interest despite the child's contrary wishes. The child's attorney should be independent of both DSS and the parents.

In an adoption, appoint counsel for the adoptee. You must appoint counsel for an adoptee whose consent is required if the adoptee is disabled and incapable of consenting or participating in the proceedings. You may order an examination to determine the adoptee's competence. If you wish DHR to pay for the attorney, appoint an attorney approved by DHR for your jurisdiction.

You can assess the cost of the child's attorney against any party. You may assess it against the child's parent unless the parent is indigent.

F.L. § 5-307(b)
C. & J.P. § 3-813(f)
Md. Rule 11-106(b)(4)

PARENT'S ATTORNEY

C. & J.P. § 3-813 (b) & (c)
25 U.S.C.A. § 1912(b)

Parties have a right to counsel at each stage in a CINA case. However, only an indigent parent or guardian is entitled to court-appointed counsel. This entitlement only applies to the hearings listed below. Under the Indian Child Welfare Act, Indian custodians have a right to court-appointed counsel if they are indigent as well. You may also appoint counsel if complex factual or legal issues require the assistance of counsel to avoid the risk of erroneous deprivation of custody.

Count-appointed counsel is required at:

Shelter Care Hearing
Adjudicatory Hearing
Disposition Hearing
Review Hearing (if custody is at issue)
Termination of Parental Rights Hearing
Guardianship Review

F.L. § 5-307(a)
Md. Rule 11-106(b)(2)(a)

An indigent parent has a right to be represented by the Public Defender. The office of Public Defender determines indigence, not the court. A parent may knowingly and intelligently waive this right.

C. & J.P. § 3-813(c)
F.L. § 5-307
Md. Rule 11-106(b)(2)(a)



QUESTIONS ON WAIVER OF COUNSEL

Do you understand:

The nature of the allegations?

The nature of the proceedings?

The range of allowable dispositions?

An attorney may assist you in presenting defenses and mitigating circumstances?

An attorney can be useful even if you admit the allegations by developing and offering evidence to affect disposition?

You have the right to counsel?

Md. Rule 11-106(b)(1)

You have the right to prompt appointment of an attorney if you are indigent?

You have the right to call witnesses on your own behalf?

You have the right to confront and cross-examine witnesses?

You have the right to subpoena witnesses?

You have the right to require proof of any allegations?

You may appoint a separate attorney for any indigent party. You may make or grant such a motion if there is a conflict of interest and it is necessary to meet fair hearing requirements. For example, the child's mother and father may require separate counsel.

MINOR OR INCOMPETENT PARENTS

In an adoption or guardianship, you must appoint counsel for a minor parent. F.L. § 5-307. A disabled parent incapable of consenting or participating in the proceedings must be given court-appointed counsel. F.L. § 5-307. You may order an examination to determine the parent's competence. F.L. § 5-307. The parent may not be represented by an attorney or firm who also represents the adopting parent or child placement agency, or vice versa. F.L. § 5-307. You may approve reasonable attorney fees for court-appointed counsel and assign costs among the parties. F.L. § 5-307. You may not assess these costs if the adopting parent is a relative.

Md. Rule 11-106(a)
Bar Admission Rule 14

An out-of-state attorney may appear if specially admitted. A Maryland attorney must file a written motion to allow the out-of-state attorney to be specially admitted to practice in Maryland. Admission is for the limited purpose of appearing and participating as co-counsel in the action. You may allow the out-of-state attorney to appear as sole counsel by waiving the appearance of the other attorney.

Form RGAB-14/M (motion)

Form RGAB-14/O (order)

www.lawlib.state.md.us



CASA

C. & J.P. § 3-830
C. & J.P. § 3-813(e)

You may also appoint the child a CASA. A court-appointed special advocate (CASA) is a trained volunteer to ensure the child gets appropriate case planning and services. A CASA gives the judge background information to aid the court in making decisions in the child's best interest. Not every jurisdiction has a CASA program.

RELATED TOPICS

CL-107 Indian Child Welfare Act
CL-204 Shelter Care
CL-502 Adoption

BEST PRACTICES

Hold all parties, including attorneys, accountable for fulfilling their roles and responsibilities.

RESOURCE GUIDELINES

Attorneys should be competent, and trained in child welfare issues.



SUMMARY

The juvenile court has exclusive jurisdiction over CINA children. Proper venue is where the child resides when the proceeding begins. Some concurrent proceedings, such as criminal actions, may be held in other courts. The UCCJA and Interstate Compacts govern interstate issues.

JURISDICTION

C. & J.P. § 3-803(a)

C. & J.P. § 3-803(c)(3)

C. & J.P. § 3-801(e)

Juvenile court has exclusive jurisdiction over CINA children. For any child found to be a “child in need of assistance” (CINA), the court also has exclusive original jurisdiction over termination of parental rights and adoption.

The child’s age at petition filing determines jurisdiction. The court has jurisdiction over a child under age 18 at the time a CINA petition is filed.

Jurisdiction continues until the child is age 21. The court may terminate jurisdiction sooner. If you transfer custody of a CINA child from the child’s parent, guardian, or custodian who had care and custody when the CINA petition was filed, your custody order remains in effect after the CINA proceeding ends. It may be terminated or modified by court order only.

C. & J.P. § 3-804(b)

25 U.S.C.A. §§ 1911(a) & 1922

25 U.S.C.A. §§ 1911(a) & 1922

Tribal court has exclusive jurisdiction over children on its reservation. This includes children who reside or are domiciled on the reservation and any wards of tribal court regardless of where they live. However, the Indian Child Welfare Act allows state courts to make emergency removals of Indian children temporarily off the reservation to prevent their imminent physical damage or harm.

An Indian child’s case is subject to transfer to tribal court. For an Indian child living off the reservation, a parent, Indian custodian or the tribe may petition for transfer to tribal court. You only have discretion to deny the transfer to tribal courts if:

- Either parent opposes it.
- The tribe declines jurisdiction.
- There is good cause to retain state jurisdiction.

VENUE

C. & J.P. § 3-805(a)

C. & J.P. § 3-805(b)

C. & J.P. § 3-828

C. & J.P. § 3-805

Proper venue for CINA petition is the county where the child resides. If it is filed in another county, you may transfer it to the child’s domicile at any time on your own or a party’s motion. If you receive a transferred case, you have discretion to take further action. All court records must be transferred with the case within 15 days of the transfer order.

Proper venue for the crime of contributing to CINA is the county where the incident occurred. The petition should be filed in this county but is subject to transfer to the county where the child resides.

CONCURRENT PROCEEDINGS

C. & J.P. § 3-803(b)

While a CINA case is pending, other proceedings involving the child may be held. For example, the parent may be charged with a crime as a result of the abuse. However, another court may not overrule a valid juvenile court custody order.

Potential Concurrent Proceedings
Criminal
Paternity
Child Support
Divorce/Separation
Relative Guardianship

Md. Rule 11-117(b)

Give due consideration to pending support proceedings. However, they do not affect your ability to place a child under your jurisdiction in shelter care, issue an order controlling conduct, or order support after commitment.

C. & J.P. § 3-828
C. & J.P. § 3-803(c)

The juvenile court has concurrent jurisdiction over the crime of contributing to CINA. You may waive jurisdiction if charges from the same incident are pending in criminal court on your own motion or a motion of a party. You must waive jurisdiction if the state's attorney or the adult charged so moves.



Does a CINA finding that the parent did not abuse the child prevent a criminal prosecution because of double jeopardy? According to *Bowling v. State*, 298 Md. 396 (1984), it does only if it meets a three-pronged test:

- The earlier proceeding must have ended in a final judgment or determination of the issue.
- The defendant must have been a party to both proceedings.
- The resolution of the issue at the earlier proceeding cannot have been unnecessary or mere dicta—it must have been an ingredient or basis of the decision.

In *Bowling*, the CINA finding that the father did not sexually abuse his daughter did bar a criminal prosecution. However, in *Lee v. State*, 62 Md. App. 341 (1985), the juvenile judge found the father had acted in a sexual and inappropriate manner toward his children, which was sufficient for a CINA finding. Since determining whether he committed a sexual offense was not necessary to his decision, a criminal action could also be brought. In *White v. State*, 109 Md. App. 350 (1996), a master's acceptance of the father's admission to a CINA finding when the petition has not alleged he was the abuser also did not bar criminal charges.


UCCJA

The Uniform Child Custody Jurisdiction Act (UCCJA) governs interstate custody cases. The goals of the UCCJA are to avoid disputes between states over child custody jurisdiction and to ensure the state with

which the child has the closest connections makes custody decisions. The “custody proceedings” covered by the UCCJA include CINA cases.

Under the UCCJA, a state may take jurisdiction over child custody.

The child’s physical presence in the state alone is not enough for jurisdiction. It is also not a prerequisite to jurisdiction.

Bases for Jurisdiction under UCCJA	
Home State 	It is the child’s home state. The “home state” is where the child has resided for the last six months. Alternatively, it is where the child has resided for six months before being removed by a person claiming custody as long as one parent remains in that state.
Significant Connections	The child and at least one parent have significant connections with the state and there is substantial relevant evidence in the state regarding the child’s current or future care.
Emergency Circumstances	The child is in the state and in need of emergency protection from abuse or neglect. The child has been abandoned in the state.
Other State Jurisdiction	No other state has jurisdiction under these guidelines. Another state has declined jurisdiction. In either situation, it must be in the child’s best interests for the state to assume jurisdiction.

28 U.S.C.A. § 1738A
 28 U.S.C.A. § 1738A(d)
 28 U.S.C.A. § 1738A(b)(3)
Malik v. Malik, 99 Md.
 App. 521 (1994)

The Parental Kidnapping Prevention Act (PKPA) is aimed at deterring parental child snatching. It is a federal law that enforces full faith and credit to state custody orders. It confers continuing jurisdiction on a state that issued a custody order as long as the child or a parent lives in the state. Under its provisions, a court may not take jurisdiction under the UCCJA on the basis of “significant connections” if another state court has already issued a custody order.

UCCJA

In *Malik v. Malik*, 99 Md. App. 521 (1994), the mother absconded with the child to the United States when a Pakistan court gave the father custody. After two years in Maryland, she filed for custody in Baltimore County Court. Based on the child’s residence for the last six months, Maryland was the “home state” under the UCCJA. (The Maryland UCCJA also applies to foreign custody orders. F.L. § 5-101 *et seq.*) However, since the mother obtained jurisdiction through disobedience of a court order, the court should have declined jurisdiction. The court could only deny comity to the Pakistani order if that court did not apply the “best interests of the child” standard or applied law contrary to Maryland public policy. Pakistan’s paternal custody preference did not violate Maryland public policy.

A good resource on interstate custody issues is Deborah Goelman, *et al.*, *Interstate Family Practice Guide: A Primer for Judges* (American Bar Association, 1997).



INTERSTATE
COMPACTS

F.L. §§ 5-601 to 5-611

Interstate Compacts

Interstate Compact for Placement of Children

Interstate Compact on Juveniles

Interstate Compact on Adoption and Medical Assistance

The Interstate Compact for Placement of Children allows you to place children in another state. The purpose of the Compact is to encourage cooperation between states in interstate placements. Through the Compact, the court can place children with out-of-state foster and adoptive homes as well as in group care facilities. The sending state agency retains jurisdiction over the child's custody, supervision, care, treatment and disposition. Jurisdiction ends if the child:

- Is adopted.
- Reaches majority.
- Becomes self-supporting.
- Is discharged by agreement of both the sending agency and receiving state.

SANCTIONS FOR NONCOMPLIANCE

The Court of Appeals has held that a violation of the Interstate Compact for Placement of Children (ICPC) does not require dismissal of an adoption petition. *Adoption No. 10087*, 324 Md. 394 (1991). In that case, Maryland adoptive parents did not receive approval from the Virginia ICPC Administrator because they did not want to reveal their name and address to the mother. The Court of Special Appeals overturned the Juvenile Court's dismissal of the adoption petition and remanded the case for a decision on the child's best interests.

In *Adoption/Guardianship No. 3598*, 347 Md. 295 (1997), the adoptive parents had filed the necessary ICPC paperwork with New York, where the infant was born, and Maryland where the adoptive parents lived. Their attorney received a call from the New York ICPC Administrator saying that their application had been granted. The attorney erroneously assumed this meant Maryland had also approved it so he told the adoptive couple they could return to Maryland with the baby. The Maryland ICPC Administrator did not approve it. The juvenile court found that the adoptive parents made a "good faith" effort to comply and it was still in the child's best interests to approve the adoption.

The Court of Special Appeals did list factors that might result in dismissal of an adoption petition because of ICPC noncompliance.

Consider whether the violation:

- Was knowingly committed by the adoptive parents.
- Impaired the rights of a parent.
- Was more than a procedural technicality.
- Impeded the sending state's jurisdiction to determine the child's best interests.

42 U.S.C.A. § 671(a)(23)
42 U.S.C.A. § 622(b)(12)

Human Services § 9-303



C. & J.P. § 3-803(a)
Md. Rule 11-103(a)(2)(b)
& (a)(4)

F.L. §§ 5-4A-01 to 5-4A-08

RELATED TOPICS

- Circumvents the sending state's laws to effect the adoption.
- Was made to enhance the adoptive parents forming an emotional tie with the child to dictate the adoption in the receiving state's court. *Adoption/Guardianship No. 3598, 347 Md. 295 (1997).*

DSS cannot deny or delay placing a child in an approved out-of-state adoptive home. DSS must offer a fair hearing to approved out-of-state adoptive parents who believe Maryland has delayed or denied the placement. This requirement applies to all states. Violations could result in a loss of federal funds.

The Interstate Compact on Juveniles provides for the return of children who have run away from their home state. It applies to all children under juvenile court jurisdiction, including CINA children. If a child comes before a Maryland court but is not a resident of Maryland, the court must determine the child's home state and authorize the return of the child to that state within 90 days. Other states are under the same obligation for Maryland children appearing before them.

The juvenile court has exclusive original jurisdiction over Interstate Compact on Juveniles. Petitions under the Compact must be verified by affidavit. The petition must allege that the action arises under the Compact.

The Interstate Compact on Adoption and Medical Assistance allows adoptive families receiving adoption subsidies and medical coverage to move to or from Maryland and continue to receive these benefits.

CL-107 Indian Child Welfare Act
CL-108 Paternity
CL-205 Ordering Controlling Conduct
CL-209 Contributing to CINA



SUMMARY

The CINA petition and summons are served on all parties. Notice is given for each CINA hearing. In a guardianship or adoption, a show cause order is issued. Service to missing parents may be waived if DSS made a reasonable good faith effort to find the parent.

SUMMONS

Md. Rule 11-104(c)

When a CINA petition is filed, the clerk issues a summons. This summons and a copy of the petition must be served on every party except the petitioner and respondent child. The summons requires the parent to bring the child to the scheduled hearing, unless the child has already been placed in shelter care.

C. & J.P. § 3-801(u)
C. & J.P. § 3-828



Form 904-S (release)
Form 904-WA (writ of attachment)
www.lawlib.state.md.us

25 U.S.C.A. § 1912

Parties to a CINA Proceeding

Child (“respondent”)
Child’s parents, guardian, or custodian
Department of Social Services (DSS)
Petitioner (if it is not DSS)

NOTICE



Serve the CINA petition on the child’s tribe if you know or have reason to know the child is Indian. Parents and any Indian custodians must also be given notice. Notice must be by registered mail. You cannot hold a hearing until at least 10 days after the parent or Indian custodian and the tribe or the Secretary of the Interior receive notice. You must grant another 20 days to prepare if they request it.

Md. Rule 11-110(c)



The clerk must give each party at least five days notice before a CINA hearing. This notice must include the time, place, and purpose of the hearing. The petition or other pleadings, if any, must be served with it. Five-day notice is not required for a shelter care hearing.

Md. Rule 1-321

Pleadings other than the petition are served by mailing copies to each party’s attorney. They may also be hand-delivered. The court may order service on the party. Other pleadings do not have to be served on a party who defaulted on the petition unless they request a new or additional claim of relief against that party.

F.L. § 5-326(a)(4)
42 U.S.C.A. § 675(5)(G)
C. & J.P. § 3-823(i)



DSS must give the child’s caregiver notice of all review hearings. The child’s foster or pre-adoptive parent or relative caregiver is entitled to 10 days written notice and a right to be heard at permanency planning and review hearings. The caregiver’s attorney is also entitled to notice and an opportunity to be heard. If the child’s caregiver has custody, not DSS, then the court gives notice to the caregiver as a party.

Md. Rule 11-104(d)

Parties may request subpoenas be issued for a hearing. Parents have a right to subpoena witnesses in a CINA proceeding.

Form 904-R/WS (request for witness subpoena)

Form 904-WS (witness subpoena)

www.lawlib.state.md.us



SHOW CAUSE ORDER

Md. Rule 9-105

F.L. § 5-315(a)

F.L. § 5-322(b)

25 U.S.C.A. § 1912

F.L. § 5-346(a)

F.L. § 5-341(d)

25 U.S.C.A. § 1912

Md. Rule 9-105(c)(3)

F.L. § 5-322(b)(2) & (3)

Md. Rule 9-105(c), (d) & (f)

Md. Rule 2-121



After a guardianship or adoption petition is filed, issue a show cause order. A show cause order is not necessary if all persons entitled to service have consented to the guardianship or adoption.

Notice of Guardianship Petition

Mother (unless she waived notice in writing)
Father (unless he waived notice in writing)
Child's attorney in CINA proceedings
Parents' attorneys in CINA proceedings and any appointed by court
Child's tribe and Indian custodian (if Indian child)

Notice of Adoption Petition

Child (if age 10 or older)
Child's guardian (if parental rights have been terminated)
Child's attorney (if the court appointed one)
Parent's attorney (if the court appointed one)
Child's tribe and Indian custodian (if Indian child)
Any other person the court directs

The show cause order must include a notice of objection. For guardianships, the show cause order must state the name of the child placement agency seeking guardianship. For adoptions, the order cannot include the adopting parents' names.

Show Cause Order-Md. Rule 9-105(h)

www.lawlib.state.md.us

Notice must be made to the person's last known address. This may be done by private process or certified mail. Notice to attorneys for the child and parents may be made by first class mail. Once issued, the show cause order must be served within 90 days or be reissued.

ADEQUATE NOTICE

DSS filed a guardianship petition, serving the father and mailing a copy to the head of the Public Defender's CINA division. The father's attorney in the CINA proceeding was a panel attorney. He was appointed due to a conflict of interest because the Public Defender was representing the mother. The panel attorney did not receive notice of the guardianship petition until the 30-day period for filing a notice of objection had expired. The Court of Special Appeals ruled the father's due process rights had been violated. *Adoption/Guardianship TPR970011*, 122 Md. App. 462 (1998).



F.L. § 5-318(c)

MISSING PARENTS

Md. Rule 11-104(c)

Md. Rule 2-101 to 2-132

C. & J.P. § 3-822 (b) & (c)

F.L. § 5-314

C. & J.P. § 3-822(a)(1)

C. & J.P. § 3-822(a)(2)



A consenting parent may request notice of further proceedings. The parent is entitled to notice of all hearings held before and at entry of the termination of parental rights order. Notice is sent by first-class mail to the address on the consent form unless the consenting parent has provided a new address in writing. Sending of the notice does not affect the consent or give the parent standing to participate in the action.

After a CINA summons is issued, you are notified if the parent is a non-resident or cannot be served. Direct how the parent should be given notice. The clerk must give proof these steps have been taken.

A CINA child's parent must notify the court of address changes. A parent must also give address changes to DSS. The juvenile court clerk maintains the address list.

At each CINA hearing, you must make certain findings concerning the child's parents. Ask the identity and current address of each parent of each child before the court.

C. & J.P. § 3-822(d)

C. & J.P. § 3-822(b)

F.L. § 5-316(d)

F.L. § 5-322(b)

F.L. § 5-316(e)

F.L. § 5-316(e)

PARENTAL ADVISEMENT CHECKLIST

- You have a continuing obligation to assist the court in identifying and locating the child's other parent.
- You must notify the clerk of any changes in your address.
- You may file a paternity action if it has not yet been established.
- You may contact the local child support enforcement agency if you wish to pursue paternity or support.



For CINA children, special notice requirements apply for guardianship or adoption. The clerk may disclose the addresses to DSS to notify parents of a petition for guardianship with the right to consent to adoption or long-term care short of adoption.

If the parent attended a CINA hearing and was told to notify the court of any address changes, then the parent may be served by mail at the latest address or any address listed in the last six months by the court or DSS. The clerk must disclose the addresses to DSS if DSS requests them.

If the parent did not attend a CINA hearing, the notice may be sent to the latest address listed in court records or to any other address identified after a good faith effort to find the parent.



You may then grant alternative service if personal service is unsuccessful. You must be satisfied by testimony or affidavit the DSS made a reasonable good faith effort to serve the parent by both private process and certified mail.



DSS has made a reasonable good faith effort if within six months of petition filing, it has attempted to find the parent's last known address by contacting the persons and agencies listed below. If DSS mailed the inquiry and the agency did not respond within 30 days, it is considered a negative response.



QUESTIONS ON MISSING PARENT SEARCH

In the last six months, did you check with:

State Motor Vehicle Administration?

Local DSS?

State Department of Public Safety and Correctional Services?

State Division of Parole and Probation?

Local detention center?

Local Juvenile Court Records?

Any social services agency from which you are aware the parent received benefits within nine months of petition filing?

Any detention center you are aware of that confined the parent within nine months of petition filing?

The other parent, immediate family, and employer, if available?

F.L. § 5-316(f)(3)

You may order a missing parent be served by publication and posting on the agency website. The show cause order is published at least one time in the county or city of the parent's last known address. The notice does not include the child's name but does include the child's date and place of birth, if known.

RELATED TOPICS

CL-103 Attorneys

CL-107 Indian Child Welfare Act

CL-108 Father

CL-401 Guardianship Petition

CL-501 Adoption Petition



SUMMARY

A child’s hearsay statements may be admissible. Before a child testifies, determine the child’s competency. You may also order closed-circuit testimony to prevent further trauma. Some privileges are waived for CINA proceedings.

RULES OF EVIDENCE

Md. Rule 5-101

The Rules of Evidence apply to juvenile proceedings. However, they do not apply to shelter care hearings. In disposition and modification hearings, you may decline to require strict application of the rules if it is in the interests of justice. However, you may not dispense with the rules relating to privilege and competency of witnesses.

PROCEEDING BY PROFFER

You may allow parties to present their evidence by proffer—an oral summary of what admissible evidence would be offered at a contested hearing. All parties must agree. If any party objects, you must hold a hearing. In disposition and modification hearings, in which you have discretion over whether to strictly apply evidence rules, you may require parties to proceed by proffer.

CHILD’S STATEMENTS

C.P. § 11-304(b)

A child victim’s out of court statement may be admissible. The child must be under age 12 and an alleged victim or respondent in a CINA action. The statements must involve committed or attempted physical or sexual abuse. You may admit the statement if it was made to a professional listed below acting in the course of their profession and if it possesses particularized guarantees of trustworthiness.

C.P. § 11-304(c)

Admissible if child made statement to:	
Physician	Principal
Psychologist	Vice-Principal
Nurse	Teacher
Social Worker	School Counselor

C.P. § 11-304(e)

Consider these factors in determining its trustworthiness:

- The child’s personal knowledge of the event.
- The certainty that the statement was made.
- Any motive for the child to fabricate or exhibit partiality.
- Whether the statement was spontaneous or in answer to a question.
- When the child made the statement.
- Whether the statement includes terms not age appropriate.
- The nature and duration of the abuse.
- The statement’s inner consistency and coherence.
- Whether the child was suffering pain or distress when making it.
- Extrinsic evidence the offender had the opportunity to do the acts.
- Whether the statement was suggested by leading questions.



- The credibility of the witness.
 - Any other factor that shows the statement’s trustworthiness.
- Make findings on the statement’s trustworthiness and admissibility on the record.

C.P. § 11-304 (d)(1) & (2)

The statement is admitted for the truth of the matter asserted. It does not have to be admissible under another exception to the hearsay rule. The child does not have to testify. However, if the child does not testify, the statement must be corroborated by evidence that the alleged abuser had the opportunity to commit the abuse or neglect.

C.P. § 11-304(a)

The child’s nonverbal assertions are also admissible. “Statement” means anything the child speaks or writes and any nonverbal conduct intended as an assertion. Examples of nonverbal conduct include:

- Sounds
- Gestures
- Demonstrations
- Drawings
- Similar actions

C.P. § 11-304(d)(3)



The state must give alleged abuser notice. The notice must state the petitioner’s intent to introduce the statement and the statement’s contents. This notice must be made a reasonable time before the hearing. The alleged abuser may depose the witness.

C.P. § 11-304 (f) & (g)

Hold a hearing on the statement’s admissibility before the adjudicatory hearing. You also must interview the child *in camera* unless the child is dead or outside the jurisdiction for good cause and the state cannot procure the child’s presence by subpoena or other reasonable means. One attorney for each party may be present but the alleged abuser may not.

C.P. § 11-304(h)

A child’s statement may also be admitted under other hearsay exceptions. Other exceptions are summarized in the chart below.

Other Exceptions to the Hearsay Rule		
Type	Definition	Rules of Evidence
Prior Statement by Witnesses	Statements previously made by a witness who testifies at the trial or hearing and who is subject to cross-examination concerning the statement.	Md. Rule 5-802.1
Prompt Complaint of Sexual Assault	A statement of prompt complaint of sexually assaultive behavior to which declarant was subjected if the statement is consistent with the declarant’s testimony.	Md. Rule 5-802.1 (d)
Present Sense Impression	A statement describing an event or condition while the declarant perceived it.	Md. Rule 5-803(b) (1)

Type	Definition	Rules of Evidence
Excited Utterance	A statement about a startling event made while the declarant is under the stress of its excitement.	Md. Rule 5-803(b) (2)
Mental, Emotional, Physical Condition	A statement of a then existing state of mind, emotion, sensation, or physical condition offered to prove the declarant's then existing condition or the declarant's future action.	Md. Rule 5-803(b) (3)
Medical Diagnosis or Treatment	A statement made to medical professionals by a person seeking a medical diagnosis or treatment.	Md. Rule 5-803(b) (4)
Recorded Recollections	A record of information the witness once knew firsthand but now has forgotten. It must have been made while the memory of the witness was clear.	Md. Rule 5-803.1(e)
Business Records	A record made at or near the time of an event when such records are regularly made by an organization.	Md. Rule 5-803(b) (6)
Other Exceptions	A statement with equivalent circumstantial degrees of trust worthiness as other exceptions.	Md. Rule 5-803(b) (24)

Md. Rule 5-803(a)



Is a child's statement admissible as an "admission of a party?" The statement of a party-opponent may be admitted as an exception to the hearsay rule. The child is a party to a CINA proceeding. C. & J.P. § 3-801(r). However, the Court of Special Appeals has held this exception does not apply to a child's out-of-court statements against a party other than the child in CINA proceedings. *Michael G.*, 107 Md. App. 257 (1995). A parent's statements are admissible under this exception. *Dustin T.*, 93 Md. App. 726 (1992).

CHILD'S COMPETENCY

C.P. § 11-303

Matthews v. State, 106 Md. App. 725 (1995)

A child's age is not a bar to the child testifying. The child's competency to testify is in the trial court's discretion. Evaluate the child's reasonable ability to:

- Observe
- Understand
- Recall
- Communicate

Also consider whether the child is conscious of the duty to tell the truth.



SAMPLE COMPETENCY QUESTIONS FOR CHILD

Observation

What color is my tie/dress?
 What am I holding in my hand?
 What can you see outside the window?

Memory

How old are you?
 Where do you live?
 What is your teacher's name?

Truth and Falsehood

If I told you this pen was red, would that be true?
 If someone said you were here yesterday, would that be a lie?
 If I said I like blue when I don't would I be telling the truth?

Fact and Fantasy

Can you fly?
 Can you pretend to fly?
 When you pretend to fly, are you really flying?

Duty to Tell Truth

What happens if you tell a lie here?
 Do you know what a promise is?
 Will you promise to tell the truth here?
 Will you promise not to tell any lies here?

CHILD COMPETENCY

For more information on children's competency as well as age-specific voir dire examinations, see Anne Graffam Walker, "Handbook on Questioning Children" (2d ed. 1999).

CLOSED-CIRCUIT TESTIMONY

C.P. § 11-303
 F.L. § 5-701(b)



A child witness may testify by closed-circuit television. If the child has been physically, sexually, or mentally abused, you may take the child's testimony outside the courtroom via closed-circuit television. You must find that the alleged abuser's presence will cause the child to suffer serious emotional distress that would prevent the child from reasonably communicating.

C.P. § 11-303(c)
Craig v. State, 322 Md. 418 (1991)

Take evidence on the issue of serious emotional harm. You may question and observe the child inside or outside the courtroom. The attorneys must be present but not the alleged abuser. You may also take testimony from a parent, caregiver, or the child's therapist. The alleged abuser and attorneys have a right to be present for this testimony. You should usually interview the child and take expert testimony, but neither is specifically required for such a finding.

C.P. § 11-303(d)(4)(ii)

The testimony of a child by closed circuit television is governed by C.P. § 11-303(d)(4)(ii).

C.P. § 11-303(e)
Wildermuth v. State, 310 Md. 496 (1987)

If the alleged abuser is appearing pro se, you cannot use closed-circuit testimony. This provision is constitutional—it does not require the defendant to choose between the right to confrontation and right to counsel.

RIGHT TO CONFRONTATION

In criminal prosecutions, defendants have a constitutional right under the Sixth Amendment to confront the witnesses against them. However, the confrontation clause does not apply to civil cases. The issue in CINA cases is due process.

In *Coy v. Iowa*, 487 U.S. 1012 (1988), an Iowa statute allowed children to testify with the criminal defendant sitting behind a screen which allowed him to see the witness but the witness could not see him. The U.S. Supreme Court found this violated the confrontation clause. However, in *Maryland v. Craig*, 497 U.S. 836 (1990), the Court upheld Maryland's use of closed-circuit testimony in criminal child abuse cases because, unlike the Iowa statute, it first required a specific finding of potential trauma to the child.

Other options available to protect child witnesses in CINA cases include:

- In camera* interviews
- Limiting testimony (e.g., one-hour time limit)
- Protective screens
- Videotaped depositions

PRIVILEGE

Statutory Privileges	
Communications between:	Citation
Husband and Wife	C. & J.P. § 9-105
Attorney and Client	C. & J.P. § 9-108
Psychiatrist/Psychologist and Patient	C. & J.P. § 9-109
Counselor/Mental Health Nurse and Patient	C. & J.P. § 9-109.1
Clergyman and Penitent	C. & J.P. § 9-111
Social Worker and Client	C. & J.P. § 9-121

C. & J.P. § 9-109

A patient's communications with a psychiatrist or psychologist are privileged. They may be disclosed if the patient expressly waives consent. Communications in a court-ordered examination are not privileged. The privilege is also waived if patients raise their mental condition as an element of their claim or defense.



Can you compel a parent to produce past mental health records? If DSS requests disclosure, it has the burden of showing that the privilege is waived. *Vanessa C.*, 104 Md. App. 452 (1995). If DSS raises the parent's mental condition first, to deprive the parent of custody or visitation, the parent may respond without waiving the privilege. *Matthew R.*, 113 Md. App. 701 (1997).



C. & J.P. § 9-109.1(e)
C. & J.P. § 9-121(e)

Communications with a professional counselor are not privileged.

There is no privilege in non-delinquent juvenile proceedings. Nor does the privilege apply for communications with social workers or psychiatric mental health nursing specialists.

EVIDENCE IN CHILD ABUSE AND NEGLECT

An excellent resource for nationwide statutes and cases on special evidentiary issues in CINA and termination cases is John E.B. Myers' *Evidence in Child Abuse and Neglect* (3d ed. 1997).

RELATED TOPICS

CL-102 Parties
CL-104 Concurrent Criminal Proceedings
CL-205 Court-Ordered Examinations



SUMMARY

For Indian children, you must notify their tribe. The case may be subject to transfer to tribal court. You must make special findings at CINA adjudication and guardianship (TPR) and follow special consent procedures in voluntary placements and consents to guardianship.

GOALS

25 U.S.C.A. § 1901

The Indian Child Welfare Act (ICWA) protects the tribal ties of Indian children. Congress passed ICWA in 1978 to address the misuse of state child protection power to remove Indian children and place them in non-Indian homes. Before the Act was passed, Indian children were placed in foster care at two to three times the rate of non-Indian children.

25 U.S.C.A. § 1902

ICWA seeks to preserve Indian families. It mandates preventive services before removal. An Indian child who must be removed should be placed in an available and safe home that reflects the unique values of Native American culture. It does *not* prevent you from protecting Indian children or freeing them for adoption.

WHEN ICWA APPLIES

25 U.S.C.A. § 1903(1)
25 U.S.C.A. § 1916(b)

ICWA controls child custody proceedings involving Indian children.

“Child custody proceedings” include:

- Foster care placement.
- Termination of parental rights.
- Pre-adoptive placement.
- Adoption.
- Any transfers of placement.

It does *not* include custody disputes in divorce cases or juvenile delinquency cases.

25 U.S.C.A. § 1903(3) & (4)

An Indian child is, or is eligible to be, a tribal member. An “Indian child” is any unmarried person under age 18 who is a member of an Indian tribe or is an Alaskan native. Also included is a child eligible for tribal membership if at least one parent is a member. Each tribe sets its own eligibility criteria.

Adoption of Child of Indian Heritage, 543 A.2d 925 (N.J. 1998)



Does ICWA apply if a child is not in an “existing Indian family?”

Although the statute is silent on this issue, some state courts have held ICWA does not apply to a child raised by a non-Indian parent with no tribal contact. However, other state courts have rejected this exception as inconsistent with ICWA’s goal to encourage tribal ties.



QUESTIONS ON WHETHER ICWA APPLIES

- Is the child a tribal member?
- Is the parent a tribal member and the child eligible for membership?
- Is the child being placed in foster care or for adoption?
- Are parental rights being terminated or relinquished?

JURISDICTION

25 U.S.C.A. § 1911(a)
25 U.S.C.A. § 1903(12)

*Mississippi Band of Choctaw
Indians v. Holyfield*, 490
U.S. 30 (1989)

25 U.S.C.A. § 1922

25 U.S.C.A. § 1911(b)

25 U.S.C.A. § 1911(d)

NOTICE

25 U.S.C.A. § 1912(a)
25 U.S.C.A. § 1903(5)

*Mississippi Band of Choctaw
Indians v. Holyfield*, 490
U.S. 30 (1989)

Tribal court has exclusive jurisdiction over a child living on its reservation. This includes a child who resides or is domiciled on the reservation or ward of tribal court regardless of where they live. A “tribal court” means:

- A Court of Indian Offenses.
- A court established under a tribe’s code or custom.
- Any tribal administrative body vested with child custody jurisdiction.

There is currently one federally-recognized tribe in Maryland, the Lumby Tribe.

The parent’s actions cannot defeat the tribal court’s jurisdiction.

The U.S. Supreme Court held that the state did not have jurisdiction over a child whose Indian parents lived on the reservation but gave birth and relinquished custody off the reservation.

You have jurisdiction for emergency protection of Indian children.

You may order emergency removal of an Indian child temporarily off the reservation to prevent imminent physical danger or harm. The placement must terminate as soon as the danger has passed. If you do not return the Indian child home, you must expeditiously transfer the case to tribal court or file a CINA action and comply with ICWA requirements.

Any Indian child’s case is subject to transfer to tribal court. For an Indian child living off the reservation, a parent, Indian custodian, or the tribe may petition for transfer to tribal court. You only have discretion to deny the transfer to tribal court if:

- Either parent opposes it.
- The tribe declines jurisdiction.
- There is good cause to retain state jurisdiction.

State courts must give “full faith and credit” to tribal court decisions. The tribal court must have proper jurisdiction over the child custody proceeding. Tribal courts must give full faith and credit to other tribal court orders.

The child’s tribe must be given notice of any involuntary foster care or termination proceeding. You must give the tribe notice if you know or have reason to know the child is Indian. If the child is a member or eligible to be a member in more than one tribe, you only need to notify the tribe with which the child has more significant contacts.



What about voluntary proceedings? The Indian Child Welfare Act allows tribes to intervene in both involuntary placements and terminations and voluntary placements and consents to guardianship. However, the tribal notice provisions mention only involuntary proceedings. If parents domiciled on the reservation are consenting to voluntary

placement or guardianship, you should notify the tribe because of jurisdictional issues. It may be simpler to give tribes notice in all voluntary proceedings to avoid risking the finality of these orders.

25 U.S.C.A. § 1912(a)
25 U.S.C.A. § 1903(9)

Parents must be given notice. “Parent” is defined as the birth parent or adoptive Indian parent of an Indian child. The definition excludes unmarried fathers who have not acknowledged or established paternity. Note that the definition includes a non-Indian birth parent of an Indian child.

25 U.S.C.A. § 1912(a)
25 U.S.C.A. § 1903(6)

Any Indian custodians must be given notice. An “Indian custodian” is any Indian person with legal custody of an Indian child under tribal law or custom, under state law, or by agreement of the parents.

25 U.S.C.A. § 1912(a)



Notice must be by registered mail. It must include the petition and a notice of the tribe’s right to intervene. If you do not know the identity or location of a parent or Indian custodian and the tribe, you must notify the Secretary of the Interior. The Secretary has 15 days after receipt to provide notice to the parent or Indian custodian and the tribe.

25 U.S.C.A. § 1912(a)



No foster care or termination proceeding may be held until notice is made. You cannot hold a hearing until at least 10 days after the parent or Indian custodian and the tribe (or the Secretary) receives notice. You must grant another 20 days to prepare if they request it.



QUESTIONS ON ICWA NOTICE

Has the tribe been notified by registered mail?
Have the parents been notified by registered mail?
Does the child have an Indian custodian?
Has the Indian custodian been notified by registered mail?
If any of these are unknown, has the Secretary of the Interior been notified by registered mail?
Has it been at least 10 days since notice was received?

PROCEDURAL RIGHTS

25 U.S.C.A. § 1911(c)

The tribe and Indian custodians have rights to intervene. This right applies to any foster care or termination proceeding (both voluntary and involuntary). They may request to intervene at any point in the proceeding.

25 U.S.C.A. § 1912(b)

Parents and Indian custodians have rights to counsel. The court must appoint them attorneys if they are indigent.

25 U.S.C.A. § 1912(c)

The tribe and Indian custodian may access court records. Once they intervene as parties, they are entitled to all reports and other documents filed with the court upon which any decision will be based.

25 U.S.C.A. § 1921
25 U.S.C.A. § 1912(b)

Higher state or federal standards apply. If federal or state law provides a higher standard of protection of rights for a parent, Indian child, or In-

C. & J.P. § 3-813(d)

INVOLUNTARY PROCEEDINGS

25 U.S.C.A. § 1912(e) & (f)

25 U.S.C.A. § 1912(d)

*Mississippi Band of Choctaw
Indians v. Holyfield*, 490
U.S. 30 (1989)

Nicole B., 175 Md. App.
450 (2007) – *decision cur-
rently on appeal.*

dian custodian than ICWA, those rights apply. For example, ICWA only requires an attorney be appointed for the child if it is in the child's best interests. Maryland law mandates a child's attorney in CINA proceedings, so the higher state standard applies to Indian children.

Proof of harm must be shown in addition to state grounds. An Indian child cannot be placed in foster care and a parent cannot have their rights terminated unless continuing custody with the parent or Indian custodian would result in serious emotional or physical damage to the child. A qualified expert witness must testify to this. Proof must be made by clear and convincing evidence for foster care placement. It must be beyond a reasonable doubt for termination.

DSS must show “active efforts” to prevent placement or termination. Before removing an Indian child to foster care or terminating the parent's rights, the state must satisfy the court that “active efforts” have been made to provide remedial services and rehabilitative programs to prevent the breakup of Indian families and that these efforts have proved unsuccessful.

“ACTIVE EFFORTS” UNDER FEDERAL LAW – Trial court erred, regarding the placement of two Indian children, when it switched the county social services agency's permanency plan from reunification to custody and guardianship with a paternal aunt and closed the child in need of assistance case. The trial court failed to properly address “active efforts” to prevent the break-up of the family. *Nicole B.*, 175 Md. App. 450, 927 A.2d 1194 (2007). Note: this decision is currently on appeal. The issue on appeal is whether Maryland's “reasonable efforts” are the same as ICWA's required “active efforts.”

For a thorough discussion of “active efforts,” see *Department of Human Services v. Finfrock*, 281 Mich. App. 88 (2008). The appellate court found that the trial court had not properly determined if “active efforts” had been made to prevent the break-up of the Indian family. In guiding the lower court, the appeals court held that the standard to be used when making the determination of whether “active efforts” were made is the default standard, clear and convincing evidence, not beyond a reasonable doubt, as argued by the mother. The standard beyond a reasonable doubt is specific to the requirement that the court must find serious emotional and physical harm. In addition, the appellate court held that the “active efforts” may be part of an earlier service plan and do not necessarily need to have been part of the current case plan. “Thus, where a parent has consistently demonstrated an inability to benefit from the Department's provision of remedial and rehabilitative services, or has otherwise clearly indicated that he or she will not cooperate with the provision of the services, a trial court's finding that additional attempts to provide services would be futile will satisfy the requirements of § 1912(d) of the ICWA. The dissent disagrees with this point and would

hold that current evidence of fitness is required so the ‘active efforts’ must be temporally related to the current matter.”

ACTIVE EFFORTS

U.S. Bureau of Indian Affairs (BIA) Guidelines for State Courts (1979) advises judges to take into account the prevailing social and cultural conditions and way of life of the Indian tribe in determining “active efforts.” Such efforts should use the available resources of the extended family, tribe, Indian social services agencies, and individual Indian caregivers.

VOLUNTARY PROCEEDINGS

Voluntary placement and consents to guardianship require judicial safeguards. For an Indian child:

- The consent of a parent or Indian custodian must be in writing.
- It must be signed before a judge.
- The judge must certify that the terms and consequences of the consent were explained in detail and fully understood by the parent or Indian custodian.
- This certification must note whether the instrument was explained in English or was interpreted into another language the parent or Indian custodian understood.



25 U.S.C.A. § 1913



Any consent given before or within 10 days after the Indian child’s birth is invalid.

A parent or Indian custodian may revoke consent to voluntary placement at any time. Once consent is withdrawn, the child must be returned. Revocation of consent to adoption is summarized below:

Revocation of Consents to Guardianship		
If an Indian child’s adoption:	Then the parent or Indian custodian may:	And the court must:
Is not yet final;	Revoke the consent at any time;	Return the child to the parent or Indian custodian.
Has been final less than two years;	Revoke the consent if it was obtained through fraud or duress;	Return the child to the parent or Indian custodian.
Has been final for two years;	Never revoke the consent;	Reject requests to revoke.
Is set aside or vacated;	Petition for return of the child;	Grant the petition unless there is a showing that it would not be in the child’s best interests.

PLACEMENT PREFERENCES

25 U.S.C.A. § 1915

There is a preference for placing an Indian child in an Indian home. An Indian child must be placed in the least restrictive setting and within a reasonable proximity to the child's home, taking into account the child's special needs. Every time a child changes placement, except when returned home, the ICWA placement preferences apply.

25 U.S.C.A. § 1915(b)

For foster care or pre-adoptive homes, preference must be given, in the absence of good cause to the contrary, to:

- Extended family members;
- Tribal members; and
- Other Indian families.

25 U.S.C.A. § 1915(a)

For adoptive homes, preference must be given, in the absence of good cause to the contrary, to:

- Extended family members;
- Tribal members; or
- Other Indian families.

25 U.S.C.A. § 1903(2)

The tribe's law or custom defines an "extended family member." If there is no law or custom, it includes any adult grandparent, aunt, uncle, sister, brother, sister-in-law, brother-in-law, niece, nephew, first or second cousin, or stepparent.

25 U.S.C.A. § 1915(c)

The tribe may also establish its own placement preferences. If it does, the state must follow them as long as the placement is the least restrictive setting appropriate to the child's needs. You may also consider the preferences of the parent and child where appropriate. If a parent wishes anonymity, you must give weight to this in applying the preferences.

25 U.S.C.A. § 1915(d)

Prevailing Indian social and cultural standards apply. In meeting the preference requirement, you must follow the standards of the Indian community where the parent or extended family member resides or maintains social and cultural ties.

25 U.S.C.A. § 1915(e)

The state must maintain records of its compliance with the placement preferences. The tribe or Secretary of the Interior may request these records at any time.

25 U.S.C.A. § 1917

Adult adoptees are entitled to information on their Indian heritage. An adopted Indian child who reaches age 18 may petition the court that entered the adoption decree for information on their Indian heritage. The court must inform them of their tribal affiliation and give them any other information necessary to protect any rights flowing from the tribal relationship.

SANCTIONS

25 U.S.C.A. § 1914

If the state fails to comply with ICWA, court orders are voidable. The parent, Indian custodian, or tribe may petition to invalidate a foster care placement or termination of parental rights.

25 U.S.C.A. § 1920

You must dismiss a petition of anyone with improper custody of an Indian child because of lack of jurisdiction. You must return the child to the parent or Indian custodian unless it would subject the child to a substantial and immediate danger or threat of such danger.

ICWA CHECKLISTS

Removing an Indian child in CINA proceedings:

- Tribe notified of right to intervene.
- Proof by clear and convincing evidence by a qualified expert that the child will suffer emotional or physical harm if left at home.
- Proof DSS made “active efforts” to prevent the placement.
- Preference to placement with extended-family member, approved tribal home, Indian foster home, or Indian-approved institution.

Approving the voluntary placement of an Indian child:

- Parent signs written consent before judge.
- Consent is signed more than 10 days after child’s birth.
- Certify you explained terms and consequences and the parent understood.
- Certify if the explanation was in English or translated into another language the parent understood.
- Preference to placement with extended family members, approved tribal home, Indian foster home, or Indian-approved institution.

Terminate parental rights of an Indian child:

- Tribe notified of right to intervene.
- Proof beyond a reasonable doubt by a qualified expert that the child will suffer emotional or physical harm if returned home.
- Proof DSS made “active efforts” to reunify the family.
- Preference to placement with extended family members, tribal members, or other Indian families.

Accepting consent to guardianship of an Indian child.

- Parent signs the written consent before a judge.
- Consent is signed more than 10 days after child’s birth
- Certify you explained terms and consequences and the parent understood.
- Certify if the explanation was in English or translated into another language and the parent understood.
- Preference to placement with extended family members, tribal members, or other Indian families.

For more information on ICWA, refer to B.J. Jones, “The Indian Child Welfare Act Handbook” (American Bar Association, 1995). This book summarizes case law nationally, included the BIA guidelines, and lists the addresses of all federally-recognized tribes.

RELATED TOPICS

CL-104 Jurisdiction
CL-105 Notice & Service
CL-108 Paternity



SUMMARY

Men who have established paternity and men who are presumed to be fathers under Maryland law, unless that presumption has been rebutted, have the same parental rights as mothers. A father is married to the mother or has established paternity. Check on the identity and location of the child's father at every CINA hearing.

CONSTITUTIONAL RIGHTS

Wisconsin v. Yoder, 406 U.S. 205 (1972)

Quillon v. Walcott, 434 U.S. 246 (1979)

Stanley v. Illinois, 405 U.S. 645 (1972)

Caban v. Mohammed, 441 U.S. 380 (1979)

Lehr v. Robertson, 463 U.S. 248 (1983)

Michael H. v. Gerald D., 491 U.S. 110 (1989)

Md. Const. Declaration of Rights, Art. 46

A married father has constitutionally-protected parental rights. Like the mother, he has a fundamental liberty interest in the care, custody, and management of his child.

An unmarried father involved in his child's life also has these rights. If an unmarried father holds himself out as the child's father, he has the same rights as a married father.

Unlike the U.S. Constitution, Maryland has an Equal Rights Amendment. It provides that equality of rights under the law shall not be abridged or denied because of sex.

UNMARRIED FATHER'S RIGHTS

In *Adoption/Guardianship No. 3598*, 347 Md. 295 (1997), the Court of Appeals approved the termination of the father's parental rights as in the child's best interests in an adoption proceeding. The father, age 21, had a casual affair with the mother, age 18. After learning of the pregnancy, the father said he would "live up to his responsibilities." He drove the mother to apply to DSS for prenatal assistance and attended two prenatal appointments. He brought her to meet his family (but then disappeared for the night). He tried to visit the mother but she refused to see him. He came to the hospital two days after the child was born but was turned away by hospital security. He filed a paternity action in New York then learned from the mother she had placed the infant for adoption with a Maryland couple. The mother had told the couple she did not know who the father was. He filed a notice of objection in Maryland but failed to meet with the investigative social worker. He met with the child's attorney who judged the father as not as realistic or forthcoming as the adoptive parents. The trial court found the father was emotionally immature and had no real concept of parental responsibilities. Although this decision was overturned in the Court of Special Appeals, the Court of Appeals reinstated the trial court's order.

FATHERS

F.L. § 5-306(a)
F.L. § 5-301(f)

Unless a court excludes a man as the father of a child, a man is the father if:

- the man was married to the child's mother at the time of the child's conception;
- the man was married to the child's mother at the time of the child's birth;
- the man is named as the father on the child's birth certificate and has not signed a denial of paternity;
- the child's mother has named the man as the child's father and the man has not signed a denial of paternity;
- the man has been adjudicated to be the child's father;
- the man has acknowledged himself, orally or in writing, to be the child's father and the mother agrees; or
- on the basis of genetic testing, the man is indicated to be the child's biological father.

F.L. § 5-1028



An unmarried father and mother may execute an affidavit of paternity. Once completed, it constitutes a legal finding of paternity. It may only be revoked within 60 days of signing or by a judicial proceeding.

F.L. § 5-1027(c)
Toft v. Pimentel, 108 Md.
App. 206 (1996)

The mother's husband is presumed to be the father. A child born during the marriage is presumed to be fathered by the mother's husband unless that presumption is rebutted. It may be rebutted by testimony of a third party that the spouses were living separately. According to the Court of Special Appeals, it may also be rebutted by blood tests.

PATERNITY ACTIONS

F.L. § 5-1005

Paternity may be an issue in a CINA or Guardianship (TPR) action. Although the equity court, not the juvenile court, has jurisdiction over paternity actions, you may have to resolve paternity issues in juvenile proceedings.

F.L. § 5-1021
F.L. § 5-1029



If the alleged father disputes paternity, you may order a blood test. The blood test is admissible if it is sufficiently extensive to exclude 97.3% of alleged fathers who are not biological fathers and finds the statistical probability of the alleged father's paternity is 97.3%. A probability of paternity of at least 99.0% constitutes a rebuttable presumption of his paternity. A signed lab report is sufficient. An alleged father who wants cross-examination must subpoena the doctor or technician at least 10 days before trial.

ALLEGED FATHERS

F.L. § 5-306(b)

A man claiming to be the child's father must be given notice of a guardianship or adoption. He is entitled to a paternity hearing. Notice is not required if he has waived it or had his parental rights terminated.



Are alleged fathers entitled to notice of CINA proceedings? The statute mandates service on the child's parents. Md. Rule 11-104(c), C. & J.P. § 3-801(r). The rules define "parent" as including guardians

and custodians but do not offer any further guidance. Md. Rule 11-101(b)(4).

25 U.S.C.A. § 1912(a)
25 U.S.C.A. § 1903(9)

An alleged father is not entitled to ICWA procedural rights. The Indian Child Welfare Act definition of “parent” specifically excludes unmarried fathers who have not acknowledged or established paternity.

REQUIRED FINDINGS

C. & J.P. § 3-822(a)(1)



At each CINA hearing, you must ask and make findings on the child’s parents. This includes the identity and current address of each parent of each child before the court. This evidentiary record may be used in any subsequent paternity, child support, or termination proceedings for that child.

C. & J.P. § 3-822(a)(2)

PARENTAL ADVISEMENT CHECKLIST

- You have a continuing obligation to assist the court in identifying and locating the child’s other parent.
- You must notify the clerk of any changes in your address.
- You may file a paternity action if it has not yet been established.
- You may contact the local child support enforcement agency if you wish to pursue paternity or support.

C. & J.P. § 3-822(e)

You can order a parent to apply for child support. You can also order an alleged father to cooperate in establishing paternity and support.

RELATED TOPICS

CL-105 Notice & Service
CL-402 Consent to Guardianship



SUMMARY

Judges review masters' orders. Final orders may be appealed to the Court of Special Appeals and by writ to the Court of Appeals. Only issues raised and decided in court may be appealed. The standard of review is whether there is clear error and abuse of discretion.

EXCEPTIONS

C. & J.P. § 3-807(c)
Md. Rule 11-111(c)

Michael G., 107 Md. App.
257 (1995)



Any party may file a written exception to the master's findings.

It must be filed within five days and object to specific findings. An exception may request a hearing on the record or *de novo*.

A hearing is held only on the issues in dispute. A judge may refuse to hear argument on an issue not objected to in the exception.

The judge may determine the master considered evidence that should not have been admitted. If so, the judge decides whether the admissible evidence met the required standard of proof. The judge must defer to the master's factual findings and assessments of witness credibility. Then the judge exercises independent judgment as to the proper outcome based on the facts.



May a party appeal a judge's order approving a master's findings if no exception was filed? Master's findings are not final orders, hence not appealable directly. Md. Rule 11-111(a)(2). The judge's final order is appealable. C. & J.P. § 12-301. There is no mandate that an exception precede an appeal. According to the Court of Special Appeals, the failure to file an exception does preclude a party from challenging the master's first-level findings of fact. However, a party may seek review of the propriety of the judge's actions in approving the master's recommendations. *Levon A.*, 124 Md. App. 103 (1998). If an exception is filed, then the party may not appeal issues waived on the record at the judge's review. *Tyrek S.*, 118 Md. App. 270 (1997), *Aff'd in part*, 351 Md. 698 (1998). *See also Kaela C.*, 394 Md. 432 (2006).

APPEALABLE ORDERS

C. & J.P. § 12-301
C. & J.P. § 12-101(f)

C. & J.P. § 12-303(3)(x)
Adoption/Guardianship No.
93321005, 344 Md. 458
(1997)
Md. Rule 8-131(d)

A party may appeal from a final judgment of the juvenile court. A "final judgment" is a judgment, decree, sentence, order, determination, decision, or other court action from which an appeal, application for leave to appeal, or petition for certiorari may be taken.

Interlocutory orders involving child custody and adoption are also appealable. A party may appeal from an interlocutory order depriving a parent, grandparent, or natural guardian of the care and custody of a child or an order modifying custody. Interlocutory adoption orders may be appealed. However, interlocutory guardianship orders are not automatically appealable. Appealed interlocutory orders may not be reviewed again on an appeal of the final order.

Montgomery County v. Stevens, 337 Md. 471 (1995)

Adoption/Guardianship No. 90072022/CAD, 87 Md. App. 630 (1991)

Billy W., 386 Md. 675 (2005).

Samone H. & Marchay E., 385 Md. 282 (2005)

See *Billy W.*, 386 Md. 675 (2005), and *Samone H. & Marchay E.*, 385 Md. 282 (2005) (described below). See also *Damon M.*, 362 Md. 429 (2001) and *Karl H.*, 394 Md. 402 (2006).

Other non-final orders may be appealed under the “collateral order doctrine.” The interlocutory order must

- Conclusively determine the disputed question.
- Resolve an important issue.
- Be completely separate from the merits of the action.
- Be effectively un-reviewable on appeal from a final judgment.



Is an order effectively terminating one parent’s rights appealable if the other parent’s rights are unresolved? There are two theories that

may support such an appeal. First, it may be appealable because it deprives a parent of care and custody or modifies such an order. C. & J.P. § 12-303(3)(x). However, it is arguable that the parent has already been deprived of custody in prior proceedings. Second, it may satisfy the “collateral estoppel doctrine” since it resolves a dispute on an important issue that is separate from the action’s merit. *Montgomery Cty. v. Stevens*, 337 Md. 471 (1995). However, it is not “effectively un-reviewable” on a final judgment. You do have the option to enter a final judgment as to only one parent if there is no just reason for delay. Md. Rule 2-602(b). The Court of Special Appeals approved exercising this discretion in a case where the father filed an untimely objection to a guardianship petition. The court struck his objection but proceeded on the mother’s objection. Allowing the father to appeal before the mother’s case was resolved helped reduce delays in resolving the child’s status. *Adoption/Guardianship No. TPR970011*, 122 Md. App. 462 (1998).



Orders are not appealable if the order did not affect rights or conclusively determine custody or rights. Periodic review of established permanency plans resulting in an order to continue said plans was not appealable because it did not detrimentally affect the mother’s custody rights or visitation with the children nor did the order conclusively determine the custody of the children or the mother’s custodial rights. *Billy W.*, 386 Md. 675 (2005).

See also *Samone H. & Marchay E.*, 385 Md. 282 (2005), where the trial court’s denial of the motion for a bonding study did not deprive the mother of custody or change the terms of her parental rights. The previous permanency plan remained and she was given more visitation with the children. Had she sought the study when the permanency plan changed from relative placement to adoption, she could have appealed its denial, but not when the plan was continued and visitation was increased.

C. & J.P. § 12-304

A person found in contempt of court may appeal that order. This includes any order to preserve the power or vindicate the dignity of the court. The person need not be a party to the action.

PROCEDURES

Md. Rule 8-202(a) & (e)
Md. Rule 8-207(a)



A notice of appeal must be filed within 30 days. The time period begins from the date of the judgment is entered. If one party files a notice of appeal, another party may also file one within 10 days of the notice date.



Form 22 (notice of appeal)
www.lawlib.state.md.us

C. & J.P. § 12-701(b)



Appeals are expedited for:

- Adoption
- Guardianship
- Termination of parental rights
- Child custody
- Visitation

Md. Rule 8-121
Md. Rule 8-122

An appeal from juvenile court does not stay the court's order. It does not discharge the child from a commitment order. The appellate court may authorize a stay on application and hearing. It must find that suitable provision is made for the child's care and custody.

C. & J.P. § 12-308

The child's confidentiality is protected in juvenile court appeals. The caption includes the first name and initial of last name of the child. The child's last name is not used in the court papers. Access to the court record is limited to the court, court staff, attorneys, and parties. These confidentiality requirements also apply to guardianship and adoption actions.

C. & J.P. § 12-201

The Court of Special Appeals has exclusive initial appellate jurisdiction. For example, the statute requires adoption appeals to be made to the Court of Special Appeals.

C. & J.P. § 12-203
C. & J.P. § 12-305
C. & J.P. § 12-307
Baltimore Sun v. State, 340
Md. 437 (1995)

A party may file petition for certiorari to the Court of Appeals. The Court of Appeals may also issue a writ of certiorari on its own motion. It may be filed before or after the Court of Special Appeals has rendered a decision.

The Court of Appeals must issue the writ if it is desirable and in the public's interest. It is also required if necessary to secure uniformity if two or more judges have construed the same statute differently. If it denies the writ, it must state its reasons in writing. It may issue the writ before or after the Court of Special Appeals renders its decisions. For example, in a case involving First Amendment issues on the media's access to juvenile proceedings, the Court of Appeals issued the writ before the Court of Special Appeals ruling.

REVIEWABLE ISSUES

Md. Rule 8-131(a)

Md. Rule 8-131(b)(1)

Adoption/Guardianship No. 11137, 106 Md. App. 308 (1995)

Justin D., 357 Md. 431 (2000)

Sophie S., 891 A.2d 1125 (2006)

STANDARD OF REVIEW

Md. Rule 8-131(c)

Joseph G., 94 Md. App. 343 (1993)

Adoption/Guardianship No. 94339058, 120 Md. App. 88 (1998)

Rashawn H., 402 Md. 477 (2007)

Only issues raised and decided in the trial court may be reviewed on appeal. The appellate court may review subject matter jurisdiction whether or not it was raised below. In rare instances, the appellate court may decide other issues if necessary or desirable to guide the trial court or to avoid the expense and delay of another appeal.

Reviewable issues are further limited in an appeal from an appellate decision. In reviewing a Court of Special Appeals decision, the Court of Appeals may only consider issues raised in the petition for certiorari and any cross-petitions. On an issue of error, it may consider whether the error was harmless or non-prejudicial regardless of whether this issue was raised.

In general, an appellate court cannot rule on a moot issue. An issue is moot if there is no longer an existing controversy between the parties when it is before the appellate court. However, the appellate court has the constitutional authority to express its views on the merits. This authority may only be used in rare instances that demonstrate the most compelling circumstances. For example, issues in review hearings may be moot by the time of appeal, but the appellate court may find it necessary to review these decisions if the matter is likely to recur frequently.

The appellate court reviews the case on the law and evidence. This is true for any case tried without a jury, like juvenile proceedings.

A CINA order will not be overturned unless clearly erroneous. The court must give due regard to the judge's assessment of witness' credibility. There must be a clear abuse of discretion for the appellate court to disturb the judge's conclusion.

In termination, the standard for review is whether there is clear and convincing evidence to support guardianship (TPR). The issues are:

- Did the court consider all the statutory criteria?
- Were any of the court's findings clearly erroneous?
- Did the court properly apply the law?
- Did the court abuse its discretion in making its decision?

The appellate court does not review the evidence and make its own determination.

The standard of review for adoption (and custody) cases is:

- Did the trial court make findings of fact that were clearly erroneous?
- Did the trial court abuse its discretion in making a determination?

Adoption/Guardianship No.
3598, 347 Md. 295 (1997)

To be reversed, the decision must be beyond the fringe of what the appellate court deems minimally acceptable. The reviewing court must assess the sufficiency of the evidence but may not embark on an independent fact-finding mission and substitute its judgment for trial court. It is the trial judge's role to assess the evidence and the credibility of the witnesses and to resolve conflicting evidence.

RELATED TOPICS

CL-103 Judges and Masters
CL-106 Evidence

200 CINA



SUMMARY

Complaints of abuse and neglect are initially made to DSS. DSS investigates reports of abuse or neglect and determines whether to file a CINA petition. Alleged maltreaters, indicated as having committed abuse or neglect, are entered on a central registry.

INVESTIGATION

F.L. § 5-704

Child abuse reports may be made directly to DSS. Health practitioners, police officers, educators, and human service workers are required to report all suspected child abuse or neglect to DSS.

F.L. § 5-706



DSS must begin its investigation of alleged abuse within 24 hours.

This includes suspected physical and sexual abuse. If the report alleges neglect or mental injury, the investigation must begin within five days. DSS must see the child and attempt to interview the child's caregiver. This investigation should be completed within 10 days or, at most, within 60 days. The written report should be issued five days later.

F.L. § 5-701(m),(v) & (y)

F.L. § 5-714(b)(2)

After investigation, DSS determines if the report is indicated. It is "indicated" if there is credible evidence not satisfactorily refuted that abuse or neglect did occur. The report is "ruled out" if the abuse or neglect did not occur. It may be found to be "unsubstantiated" if there was not enough evidence to make a determination. Both indicated and unsubstantiated reports are listed in the state central registry unless expunged.

RIGHT TO CONTESTED HEARING

The Court of Appeals has held that a person has a statutory right to a contested hearing before that person's name is entered as an alleged child abuser or neglector in the central registry. *C.S. v. Prince George's Cty. DSS*, 343 Md. 14 (1996). This right extends to any such listing in a local database that is accessible statewide even if it is not called a "central registry." *Montgomery Cty. DSS v. L.D.*, 349 Md. 239 (1998). These hearings are commonly known as "Chapter 318" hearings based on the legislative act that created them.

FILING A COMPLAINT

C. & J.P. § 3-809

A representative from DSS may take a complaint from any person.

Md. Rule 11-102

DSS must decide whether to file a CINA petition.

Filing a CINA petition must be in the child's best interests. DSS may only file the petition if the court has jurisdiction and it is in the best interests of the public or the child.

DSS must notify the complainant of its decision not to file. Notice of the decision to not file a CINA petition must also go to the child, if over the age of 10, and the child's parent, guardian, or custodian. The notice must include the reasons for its decision.



The complainant may appeal a decision not to file. This appeal must be made to the Secretary of Human Resources within 15 days after the complainant receives notice of the denial. The Secretary of Human Resources or the Secretary's designee, in consultation with the director of the local department, shall review the report and may direct the local department to file a petition within five days.

Complainant may file petition if Secretary of Human Resources refuses. If the Secretary of Human Resources or the Secretary's designee refuses to direct the local department to file a petition, the person or agency that filed the complaint or caused it to be filed may file the petition.

RELATED TOPICS

CL-202 CINA Petition
CL-207 Definition of CINA



SUMMARY

The petition describes the facts that show a child is in need of assistance (CINA). After filing, other parties may file pleadings. DSS may amend the petition. You may consolidate petitions on siblings for hearings.

CONTENTS

C. & J.P. § 3-811

Md. Rule 11-103

The petition must set forth facts supporting the CINA allegation.
These facts must be stated in clear and simple language.

IS THE PETITION COMPLETE?

- Caption
- Respondent child's name, age, and residence
- Parent's name and residence
- Allegation that the child is in need of assistance
- Factual basis for the CINA allegation
- Witnesses' names
- Whether the child is in shelter care. If so:
 - The date shelter care began
 - Whether the parent has been notified
- Signature



Form 903-P/C
www.lawlib.state.md.us

Md. Rule 11-110(d)(2)

Consolidation. Hearings on juvenile petitions filed against more than one respondent arising out of the same incident or conditions, may be consolidated or severed as justice may require. If prejudice might result to any respondent from a consolidation, the hearing on the juvenile petition against the respondent shall be severed and conducted separately.

42 U.S.C.A. § 671(a)(15)

The petition should also include a section on reasonable efforts. If DSS requests commitment, it should state whether preventive services were offered or could not be offered because of an emergency situation. If the child is already in shelter care, it should explain what services were offered to reunify the family or request a waiver of reunification efforts because of "aggravated circumstances."

25 U.S.C.A. § 1912

The petition should state if the child is an Indian child. If so, it should name the child's tribe, parents, and any Indian custodian. If the child is in shelter care or DSS seeks commitment, it must allege that the child will suffer emotional or physical harm if returned home. It must also allege DSS made "active efforts" to prevent the placement.

INCLUSION OF PRENATAL ACTIONS IN CINA PETITION

In *Dustin T.* 93 Md. App. 726 (1992), the Court of Special Appeals held that the mother's actions before the child's birth could be alleged in a CINA petition. The petition stated the mother had a long history of drug use and had been involved with other drug users. At birth, she and her infant tested positive for cocaine. A parent's past conduct is relevant to future conduct so it may be included in the petition.

AFTER FILING

Md. Rule 11-107
Md. Rule 11-110(d)(2)

The parent or child may file a responsive pleading or motion. They can admit or deny all or any of the facts alleged in the petition. Any allegations not admitted are deemed denied. If no responsive pleading is filed, all allegations are deemed denied. The parent or child may also file a motion raising any preliminary objection.

You may consolidate multiple petitions. For example, CINA petitions on siblings are usually heard together. You may also sever them if justice requires.

Md. Rule 11-109(b) & (c)

You may order discovery if justice requires it. The party requesting discovery must show good cause. Required information must be disclosed in time to allow its beneficial use.

PRELIMINARY HEARING

In some jurisdictions, judges and masters hold preliminary hearings on CINA petitions. At this hearing, the parents are notified of the petition allegations and attorneys are appointed.

AMENDMENTS

Md. Rule 11-108



Amendments can be made any time before the adjudicatory hearing ends. You must approve the amendment. You may also amend the petition. Other pleadings may be amended any time before the final disposition of that pleading. After an amendment, you may grant a continuance if justice requires.

RELATED TOPICS

CL-105 Notice & Service
CL-107 Indian Child Welfare Act
CL-203 Reasonable Efforts
CL-203 Aggravated Circumstances



SUMMARY

Before placing a child in foster care, determine if DSS has made reasonable efforts to prevent placement. If you continue a child in care, determine if reasonable efforts have been made to reunify the family. If there are proven aggravated circumstances, you must waive reunification efforts.

TO PREVENT REMOVAL

C. & J.P. § 3-816.1
42 U.S.C.A. § 671(a)(15)
42 U.S.C.A. § 672 (a)(1)
42 U.S.C.A. § 678

C. & J.P. § 3-816.1

James G., 178 Md. App.
543 (2008)

Damien F., 182 Md. App.
546 (2008)



There are federally required findings when you place a child in foster care.

- Continuation in the home is contrary to child’s welfare.
- Reasonable efforts have been made to prevent or eliminate the need for the child’s removal and to make it possible for the child’s safe return home.

These requirements do not affect your authority to protect or remove a child. They do affect DSS’ ability to get federal funding for the placement. For federal funding purposes, contrary to the welfare findings must be made at the initial hearing when a child is removed or be irrevocably forfeited.

Make findings each hearing. The court’s finding under this subsection shall assess the efforts made since the last adjudication of reasonable efforts and may not rely on findings from prior hearings.

Reasonable efforts are not required in an emergency. If DSS removes a child without efforts to prevent the placement, you may find it was reasonable under emergency circumstances to protect the child.



QUESTIONS ON EFFORTS TO PREVENT REMOVAL

Were services offered to the family before the child’s removal?

If not, was it reasonable not to offer services?

If services were offered:

Were the services relevant to the family’s problems?

Were they adequate to address these problems?

Were the services made accessible to the family?

Were the efforts diligently made?

Were multiple services coordinated well?

Were there other cost-effective services that should have been offered?

Factors not to be considered. The court may not consider a potential loss of federal funding for placement of a child that may result from a determination that reasonable efforts were not made.

C. & J.P. § 3-816.1(d)

You may find that the lack of efforts was not reasonable. If you find services should have been offered to prevent removal, you may make a negative reasonable efforts finding. You may still remove the child, but DSS loses federal funding for the child’s placement until it makes reunification efforts that you find are reasonable.

C. & J.P. § 3-816.1(e)

Notice of written findings. If the court finds that reasonable efforts for a child were not made, the court promptly shall send its written findings to: the director of the local department; the Social Services Administration; the State Citizen's Review Board for Children established under F.L. § 5-535; if applicable, the local citizen's review panel established under F.L. § 5-539.2, and any individual or agency identified by a local department or the court as responsible for monitoring the care and services provided to children in the legal custody or guardianship of the local department on a systemic basis.

25 U.S.C.A. § 1912(d)

For an Indian child, DSS must show “active efforts” to prevent placement. Under the Indian Child Welfare Act, the state must satisfy the court that “active efforts” have been made to provide remedial services and rehabilitative programs to prevent the breakup of Indian families and that these efforts have proved unsuccessful before removing an Indian child to foster care.

TO REUNIFY FAMILIES

F.L. § 5-525(d)
42 U.S.C.A. § 671(a)(15)

Also make a case specific reasonable efforts finding if you continue the child's placement. Make this finding at the disposition, modification, and review hearing if the child is in foster care. Evaluate reunification services. Reasonable efforts must be assessed at each of these hearings. The court may not rely on findings from prior hearings.



QUESTIONS ON EFFORTS TO REUNIFY THE FAMILY

Were services offered to the family to return the child home safely?

If not, was it detrimental to the child to offer services?

If reunification services were offered:

What was the treatment plan?

Was it developed with the family's participation?

Were the services offered relevant to the family problems?

Were they adequate to address these problems?

Were the services made accessible to the family?

Were the efforts diligently made?

Were multiple services coordinated well?

Were there other cost-effective services that should have been offered?

Did DSS encourage visitation consistent with any court orders?

F.L. § 5-525(d)(2)

Consider child's safety and health. In determining the reasonable efforts to be made and in making the reasonable efforts determination, the child's safety and health shall be the primary concern.

F.L. § 5-525(d)(3)
Karl H., 394 Md. 402
(2006).

Concurrent Planning. Reasonable efforts to place a child for adoption or with a legal guardian may be made concurrently with the reasonable efforts to preserve and reunify a family.

You may find that lack of efforts was not reasonable. If you find that more or different services should have been offered to reunify a family, you may make a negative reasonable efforts finding. The child remains

in care but DSS loses federal funding for the child’s placement until it makes reunification efforts that you find are reasonable.

C. & J.P. § 3-816.1

Notice of written findings that reasonable efforts were not made, as above.



JUDICIAL DETERMINATION OF REASONABLE EFFORTS

The federal reasonable efforts requirement gives state courts an opportunity to impact DSS funding when it fails to use services to avert placements or reunite families. This remedy is especially important since the U.S. Supreme Court has held there is no private right of action for the state’s failure to make reasonable efforts. *Suter v. Artist M.*, 503 U.S. 347 (1992).

WAIVER OF EFFORTS

C. & J.P. § 3-812

DSS may petition for reasonable efforts to be waived because of “aggravated circumstances.” Reasonable efforts to reunify the child with the parent are not required if the parent has:

- Subjected the child to torture, chronic abuse, sex abuse, or chronic and life threatening neglect;
- Been convicted in Maryland or another state of a crime of violence against the child; the child’s other parent or guardian; another child of the parent or guardian; or convicted of aiding or abetting, conspiring, or soliciting such a crime; or
- Had their parental rights involuntarily terminated to the child’s sibling.

If DSS discovers any of these circumstances after filing the petition, it may immediately request the court make such a finding.

C. L. § 14-101

Crimes of Violence
Abduction
Arson in the first degree
Assault in the first degree or with intent to murder, rape, rob, or commit a sexual offense in the first or second degree
Carjacking
Kidnapping
Manslaughter (except involuntary manslaughter)
Mayhem and maiming
Murder
Rape
Robbery
Sexual offense in the first degree or second degree
Use of a handgun in the commission of a felony
Attempt to commit any of the above offenses

C. & J.P. § 3-812
 42 U.S.C.A. § 671(a)(15)
 42 U.S.C.A. § 5106a(b)(2)
 (A)

C. & J.P. 3-812
 42 U.S.C.A. § 671(a)(15)

TO FINALIZE A PERMANENT HOME

42 U.S.C.A. § 671(a)(15)
 (E)

C. & J.P. 3-812(e)
 F.L. § 5-525(d)(3)

RELATED TOPICS

If DSS proves aggravated circumstances, you must waive reasonable efforts. The standard of proof is clear and convincing evidence. DSS must then make reasonable efforts to find the child a permanent home.



If you waive efforts, hold a permanency planning hearing within 30 days. The permanency planning hearing may be held on the same day as the reasonable efforts hearing if all parties agree.

DSS must also make reasonable efforts to finalize a permanent home. If family reunification is no longer the goal, DSS must make reasonable efforts to find the child a permanent placement and complete steps to finalize it. These efforts may also be made concurrently with reunification efforts (concurrent planning).

QUESTIONS ON EFFORTS TO FINALIZE PERMANENT HOME



If appropriate, has a guardianship petition been filed?
 What efforts are being made to identify an adoptive family?
 Are the child's current foster parents willing to adopt?
 Does the child have a relative willing to become a guardian?
 If appropriate, has an adoption petition been filed?

CL-101 Juvenile Court Goals
 CL-107 Indian Child Welfare Act
 CL-301 Permanency Planning Hearing



SUMMARY

DSS or the police may remove a child in need of protection to emergency shelter care. Hold a shelter care hearing to authorize the placement.

EMERGENCY

F.L. § 5-709
C. & J.P. § 3-815(a) & (b)
Md. Rule 11-112(a)(1)

DSS may temporarily remove a child without court approval. A DSS investigator who has probable cause to believe the child is in serious immediate danger and has previously been denied entry may enter the house and remove the child. A police officer may accompany the investigator and use reasonable force to gain entry. After removal, DSS must have a physician thoroughly examine the child.

C. & J.P. § 3-815(b)

DSS may also place a child in emergency shelter care before a hearing if the placement is required to protect the child from serious immediate danger and there is no parent, guardian, custodian, relative, or other person able to provide supervision. In addition:

- The child's continued placement in the child's home is contrary to the welfare of the child; and
- Because of an alleged emergency situation, removal from the home is reasonable under the circumstances to provide for the safety of the child; or
- Reasonable efforts have been made but have been unsuccessful in preventing or eliminating the need for removal from the child's home; and
- As appropriate, reasonable efforts are being made to return the child to the child's home.

HOMELESS FAMILIES

A child may not be placed in shelter care solely because the parent is homeless. DSS must refer the family to local homeless shelters. F.L. §5-525(c)(2)(ii).

C. & J.P. 3-814(a) & (b)

A police officer may also remove a child believed to be in immediate danger. The police officer or other person authorized by the court must have reasonable cause to believe the child is in immediate danger from the surroundings and removal is necessary for the child's protection. The officer may also detain a child believed to have run away from a parent, guardian or legal custodian. The officer must deliver the child to court or shelter care designated by the court. The police officer must immediately notify the parent, guardian or custodian of the removal.



C. & J.P. § 3-801(y)
C. & J.P. § 3-815

“Shelter care” means a temporary placement of a child outside of the home at any time before disposition. It does not include care in a state mental health facility. Children with mental handicaps may be placed in Department of Health and Mental Hygiene approved shelter care facilities. Only children adjudicated delinquent may be placed in “detention”—physically restrictive facilities.

C. & J.P. § 3-815(c)
Md. Rule 11-112(a)(2)

HEARING

C. & J.P. § 3-815(c)
Md. Rule 11-112(a)(3) &
(d)

C. & J.P. § 3-815(d)
Md. Rule 5-101(b)(11)
Md. Rule 11-112(a)(1) &
(b)(1)

Damien F., 182 Md. App.
546 (2008)

F.L. § 5-525(d)

C. & J.P. § 3-815(c)(4)
Md. Rule 11-112(b)(2) & (c)



DSS must file a petition by the next court day. The petition must explain the circumstances that led to emergency shelter care. If continued shelter care is warranted, the petition must explain why.



Form 912-P/CDSC (petition for continued shelter care)
www.lawlib.state.md.us



Hold a shelter care hearing the day the petition is filed. You may extend the deadline for good cause shown but for no longer than eight days from the placement date. Reasonable notice, written or oral, of the hearing's time, place, and purpose must be given to the respondent child and, if they can be found, the child's parent, guardian or custodian, and attorney.



Form 912-N (notice of shelter care hearing)
www.lawlib.state.md.us

PARENTS' DUE PROCESS RIGHTS

Parents have a due process right to a hearing after an emergency removal. While the state may temporarily deprive a parent of custody in an emergency, it must promptly initiate a judicial proceeding to ratify its actions. This right also applies when DSS removes children from one parent and places them with the other parent or a relative. *Weller v. Baltimore City DSS*, 901 F.2d 387 (4th Cir. 1990).

At the shelter care hearing, determine if placement was necessary. The rules of evidence do not apply at this hearing. Determine whether DSS made reasonable efforts to prevent the placement and whether remaining in the home is contrary to the welfare of the child.

To authorize continued shelter care, you must find the following:

Findings for Continued Shelter Care

Return of the child to the child's home is contrary to the safety and welfare of the child; and

Removal of the child from the child's home is necessary due to an alleged emergency situation and in order to provide for the safety of the child; or

Reasonable efforts were made but were unsuccessful in preventing or eliminating the need for removal of the child from the home.



Shelter care may only be authorized for 30 days. You must hold an adjudicatory hearing within 30 days. You may extend shelter care an additional 30 days if you have held at least part of the adjudicatory hearing and determine continued shelter care is necessary.



Form 912-O/CDSC (order for continued shelter care)
www.lawlib.state.md.us

AUTHORIZING SHELTER CARE

In *Vanessa C.*, 104 Md. App. 452 (1995), the juvenile court authorized shelter care for an infant born prematurely with special feeding require-

ments. Her mother displayed signs of mental illness, was homeless, and could not adequately care for the infant’s special needs. The adjudicatory hearing was delayed because of efforts to obtain psychiatric records and determine paternity of an alleged father. The appellate court approved the court’s extension of shelter care beyond 30 days since the adjudication had begun within the time period. It required that, in such situations, the court hold the hearing as soon as possible. The law now limits the extension to another 30 days.

AFTER REMOVAL

C. & J.P. § 3-815(c)(5)

DSS must give first priority to relative placements.

Unless good cause is shown, a court shall give priority to the child’s relatives over nonrelatives when ordering shelter care for a child.

F.L. § 5-534

DSS must exhaust all reasonable resources to identify an appropriate relative for initial placement. If not, the child is placed in foster care. If an appropriate relative is identified after initial placement, DSS may place the child with the relative if it is in the child’s best interests.

25 U. S.C.A. § 1915(b)

For an Indian child, DSS must follow tribal placement preferences.

Under the Indian Child Welfare Act, preference for foster care placement must be given, in the absence of good cause to the contrary, to:

- Extended family members;
- Foster homes approved by the tribes;
- Licensed Indian foster homes; or
- Indian-approved institutions.

C. & J.P. § 3-815(f)(4) & (5)



DSS must develop a case plan within 45 days of the shelter care placement.

Children placed in shelter care must be given appropriate services. DSS must submit the plan to the court, parties, and attorneys. DSS must promptly amend the plan as necessary given the child’s situation and any court orders.

F.L. § 5-525(f)

Services for Children in Shelter Care
Health care
Counseling
Education
Social Work
Drug and alcohol abuse assessment or treatment
Visitation with siblings and biological family

RELATED TOPICS

- CL-104 Jurisdiction & Venue
- CL-104 Interstate Runaways
- CL-105 Notice & Service
- CL-107 Indian Child Welfare Act
- CL-203 Reasonable Efforts
- CL-301 Permanency Plan

Shelter Care Hearing

(Must be held the next day, after removal, that the circuit court is sitting).

INTRODUCTORY
REMARKS

- Call case, including child's name, case number, type of hearing
- Introduction of parties/note who is present
- Explanation of proceeding
- Advisement of rights (right to counsel, change of address, establishment of paternity)
- Notify parents prior to adjudication to advise them of their right to an attorney
- If parents come to the shelter care hearing, give them Advice of Rights form and have them sign it before they leave
- Set date and time of adjudication hearing

ADEQUACY OF NOTICE
AND SERVICE OF
PROCESS ISSUES

- Address identification and location of parents
- Follow parent litany form (encompasses Maryland statute)

TROUBLESHOOTING
AND NEGOTIATIONS
BETWEEN PARTIES

- Motions
- Address eight-day continuances to allow for retaining counsel
- Address jurisdictional issues
- Address travel arrangements for parents or other possible caregivers

TESTIMONY/
EVIDENTIARY
OFFERINGS

- Live testimony
- Proffer
- Stipulation
- Reports

SERVICES UPDATE/
IMMEDIATE SERVICE/
CASE PLAN
KEY DECISIONS THE
COURT SHOULD MAKE

- Contrary to welfare finding
- Should the child be returned home immediately or kept in shelter care prior to the adjudication hearing? (i.e., is continued placement of the child in care warranted?)
- Make detailed, case-specific findings
- Determine who is present, and review efforts to locate parents
- Has the agency made reasonable efforts to avoid placement?
- Are responsible relatives or other responsible adults available?
- Required considerations:
 - ___ Extent to which DSS has complied with the law, regulations, state or federal court orders or stipulated agreements regarding provision of services;
 - ___ Whether DSS has ensured that:
 - ___ a caseworker is promptly assigned and actively responsible for the case at all times;
 - ___ the caseworker's identity has been promptly communicated to the court and the parties; and
 - ___ the caseworker is knowledgeable about the case and has received all pertinent files and information timely.
- The caseworker should report child's location and visitation status

KEY COMPONENTS OF
THE COURT'S ORDER

If child is placed in shelter care:

- Describe who is to have custody and where the child is to be placed
- Specify why continuation of the child in the home is contrary to the child's welfare, i.e., not in the child's best interest
- Specify whether reasonable efforts have been made to prevent placement, including a brief description of what services, if any, were provided, and why placement is necessary, or specify if it was an emergency and why
- Specify if any of the required considerations were not met by the local DSS
- Specify the terms of visitation

Whether or not the child is returned home:

- Provide further directions to the parties such as governing parental conduct and agency services to the child and parent agreed upon prior to adjudication
- Set date and time of next hearing
- Set visitation and conditions

Note:

Maryland Properly Conducted Hearings Checklists
Excerpts from the RESOURCE GUIDELINES
National Council for Juvenile and Family Court Judges



SUMMARY

You may issue an order controlling conduct (OCC) against any person properly before the court. You may also order emergency medical treatment and physical or mental examinations.

OCC

C. & J.P. § 3-821
Md. Rule 11-110(e)

You can issue an order controlling conduct against any person properly before the court. You must first find that the person’s conduct:

- Is or may be detrimental or harmful to the child alleged to be CINA.
- Will tend to defeat a court order or disposition made or to be made.
- Will assist in the child’s rehabilitation or is necessary for the child’s welfare.



The order may direct, or otherwise control, the person’s conduct. You may do so on your own or a party’s motion.

Barry E., 107 Md. App. 206 (1995)

A person who violated an OCC may be held in contempt. In one case, a father alleged to have sexually abused his three daughters was ordered not to have any contact with the children or the family home. After the father violated the order on numerous occasions with the mother’s cooperation, the judge found him in contempt. He was sentenced to 18 months in the county detention center.



Can you order any public agency to provide the family with services under an OCC? In *Roger S.*, 338 Md. 385 (1995), the juvenile court judge issued an OCC ordering the local Board of Education to continue to provide educational and vocational training to a special needs foster child who had turned age 18. The Board of Education had notice of the hearing and an opportunity to be heard. The Court of Appeals concluded the OCC was beyond the court’s authority. An OCC simply supplements the court’s authority over matters already under the court’s purview. Since no other Juvenile Causes Act provision gives the court power over the Board, it may not acquire this power through an OCC.



TREATMENT

C. & J.P. § 3-824(b)(1)

You can order emergency medical treatment for a child. A licensed physician or dentist must attest to the immediate need. The parents must be unavailable or refusing to consent without good cause. Treatment may be medical, surgical, or dental.

C. & J.P. § 3-824

Emergency medical treatment requests are expedited. If the CINA petition seeks an order for emergency medical treatment, you must hear and rule on it on an expedited basis.

EXAMINATIONS

C. & J.P. § 3-816(a)

You may order DSS to do a home study. This study looks at the child and the child’s family, environment, and other issues relevant to disposition.

C. & J.P. § 3-816(b)

This study may involve professional evaluations. As a part of the study, a “professionally qualified person” can examine the child or any parent, guardian, or custodian at a suitable place.

Professionally Qualified Persons
Physician
Psychiatrist
Psychologist
Other professionally qualified person



An order for a physical or mental examination must specify the examination’s:

- Time
- Place
- Manner
- Conditions
- Scope.

It also must name who will conduct the examination. Your order may also address report filing, payment, and other relevant matters.

Form 905-OE (order for examination)

Md. Rule 11-105(a)

www.lawlib.state.md.us



Md. Rule 11-105(a)

The examination should be conducted on an outpatient basis, considering the child’s condition, as long as it is feasible and appropriate.



The study is admissible at disposition but not adjudication. However, testimony on the examination is admissible at adjudication. The court must serve any report on the parties at least two days before the hearing. Each party’s attorney has a right to inspect the report before its admission. Each may challenge or impeach its findings and offer evidence on it.

C. & J.P. § 3-816(c)
Md. Rule 11-105(b)

RELATED TOPICS

CL-102 Contempt
CL-104 Jurisdiction & Venue
CL-105 Notice & Service
CL-106 Evidence



SUMMARY

At the adjudication hearing, DSS must prove the factual allegations in the petition by a preponderance of the evidence. Determine whether the petition allegations are proven and announce your findings.

PURPOSE

C. & J.P. § 3-817
C. & J.P. § 3-801

Are the petition allegations proven? This is the issue at adjudication. Whether the child needs the court’s assistance, treatment, guidance, or rehabilitation is left to the disposition.

BIFURCATED HEARINGS

At the adjudicatory hearing, the court considers evidence on the petition allegations. The decision whether the child in a CINA is not made until the disposition hearing. In *Michael W.*, 89 Md. App. 612 (1991), the mother filed an exception only to the master’s disposition of the child as CINA. The master’s adjudicatory findings—that the infant suffered a spiral leg fracture and mother could not explain the injury—were not challenged. The judge held a *de novo* disposition hearing and rejected the master’s conclusion that the injury was caused by the mother’s abuse or neglect. The judge held the child was not CINA. This was permissible even though the mother did not challenge the master’s adjudication because the CINA finding is made at disposition, not adjudication.

WHEN

C. & J.P. § 3-815
Md. Rule 11-114(a) & (b)

Blessen H., 163 Md. App. 1 (2005)



After a CINA petition is filed, hold an adjudicatory hearing. If the child is in shelter care, it must be held within 30 days of the shelter care hearing. If the child is not in care, it must be held within 60 days from service of the petition. An extension may only be granted under extraordinary circumstances by the county’s administrative judge or that judge’s designee. The motion for extension must be filed before the deadline.

PROOF

C. & J.P. § 3-817
Md. Rule 5-101(a)
Md. Rule 11-114(c) & (e)(3)
C. & J.P. § 3-816(c)
Md. Rule 11-105(c)

CINA allegations must be proven by a preponderance of the evidence. The Rules of Evidence apply to the adjudicatory hearing. The petitioner, usually DSS, presents the evidence in support of the petition.

The DSS home study is not admissible at adjudication. This includes any professional examinations done on the child or any parent, guardian, or custodian as part of this study. However, testimony on any examination is admissible at the adjudicatory hearing.

25 U.S.C.A. § 1912

If the child is an Indian child, special proof is also required. If DSS has or seeks custody of an Indian child, it must prove by clear and convincing evidence with expert testimony that the child will suffer emotional or physical harm if returned home. It must also prove it made “active efforts” to prevent the placement.

FINDINGS

Md. Rule 11-114(f)
Md. Rule 11-111
Thomas H., 381 Md. 174
(2004)



At the end of the adjudicatory hearing, announce your findings. The adjudicatory order must include the grounds for your decision. If the hearing was before a master, the findings must ultimately be reviewed and approved by a judge at the conclusion of the disposition hearing.



Form 914-O/A (order of adjudication)
www.lawlib.state.md.us

RELATED TOPICS

CL-103 Masters
CL-106 Evidence
CL-107 Indian Child Welfare Act
CL-109 Exceptions & Appeals
CL-205 Home Study & Examinations

Adjudication Hearing

(Must be held within 30 days from child's removal from the home or if child has not been removed, 60 days from service of the CINA petition).

INTRODUCTORY
REMARKS

- Call case, including child's name, case number, type of hearing
- Introduction of parties/note who is present
- Explanation of proceeding
- Advisement of rights (right to counsel, change of address, establishment of paternity)
- Notify parents prior to adjudication to advise them of their right to an attorney
- If parents come to the hearing, give them Advice of Rights form and have them sign it before they leave
- Set date and time of next hearing

ADEQUACY OF NOTICE
AND SERVICE OF
PROCESS ISSUES

- Address identification and location of parties not present
- Schedule hearing or report due within 30 days regarding identification of parents
- Follow parent litany form (encompasses Maryland statute)

TROUBLESHOOTING
AND NEGOTIATIONS
BETWEEN PARTIES

- Motions
- Reports submitted timely
- Discovery
- Rules

TESTIMONY/
EVIDENTIARY
OFFERINGS

- Live testimony
- Proffer
- Stipulation
- Reports
- Introduction of written evidence

SERVICES UPDATE/
IMMEDIATE SERVICE/
CASE PLAN
KEY DECISIONS THE
COURT SHOULD MAKE

- Determine whether the allegations in the petition have been proven or admitted
- Determine whether reasonable efforts have been made to prevent the need for placement
- Reasonable efforts to prevent removal
- Determine who is present, and review efforts to locate parents
- Determine where the child is located
- Are responsible relatives or other responsible adults available?
- Required considerations:
 - _____Extent to which DSS has complied with the law, regulations, state or federal court orders or stipulated agreements regarding provision of services;
 - _____Whether DSS has ensured that:
 - _____a caseworker is promptly assigned and actively responsible for the case at all times;
 - _____the caseworker's identity has been promptly communicated to the court and the parties; and
 - _____the caseworker is knowledgeable about the case and has received all pertinent files and information timely.

- If child is being removed for the first time at this hearing, determine whether it is contrary to the welfare of the child to be returned home.
- If the disposition hearing is held on a separate day the Court should:
- Determine whether there is good cause shown to continue disposition
- Determine where the child is to be placed prior to disposition
- Order further testing or evaluations as needed
- Ensure that the agency is making diligent search efforts to locate parents and other relatives as caretakers, including relatives outside the area
- If child is placed outside of the home, set terms for visitation, and other intra-family communication, including both parents and siblings

Issuance of Orders and Scheduling of Next Hearing

KEY COMPONENTS OF THE COURT'S ORDER

If the allegations in the petition were sustained:

- Specify whether reasonable efforts have been made to prevent placement, including a brief description of what services, if any, were provided and why placement is necessary
- Specify whether the Court is proceeding to the Disposition hearing (If so, proceed to Disposition Hearing Standards)

If the disposition hearing is held on a separate day:

- Specify the good cause for delaying the disposition hearing
- Specify who is to have temporary custody and where the child is to be placed
- Specify terms of visitation of child, both parents, siblings and other relatives, if applicable

Whether or not the child is returned home:

- Provide further directions to the parties, such as, governing parental conduct, responsibilities of parents and agency to the child and parent
- Set date and time of next hearing

Note:

Maryland Properly Conducted Hearings Checklists
Excerpts from the RESOURCE GUIDELINES
National Council for Juvenile and Family Court Judges



Disposition

SUMMARY

At the disposition hearing, determine if the child is in need of assistance. You may order protective supervision, commitment to DSS, or relative guardianship as well as rehabilitative services. You may modify or vacate a disposition order.

PURPOSE

What, if any, court assistance does the child need? This is the issue at disposition. First decide whether the child needs the court’s assistance. Then determine what kind of intervention is necessary to protect the child’s health, safety, and well-being. Your priority is to make a disposition consistent with the juvenile court goals.

C. & J.P. § 3-801(m)
C. & J.P. § 3-819(b)

CINA DEFINITION

A “child in need of assistance” (CINA) is a child who needs the court’s help. “Child in need of assistance” means a child who requires court intervention because:

C. & J.P. § 3-801(f)

- (1) The child has been abused, has been neglected, has a developmental disability, or has a mental disorder; and
- (2) The child’s parents, guardian, or custodian are unable or unwilling to give proper care and attention to the child and the child’s needs.

C. & J.P. § 3-801(q)

The child must be either “mentally handicapped” or not receiving ordinary and proper care and attention. “Mentally handicapped” includes mental retardation and mental illness. Both parents must be unable or unwilling to give proper care and attention to the child and the child’s problems.

C. & J.P. § 3-801(s)

“Neglect” means the leaving of a child unattended or other failure to give proper care and attention to a child by any parent or individual who has permanent or temporary care or custody or responsibility for supervision of the child under circumstances that indicate:

- (1) That the child’s health or welfare is harmed or placed at substantial risk of harm; or
- (2) That the child has suffered mental injury or been placed at substantial risk of mental injury.

Joseph G., 94 Md. App. 343 (1993)
Russell G., 108 Md. App. 366 (1996)



FAILURE TO PROTECT

You may find that both parents are unable or unwilling to provide proper care even if it was only one parent who perpetrated the abuse or neglect. For example, in *Joseph G.*, 94 Md. App. 343 (1993), the mother intentionally injured her baby. The father’s refusal to believe the mother harmed the child was sufficient to find he also could not provide proper care. However, in *Russell G.*, 108 Md. App. 366 (1996), the appellate court held that a father who did not live with the mother or child could not be found to have ignored the mother’s neglect without evidence he knew of the mother’s relapse into alcoholism. The fact he did not have legal custody of the child also did not justify a finding he could not provide proper care for the child.

Sophie S., 167 Md. App. 91 (2006)

C. & J.P. § 3-818

Granting custody to the “fit” parent: *Sophie S.* holds that when one parent is found to be fit, and the other is not, the Court must make that finding (that one is fit, and one is not) before granting custody to the fit parent. *Sophie S.*, 167 Md. App. 91 (2006).

Cocaine and heroin-exposed infants are presumed CINA.

Within a year of an infant’s birth, he is presumed to be not receiving ordinary and proper care and attention if:

- The infant is born addicted or dependent on cocaine, heroin, methamphetamine, or a derivative drug; or
- Upon admission to a hospital for delivery of the child, the mother tested positive for cocaine, heroin, methamphetamine, or a derivative drug as evidenced by any appropriate toxicology test; and
- Drug treatment is made available to the mother and the mother refuses the recommended level of drug treatment, or does not successfully complete the recommended level of drug treatment.

HEARINGS

C. & J.P. § 3-819(a)
Md. Rule 11-115(a)



If the facts are sustained at adjudication, hold a disposition hearing.

Hold it the same day as the adjudicatory hearing unless you or a party moves to delay it and you find good cause. It must be held no later than 30 days after the end of the adjudicatory hearing.

Md. Rule 11-115(b)
Md. Rule 5-101(c)(6)

The Rules of Evidence apply to disposition hearings. However, you may decline to require strict application of the rules if it is in the interests of justice. You may not dispense with the rules relating to privilege and competency of witnesses.

C. & J.P. § 3-816(c)

The DSS home study is admissible at disposition. This includes any professional examinations done on the child or any parent, guardian or custodian as part of this study. Each party’s attorney has a right to receive the report at least five days before its presentation to the court. Each may challenge or impeach its findings and offer evidence on it.

ORDER

Md. Rule 11-115(b)
Md. Rule 11-111

At the end of the disposition hearing, announce your findings. If the hearing was before a master, the finding must ultimately be reviewed and approved by a judge. *See Kaela C.*, 394 Md. 432 (2006).

C. & J.P. § 3-819

Potential Dispositions
Order of Protective Supervision (OPS)
Commitment to DSS (<i>see</i> CL-208)
Guardianship
Order Controlling Conduct (OCC)
Rehabilitation services
Dismissal

C. & J.P. § 3-819

If you make a CINA finding, determine child custody. Should the child remain with the parent and be under DSS supervision? Should custody be transferred to a non-custodial parent? Should the child be placed with a relative or another fit adult? Should you commit the child to DSS or another public agency? (Commitments are discussed in detail in CL-208.)

C. & J.P. § 3-819(c)(1)(ii) & (g)
Md. Rule 11-117(a)
Est. & Trusts §§ 13-701 to
13-709
Md. Rule 10-201 to 10-213

You may appoint a “guardian of the person” for a CINA. If a child is under your jurisdiction as a CINA, you may determine custody or appoint the child a guardian if it is necessary to make an appropriate disposition. The guardian may be a relative or another fit person. A guardian is given custody of the child. The guardian does not have a right to control the child’s property unless you expressly authorize it.

Guardian for Limited Purpose. In some jurisdictions, courts may appoint a person to be the guardian specifically for the limited purpose of making education or medical decisions, of the parent(s) are not able or willing to make such decisions.

KINSHIP CARE

C. & J.P. § 5-501(i)
C. & J.P. § 5-534

Children may live with relatives under various legal arrangements. Choose the legal option carefully because it affects DSS’ ability to supervise, offer services, reunify with parents, and free a child for adoption.

Sophie S., 167 Md. App. 91
(2006)

Under an *informal arrangement*, the parents agree to let a child live with a relative but there is no court order. This is appropriate when the child is not in danger. If you have enough safety concerns to remove a child from the parents, do not use an informal arrangement.

Under the placement option, the court transfers custody to DSS and DSS decides to place the child with a relative. Use placement to give DSS more authority to protect the child and a clear duty to work toward reunification. DSS may, under certain circumstances, pay the relative under this option.

Under the temporary custody alternative, the court transfers temporary custody to a relative. Under this option, DSS must return to court to remove the child if the relative home becomes unsafe. DSS may only supervise the placement if the court orders it. Make sure the relative will cooperate with the reunification plan.

Caya B., 153 Md. App. 63
(2003)

Under *permanent custody*, the court makes the relative the child’s legal custodian. It does not require termination of parental rights. However, it is not as permanent as adoption. The parent may request modification under changed circumstances. Adoption subsidies are not available.

Under *guardianship*, the court makes the relative the child’s guardian. It does not require termination. However, the guardianship may be terminated so it is not as permanent as adoption. Guardianship subsidies may be available under certain circumstances.

Under *adoption*, the court allows the relative to adopt the child. It does require termination of parental rights. This is the most permanent option. Adoption subsidies are available.

For more information, see June Melvin Mickens and Debra Ratterman Baker, *Making Good Decisions about Kinship Care* (American Bar Association 1997).

C. & J.P. § 3-821
Md. Rule 11-110(e)

You can issue an order controlling conduct (OCC) against any person properly before the court. You may do so on your own or a party's motion. You must first find that the person's conduct:

- Is or may be detrimental or harmful to the child alleged to be CINA.
- Will tend to defeat a court order or disposition made or to be made.
- Will assist in the child's rehabilitation or is necessary for the child's welfare.



The order may direct, restrain, or otherwise control the person's conduct. An OCC may be made in conjunction with an OPS, commitment, custody, or guardianship order.

C. & J.P. § 3-819

Order rehabilitation services. What services does the child need? What services do the parents need to make their home safe for the child? Rehabilitation services must be in the best interests of the child and family.

Health-Gen. § 10-622;
C. & J.P. § 3-819(h)

EMERGENCY MENTAL HEALTH EVALUATION

If there is a reason to believe a child has a mental disorder and there is clear and imminent danger of the child's doing bodily harm to self or others, you may order an emergency mental health evaluation.

A "mental disorder" is behavioral or other symptoms that indicate:

- To a lay petitioner:* a clear disturbance in the mental functioning of another individual.
- To a physician or psychologist:* at least one mental disorder that is described in the version of the American Psychiatric Association's "diagnostic and Statistical Manual—Mental Disorders" that is current at the time of the examination.

"Mental disorder" does not include mental retardation.

Health-Gen§10-620(e).

MODIFICATION

Md. Rule 11-116(a)



You may modify or vacate a disposition order. It must be in the child's best interests.

Form 916-O/TPPS (order terminating protective supervision)

Form 916-O/RCAS (order rescinding commitment)

www.lawlib.state.md.us

Md. Rule 11-116(b)



You may proceed on your own motion. A motion may also be filed by a party or the person or agency that has custody or is supervising the child. The motion must set forth concisely the requested relief and the grounds for it.

Form 916-P/RPSC (petition for revocation of protective supervision)

www.lawlib.state.md.us

Md. Rule 11-116(c)
Md. Rule 11-115(c)(3)

You may grant or deny the relief without a hearing. However, if the motion requests the child's commitment, you must set a hearing and issue a show cause order to be served on the parties. Alternatively, you may require an amended petition and a new shelter care hearing if commitment is requested.



Form 916-SCO (show cause order)
www.lawlib.state.md.us

Md. Rule 11-116(d)
Md. Rule 5-101(c)(7)

The Rules of Evidence apply to modification hearings. However, you may decline to require strict application of the rules if it is in the interests of justice. You may not dispense with the rules relating to privilege and competency of witnesses.

Md. Rule 11-120

You may terminate the proceedings. You may issue a final order of termination on your own motion any time your jurisdiction over the respondent child ends. You may also terminate the proceedings based on the recommendation of DSS.



Form 920-FOT (final order of termination)
www.lawlib.state.md.us

RELATED TOPICS

CL-106 Evidence
CL-205 Order Controlling Conduct
CL_205 Home Study & Professional Evaluations
CL-208 Commitment

Disposition Hearing

(Must be held on the same day as the adjudication hearing unless good cause is shown to extend it for another 30 days).

**INTRODUCTORY
REMARKS**

- Call case, including child's name, case number, type of hearing
- Introduction of parties/note who is present
- Explanation of proceeding
- Advisement of rights (right to counsel, change of address, possibility of change in permanency plan, including TPR)
- Set date and time of next hearing

**ADEQUACY OF NOTICE
AND SERVICE OF
PROCESS ISSUES**

- Address identification and location of parents
- Schedule hearing or report due within 30 days regarding identification of parents
- Follow parent litany form (encompasses Maryland statute)
- Advise of responsibility to notify court of change of address

**TROUBLESHOOTING
AND NEGOTIATIONS
BETWEEN PARTIES**

- Motions
- Reports submitted timely (five days prior to hearing for study/examination, 10 days prior to hearing for DSS report)
- Discovery
- Rules

**TESTIMONY/
EVIDENTIARY
OFFERINGS**

- Live testimony
- Proffer
- Stipulation
- Reports
- Introduction of written evidence

**SERVICES UPDATE/
IMMEDIATE SERVICE/
CASE PLAN
KEY DECISIONS THE
COURT SHOULD MAKE**

- Determine whether the child needs the court's assistance.
****Note: Determining whether the child is a CINA is made at the disposition hearing, not the adjudication hearing.****
- If so, list reasons
- Determine custody and placement of the child
- Determine whether the agency's proposed case plan reasonably addresses the needs of the child and parents
- Determine whether reasonable efforts have been made to prevent placement of the child into DSS custody
- Reasonable efforts to prevent removal
 - Determine who is present, and review efforts to locate parents
 - Has the agency made reasonable efforts to avoid placement?
 - Are responsible relatives or other responsible adults available?
 - Required considerations:
 - _____Extent to which DSS has complied with the law, regulations, state or federal court orders or stipulated agreements regarding provision of services;
 - _____Whether DSS has ensured that:
 - _____a caseworker is promptly assigned and actively responsible for the case at all times;

_____the caseworker's identity has been promptly communicated to the court and the parties; and

_____the caseworker is knowledgeable about the case and has received all pertinent files and information timely.

- Determine if relatives or other potential caregivers have been contacted about caring for the child

Required considerations before granting custody or guardianship:

_____Any assurance by DSS that it will provide funds for necessary support and maintenance for the child;

_____All factors necessary to determine the best interests of the child, including assessing the child's unique needs and preferences, whether the child has a bond with the family, whether the guardian is committed to staying involved with the child through the child's life, etc.; and

_____A report by DSS or licensed child placement agency regarding the suitability of the individual to be the guardian of the child

KEY COMPONENTS OF THE COURT'S ORDER

- Specify whether the child is a CINA. If so,
- Specify who has custody of the child
- Specify whether reasonable efforts have been made to prevent placement, including a brief description of what services, if any, were provided and why placement is necessary
- If applicable, specify why continuation of the child in the home would be contrary to the child's welfare
- Specify the services that are ordered
- Specify support, visitation terms
- Specify current case plan/permanency plan for the child (remember there is a presumption of reunification)
- Set date and time of next hearing

Note:

Maryland Properly Conducted Hearings Checklists

Excerpts from the RESOURCE GUIDELINES

National Council for Juvenile and Family Court Judges



SUMMARY

You may commit a child to DSS, DHMH, or both, or a parent, relative or other individual. Your order must state the grounds for placement. You may place restrictions on visitation and order child support. Mental health and developmental disability commitments for children require special findings.

ALTERNATIVES

C. & J.P. § 3-801(h)
C. & J.P. § 3-819
C. & J.P. § 3-815(f)

“Commit” means to transfer custody. If the child cannot safely remain with a parent, you may commit the child. Decide if the child should be placed in foster care under DSS custody. A child with a mental disorder or developmental disability may need a Department of Health and Mental Hygiene commitment.

C. & J.P. § 3-819

Commitment Alternatives	
Type	Definition
Commitment to DSS with physical custody to parent	Child remains with the parent but DSS may remove the child if necessary.
Commitment to DSS for relative placement	Child lives with the relative but DSS may remove the child if necessary.
Commitment to DSS for foster care placement	Child is placed in a foster home licensed by DSS.
Commitment to another agency	Child is placed with a designated agency, such as Department of Health and Mental Hygiene, for full-time care.

F.L. § 5-534(c)

DSS must give first priority to relative placements. DSS must exhaust all reasonable resources to identify an appropriate relative for initial placement. If not, the child is placed in foster care. If an appropriate relative is identified after initial placement, DSS may place the child with the relative if it is in the child’s best interests.

25 U.S.C.A. § 1915(b)
Nicole B., 175 Md. App. 450 (2007)

For an Indian child, DSS must follow tribal placement preferences. Under the Indian Child Welfare Act, preference for foster care placement must be given, in the absence of good cause to the contrary, to:

- Extended family members;
- Foster homes approved by the tribes;
- Licensed Indian foster homes; or
- Indian-approved institutions.

Roger S., 338 Md. 385 (1995)



Can you commit a child to the local Board of Education? In *Roger S.*, 338 Md. 385 (1995), the Court of Appeals held that you cannot make a commitment to an agency incapable of providing and arranging full-time care for the child. In *Roger S.*, the juvenile court judge made the order to ensure that the Board of Education would continue to provide educational and vocational training to a special needs child who had turned age 18. The appellate court concluded the commitment order was beyond the court’s authority.



42 U.S.C.A. § 675(5)(A)

PLACEMENT CONSIDERATIONS

- Safe setting
- Least restrictive and most family like
- Most appropriate setting available
- Close proximity to parents' home
- Consistent with child's special needs
- In the child's best interests

ORDER

C. & J.P. § 3-819
 C. & J.P. § 3-801(h)
 C. & J.P. § 3-825(a) & (c)
 Md. Rule 11-115(b)
 Md. Rule 11-111



If you commit the child, the disposition order must state the grounds for placement. State the specific findings of fact or the circumstances that caused the need for removal. A master's order of commitment may be implemented before court approval. CINA commitment orders are effective for an indeterminate period. However, they do not extend past the child's 21st birthday.



Form 915-O/CJ (order for commitment of juvenile)
www.lawlib.state.md.us

Ashley E., 158 Md. App.
 144 (2004)

You must also determine if DSS made reasonable efforts. Evaluate whether services could have safely averted the placement. Also make a reasonable efforts finding if you continue the child's placement. Assess reunification services. You may also waive reunification efforts at the request of DSS if you find clear and convincing evidence of "aggravated circumstances."

C. & J.P. § 816.1
 F.L. § 5-525(d)
 C. & J.P. § 3-812
 42 U.S.C.A § 671(a)(15)



Warn parents of potential termination of parental rights.

If the disposition removes a child from the child's home, the order shall:

- (1) Set forth specific findings of fact as to the circumstances that caused the need for the removal; and
- (2) Inform the parents, custodian, or guardian, if any, that the person or agency to which the child is committed may change the permanency plan of reunification to another permanency plan, which may include the filing of a petition for termination of parental rights if the parents:
 - (i) Have not made significant progress to remedy the circumstances that caused the need for the removal as specified in the court order; and
 - (ii) Are unwilling or unable to give the child proper care and attention within a reasonable period of time.

C. & J.P. § 3-819(f)

Order periodic progress reports. You may require the individual, agency, or institution to which you have transferred custody to give you written reports. These reports include recommendations for further supervision, treatment, or rehabilitation.

C. & J.P. § 3-826

COMMITMENT ORDER CHECKLIST

- Grounds for placement
- Reasonable efforts determination
- Agency to whom custody is transferred
- Visitation
- Support

- Termination of parental rights warning
- Periodic progress reports

25 U.S.C.A. § 1912(d) & (e)



For an Indian child, your order must include special findings. An Indian child cannot be placed in foster care unless you find by clear and convincing evidence that continuing custody with the parent or Indian custodian would result in serious emotional or physical damage to the child. You must also be satisfied the DSS made “active efforts” providing remedial services and rehabilitative programs to prevent the breakup of Indian families and that these efforts have proved unsuccessful.

F.L. § 9-101

Sophie S., 167 Md. App. 91 (2006)

Finding for parental custody returns and unsupervised visitation orders: The trial court must make a finding that no further likelihood of future harm to a child exists on all custody returns to a parent and unsupervised visitation grants to a parent, where the child was previously removed from the parent’s custody due to abuse or neglect.

VISITATION

Justin D., 357 Md. App. 431 (2000)

Parental visitation is not an absolute right. It must yield when inconsistent with the child’s best interests. However, it is not a privilege that may be easily denied. Visits are critical to reunification and maintaining the emotional bond between parent and child. Visitation may be supervised or suspended if the court finds it necessary for the child’s safety.

Mark M., 365 Md. 687 (2001)



Your order must specify the amount of visitations and any conditions on it. The Court of Appeals has held that the court may not leave visitation to DSS discretion. You must specify the minimal amount of visitation appropriate. You must also outline the minimal conditions that should be imposed. DSS may be granted the discretion to allow additional visitation or ease restrictions, but not to curtail or make visitation more onerous.

Can children in foster care choose whether to visit their parents? In *Barry E.*, 107 Md. App. 206 (1995), the Court of Special Appeals rejected the premise that a child should never be forced to visit with parents. Depending on the child’s age and judgment, the court may consider the child’s wishes. However, whether a visit occurs should not be left to the child’s unfettered whims. The appellate court found that a five-year-old should not be empowered to make this decision given the critical link between visitation and reunification. Visits should be given high priority and efforts should be made to ease the child into the visit.

F.L. § 5-525.2

Any siblings in separate foster placements may petition for visitation. Hold a hearing to determine if visitation is in the children’s best interests. Weigh the relative interests of each child. Your decision should promote the greatest welfare and least harm to the children. Issue an appropriate order or amend an existing order.

SUPPORT

C. & J.P. § 3-819(l)
42 U.S.C.A. § 671(a)(17)

After committing a child, you may order parents to pay support. First give the parent a reasonable opportunity to be heard. You may order one or both parents to pay all or part of the cost of commitment. Maryland child



support guidelines apply to juvenile court support orders.
Form 918-O/S (order for support)
www.lawlib.state.md.us

Sophie S., 167 Md. App. 91 (2006)



Can you order an incarcerated parent to pay support? According to the Court of Appeals, incarceration does not automatically free a parent from child support obligations. *Willis v. Jones*, 340 Md. 480 (1995). However, you may not find an incarcerated parent is “voluntarily impoverished” unless the parent committed the crime with the intention of becoming incarcerated or otherwise impoverished. *Sowers v. Reed*, 119 Md. App. 600 (1998).

DHMS COMMITMENTS

C. & J.P. § 3-819(a)
Md. Rule 11-115(a)

A child cannot be placed in a psychiatric facility without special findings. You may commit a child to the Department of Health and Mental Hygiene (DHMH) for inpatient care only if you find all the following by clear and convincing evidence:

Conditions for Psychiatric Commitments
The child has a mental disorder.
The commitment is necessary to protect the child or others.
The child is unable or unwilling to voluntarily agree to commitment.
There is no less restrictive alternative consistent with the child’s condition and welfare.

Health-Gen. § 10-620(e)

- A “mental disorder”** is behavioral or other symptoms that indicate:
- To a lay petitioner: a clear disturbance in the mental functioning of another individual.
 - To a physician or psychologist: at least one mental disorder that is described in the version of the American Psychiatric Association’s “Diagnostic and Statistical Manual—Mental Disorders” that is current at the time of the examination.
- “Mental disorder” does not include mental retardation.

C. & J.P. § 3-819(i)

A child cannot be placed in a facility for the developmentally disabled without special findings. Before you approve this placement, you must find by clear and convincing evidence all of the following:

Conditions for Developmental Disability Commitments
The child is developmentally disabled.
The child needs in-residence care or treatment to adequately protect the child or others given the child’s condition.
There is no less restrictive form of care or treatment available consistent with the child’s condition and welfare.

Md. Rule 11-115(b)
Md. Rule 11-111

C. & J.P. § 3-816
Md. Rule 11-115(c)(2)

- Order an evaluation.** Order the child be given a mental examination. Order the evaluator’s court report to include:
- Whether the above conditions are met

- The bases for these findings
- The recommended disposition
- The reason for the recommended disposition



The evaluation should be conducted on an outpatient basis if feasible and appropriate. If an inpatient evaluation is required, it may be no longer than 30 days.

C. & J.P. § 3-819(j)(1)
Md. Rule 11-115(c)(3)(a)



Order six-month progress reports. In any commitments to a psychiatric facility, or a facility for the developmentally disabled, order the Department of Health and Mental Hygiene to file progress reports with the court at least every six months. The report must include the same elements as the evaluation report above. A copy of the report also goes to the child's attorney.

Review progress reports promptly. Consider whether the commitment should be modified or vacated. Hold a hearing to hear testimony if any party requests it or you think it is necessary. A party can petition for review at any time or you can decide to schedule one. You may modify or vacate a commitment order as long as parties are given notice and an opportunity for hearing.

C. & J.P. § 3-819(j)(2) & (3)
Health-Gen. § 10-706
Health-Gen. § 7-1006



Reconsider whether the commitment is necessary at least every six months. Make sure all the conditions continue to be met. Also reconsider the placement if the individualized treatment plan (psychiatric commitments) or individualized habilitation plan (developmental disability commitments) finds the child no longer meets the conditions.

RELATED TOPICS

CL-107 Indian Child Welfare Act
CL-108 Paternity
CL-203 Reasonable Efforts
CL-207 Kinship Care
CL-302 Review Hearing



SUMMARY

The juvenile court may try an adult for the crime of contributing to a child being a CINA. Proof must be beyond a reasonable doubt. Penalties are a fine or imprisonment. An acquitted respondent may request records be expunged.

CRIMES

C. & J.P. § 3-828

It is a crime to contribute to a child being a CINA. If an adult willfully:

- Contributes to;
- Encourages; or
- Causes or tends to cause any act, omission or condition which render the child in need of assistance, the adult may be convicted of a crime.

PROCEEDINGS

C. & J.P. § 3-803(c)

The juvenile court has concurrent jurisdiction over this crime. On your own motion or a motion of a party, you may waive jurisdiction if charges from the same incident are pending in criminal court. You must waive jurisdiction if the state’s attorney or the adult charged so moves.

C. & J.P. § 3-805

Proper venue is the county where the incident occurred. The citation or petition should be filed in this county but is subject to transfer to the county where the child resides.

C. & J.P. § 3-828(d)

The state’s attorney must file the petition. It must allege the respondent adult contributed to a child being a CINA and include the facts on which the allegation is based.



Form 903-P/A (juvenile petition-adult)
www.lawlib.state.md.us

Md. Rule 11-106(b)

The respondent’s right to counsel. If the adult charged under C. & J.P. § 3-828 is financially unable to obtain private counsel and isn’t accepted by the Public Defender, you must promptly appoint an attorney. The respondent may knowingly and voluntarily waive the right to counsel.

Md. Rule 11-109

The respondent is entitled to discovery. The state must turn over all relevant and exculpatory information within its control. It does not have to disclose:

- Attorney work product;
- Confidential informants not to be called as witnesses; or
- Any evidence under a protective order.

Md. Rule 11-114(e)(2)
 C. & J.P. § 3-828(b)

Proof must be beyond a reasonable doubt. A criminal conviction is not dependent on a CINA finding. You may convict an adult of contributing to a CINA even if the child has not been found to be in need of assistance.

PENALTY

C. & J.P. § 3-828(c)
 Md. Rule 11-101(b)(5)

The penalty is a fine, imprisonment, or both. The fine may be up to \$2,500 dollars. Imprisonment may be for up to three years. You can also suspend the sentence and place the adult on probation if it is in the child’s best interests. Probation means the convicted adult remains subject to court supervision under certain conditions but is not removed from the home.



Form 915-O/PA (order for probation-adult)
www.lawlib.state.md.us

42 U.S.C.A. § 675(5)(A)

CRIMINAL PENALTIES
Imprisonment up to three years
Fine up to \$2,500
Suspended sentence with probation

RELATED TOPICS

CL-103 Waiver of Counsel

CL-104 Jurisdiction & Venue

CL-106 Evidence

CL-207 Definition of CINA

**SUMMARY**

Parents may voluntarily place a child in DSS custody.

VOLUNTARY PLACEMENTS

F.L. § 5-525(a)(1)(i) & (iii)
42 U.S.C.A. § 672

DSS may accept a voluntary placement of a child. A parent or legal guardian may sign a written agreement placing the child in DSS custody.

F.L. § 5-501(r)

Length of Placement. The placement may not last longer than six months. Federal law requires court approval after six months.

C. & J.P. § 3-811(a)(2)

Voluntary Placement Agreement

“Voluntary placement agreement” means a binding, written agreement voluntarily entered into between a local department and the parent or legal guardian of a minor child that specifies, at a minimum, the legal status of the child and the rights and obligations of the parent or legal guardian, the child, and the local department while the child is in placement.

25 U.S.C.A. § 1913

For an Indian child, the agreement must be signed before a judge. The judge must certify the terms and consequences of the consent were explained in detail and were fully understood by the parent or Indian custodian. This certificate must note whether the instrument was explained in English or was interpreted into another language the parent or Indian custodian understood. Any consent given before or within 10 days after the Indian child’s birth is invalid.

VOLUNTARY PLACEMENTS HEARINGS

C. & J.P. § 3-819.1

Voluntary Placement Hearing

Within 30 days after a voluntary placement petition is filed, the court shall hold a voluntary placement hearing. At the hearing, the court shall make findings as to:

- Whether continuation of the placement is in the child’s best interests; and
- Whether reasonable efforts have been made to reunify the child with the family or place the child in a timely manner in accordance with the child’s permanency plan.

C. & J.P. § 3-823(b)(1)(i)

Voluntary Placement Disposition

In making a disposition on a voluntary placement petition under this section, the court shall:

- Order the child’s voluntary placement to be terminated and the child returned to the child’s home and provided with available services and support needed for the child to remain in the home;
- Order the child’s voluntary placement to continue if the local department and the child’s parent or guardian continue to agree to the voluntary placement;
- For children committed inpatient care and treatment in a psychiatric facility, order an amendment to the voluntary placement agreement to address the needs of the child; or

- If necessary to ensure the care, protection, safety, and mental and physical development of the child, order the local department to file a CINA petition.

C. & J.P. § 3-823(b)(1)(i)

Permanency planning hearing. The court shall hold a permanency planning hearing to determine the permanency plan for a child no later than 11 months after a child committed under § 3-819 or continued in a voluntary placement under § 3-819.1(b) enters an out-of-home placement. *See* CL-301 for more information.

RELATED TOPICS

CL-107 Indian Child Welfare Act

CL-203 Reasonable Efforts

CL-207 Definition of CINA, Reasonable Efforts

CL-301 Permanency Planning Hearing

300 Reviews



SUMMARY

Hold a permanency planning hearing after a child has been in care for a year. Determine if the child can return home. If not, adoption, guardianship, or relative custody are the preferred plans. Order another plan only if there is a compelling reason. Achieve the plan within 24 months of placement.

WHEN



C. & J.P. §3-823(b)(1)(i) & (ii)
F.L. § 5-501(m)
42 U.S.C.A. § 675(5)(C) & (F)

Hold a permanency planning hearing within 12 months after a child is placed in out-of-home care. The statute says 11 months from when the child has “entered placement.” However, it defines “entered placement” as 30 days after the child is first placed. Out-of-home placements include foster care, kinship care, group care, and residential treatment.

Out-of-Home Placements		
Foster Care	Continuous 24-hour care and supportive services provided for a minor child placed by a child placement agency in an approved family home	F.L. § 5-501(g)
Kinship Care	Continuous 24-hour care and supportive services provided for a minor child placed by a child placement agency in the home of a relative related by blood or marriage within the 5th degree of consanguinity or affinity under the civil law rule	F.L. § 5-501(i)
Group Care	A licensed group facility providing continuous 24-hour care and supportive services for a minor child	F.L. §5-501(h)
Residential Treatment	A facility providing continuous 24-hour care and supportive services for a minor child placed in a facility that provides formal programs of basic care, social work, and health care services	F.L. § 5-501(n)

C. & J.P. § 3-823(b)(1)(ii)
C. & J.P. § 3-823(b)(3)
C. & J.P. § 3-812(e)
42 U.S.C.A. § 671(a)(15)



If reasonable efforts to reunify are waived, hold a permanency planning hearing in 30 days. A permanency planning hearing must be held within 30 days of an order waiving reasonable efforts because of aggravated circumstances. The permanency planning hearing may be held on the same day as the reasonable efforts hearing if all parties agree.

You may also hold a permanency planning hearing on request. Any party can make a written request stating the reasons a hearing is needed. You may also hold a hearing on your own motion. You can set or review the permanency plan.

C. & J.P. § 3-823(c)

HEARING

C. & J.P. § 3-823(d)

Distribution of permanency plan. -- At least 10 days before the permanency planning hearing, DSS shall provide all parties and the court with a copy of the permanency plan for the child.

C. & J.P. § 3-823(i)



Give the child’s caregiver ten days notice. The child’s foster or pre-adoptive parent or relative caregiver has the right to be heard at the permanency planning hearing. The caregiver’s attorney is also entitled to notice and an opportunity to be heard. DSS provides notice to caregivers.

Md. Rule 11-116(d)
Md. Rule 5-101(c)(7)

The Rules of Evidence apply to permanency planning hearings. However, you may decline to require strict application of the rules if it is in the interest of justice. You may not dispense with the rules relating to privilege and competency of witnesses. Consider any State Citizen’s Review Board for Children reports at the review hearing.

C. & J.P. § 3-823(e)

Determine the child’s permanency plan. The goal of the hearing is to decide if the child can safely go home. If not, you must choose a permanent plan to the extent consistent with the best interests of the child.

42 U.S.C.A. § 675(5)(c)
C. & J.P. § 3-823(f)

If the choice is not return home, adoption, or guardianship, another alternative can only be chosen if DSS documents a compelling reason that returning home, adoption, or guardianship is not in the child’s best interest.

C. & J.P. § 3-823(e)(1)(i)

Yves S., 373 Md. 551 (2003)

Permanency Plans – In Descending Order of Priority	
Reunification with the parent or guardian	Send the child home to a parent or guardian with physical custody to parent or guardian
Relative Custody - Adoption	The relative adopts the child
Relative Custody - Custody and guardianship Adoption by a nonrelative	Make a relative the child’s permanent custodian and guardian. Terminate parental rights and free the child for adoption
Guardianship by a non-relative	Appoint the child a permanent guardian
Another planned permanent living arrangement	Addresses the individualized needs of the child, including the child’s educational plan, emotional stability, physical placement, and socialization needs; and include goals that promote the continuity of relations with individuals who will fill a lasting and significant role in the child’s life.

F.L. § 5-525(e)(1)

CONSIDERATIONS IN CHOOSING A PERMANENCY PLAN

- The child’s health and safety if returned to the parent.
- The child’s attachment and emotional ties to the parents and siblings.
- The child’s attachment and emotional ties to the caregiver and the caregiver’s family.
- How long the child has been with the current caregiver.
- The potential emotional, developmental, and educational harm of moving the child from the current placement.
- The potential harm to the child of remaining in state custody for an excessive period of time.
- The court shall consider both in-State and out-of-state permanent placement options for the child.

C. & J.P. § 3-823(h)(2)(i)-(vi)

Findings to be made at the review hearing. The court shall:

- Determine the continuing necessity for and appropriateness of the commitment;
- Determine and document in its order whether reasonable efforts have been made to finalize the permanency plan that is in effect;
- Determine the extent of progress that has been made toward alleviating or mitigating the causes necessitating commitment;
- Project a reasonable date by which a child in placement may be returned home, placed in a preadoptive home, or placed under a legal guardianship;
- Evaluate the safety of the child and take necessary measures to protect the child; and
- Change the permanency plan if a change in the permanency plan would be in the child's best interest.

C. & J.P. § 3-823(h)(3)
F.L. § 5-525(d)(4)
42 U.S.C.A. § 671(a)
(15)(C)



Determine whether DSS has made reasonable efforts to achieve the permanency plan. DSS must make reasonable efforts to place the child in a permanent home in a timely manner. It must also complete the steps necessary to finalize the placement. Every effort should be made to achieve a permanent plan within 24 months of the child's initial placement.

RETURN HOME

C. & J.P. § 3-823
F.L. § 5-525(e)(l)(i)
F.L. § 9-101

Determine if the child can return home. Consider the child's safety and health if returned to the parent. Balance this against the harm to the child of remaining in placement.

Finding for parental custody returns and unsupervised visitation orders: The trial court must make a finding that no further likelihood of future harm to a child exists on all custody returns to a parent and unsupervised visitation grants to a parent, where the child was previously removed from the parent's custody due to abuse or neglect.

C. & J.P. § 3-823(f)
42 U.S.C.A. § 675(5)(C)



QUESTIONS ON RETURN HOME

- Has the parent resolved the problems that endangered the child?
- Can the parent take full-time custody of the child?
- Is the parent able to adequately care for the child's needs?
- Is the parent's home a safe place?
- Will the parent need any support services to ease the transition home?
- Is it likely that return home can be achieved in a short time?

If a child cannot return home, adoption, guardianship, or relative custody is the preferred plan. You cannot order another planned permanent living arrangement unless DSS shows a compelling reason that return home, guardianship, and adoption are not in the child's best interests.

ADOPTION

C. & J.P. § 8-323(g)



If adoption is the plan, order DSS to file a guardianship petition within 30 days, or, if the local department does not support the plan, within 60 days. Instead of another six-month review hearing, schedule the termination hearing.

**QUESTIONS ON ADOPTION**

- Is the parent willing to consent to guardianship?
- Are there grounds for termination of parental rights?
- Is the child's current caregiver willing to adopt?
- If not, what efforts will DSS make to find an adoptive placement?
- Is "open adoption" in the child's best interests?
- If the child is age 10 or older, what are the child's wishes?

DSS RESPONSIBILITIES

F.L. § 5-525.1(b)(1) & (2)
42 U.S.C.A. § 675(5)(E)

**DSS must file a guardianship petition if:**

- The child is an abandoned infant;
- The parent has been convicted in Maryland or another state of a crime of violence against the child, other parent, another of the parent's children, or any member of the household;
- The parent has been convicted in Maryland or another state of aiding or abetting, conspiring, or soliciting to commit such a crime; or
- The child has been in foster care at least 15 of the last 22 months (actually 16 months of placement since a child does not "enter" care until 30 days after placement).

F.L. § 5-525.1(b)(3)
42 U.S.C.A. § 675(5)(E)

There are exceptions to these requirements. DSS does not have to file a guardianship petition if:

- The child is in relative care;
- DSS has documented a compelling reason why termination is not in the child's best interests; or
- DSS has not provided the family with necessary reunification services consistent with the case plan's time period.

GUARDIANSHIP AND RELATIVE CUSTODY

C. & J.P. § 3-819.2
Md. Rule 11-117(a)
Est. & Trusts §§ 13-701 to 13-709
Md. Rule 10-201 to 10-213

You may award custody and guardianship of a CINA. If a child is under your jurisdiction as a CINA, you may appoint a suitable individual to be the guardian if it is necessary to make an appropriate disposition. The guardian may be a relative or another fit person. A guardian is given custody of the child. The guardian does not have a right to control the child's property unless you expressly authorize it.

42 U.S.C.A. § 675(7)

**QUESTIONS ON GUARDIANSHIPS AND RELATIVE CUSTODY**

- Did DSS do a criminal records check on the relative?
- Does the relative understand the child is not returning to parents?
- Is the relative willing to commit to care for the child until age 18?
- Can the relative meet the child's special needs?
- Can siblings be placed together with the relative?
- If the child is old enough, what are the child's wishes?

Does the relative accept full financial responsibility for the care of the child?
 If DSS has agreed to provide financial assistance, has the relative reviewed the terms of the assistance?
 Does the relative understand that if the financial assistance terminates, the relative still has full financial responsibility for the child?

OTHER PLANS



42 U.S.C.A. § 675(5)(C)

C. & J.P. § 3-823(f)

C. & J.P. § 3-823(e)(1)(ii)
 42 U.S.C.A. § 677

Consider other plans only if there is a compelling reason. You cannot order another planned permanent living arrangement unless DSS documents a compelling reason that return home, guardianship, and adoption are not in the child's best interests.

For a child over age 16, review independent living services. Determine whether the child is receiving adequate services to help make the transition to adulthood.

QUESTIONS FOR OTHER PLANS

Why is adoption not in the child's best interests?
 Why is guardianship not in the child's best interests?
 Why is relative custody not in the child's best interests?
 What are the child's wishes?
 How stable is the child's current placement?
 Does the child have family to spend holidays with?
 Will the child have a caregiver's support after attaining majority?
 Is the child receiving services necessary to attain independence?

SUBSEQUENT REVIEWS



C. & J.P. § 3-823(h)(1)

42 U.S.C.A. § 675(5)(C)

C. & J.P. § 3-823(h)(1)(iii)(3)
 C. & J.P. § 3-823(k)

Best Practice: Review the case every six months while the CINA case is open. C. & J.P. § 3-823(h)(1) states that a review hearing should be held at least every six months until the child is in a permanent home. The goal is to achieve permanency within 24 months of the child's out-of-home placement.



Guardianship Review Hearings every twelve months:

If the case is not terminated, conduct a review hearing every 12 months until the case is terminated.

Child must be seen and consulted.

The court may not conclude a review hearing unless the court has seen the child in person. In addition, at least every 12 months, the child must be consulted on the record in an age-appropriate manner.

RELATED TOPICS

CL-105 Notice & Service
 CL-203 Reasonable Efforts
 CL-207 Kinship Care
 CL-302 Review Hearings

BEST PRACTICES

Hold all stakeholders accountable for competently fulfilling their roles and responsibilities.

RESOURCE GUIDELINES

Have the order available for dissemination to the parties immediately at the conclusion of the hearing.

Permanency Planning/Permanency Planning Review Hearing

(Initial PP hearing must be held w/in 12 months from time of placement. PP must be reviewed every 6 months).

**INTRODUCTORY
REMARKS**

- Call case, including child's name, case number, type of hearing
- Introduction of parties/note who is present
- Explanation of proceeding
- Advisement of rights (right to counsel, possibility of change in permanency plan)

**ADEQUACY OF NOTICE
AND SERVICE OF
PROCESS ISSUES**

- Address identification and location of parents
- Follow parent litany form (encompasses Maryland statute)
- Schedule 30 day hearing or follow up report regarding parent identification
- Advise of responsibility to notify court of change of address
- Address whether caregivers have been notified of hearing, and if present, advise of opportunity to be heard

**TROUBLESHOOTING
AND NEGOTIATIONS
BETWEEN PARTIES**

- Motions
- Reports submitted timely (should be provided by DSS at least 10 days prior to hearing)
- Discovery
- Rules

**TESTIMONY/
EVIDENTIARY
OFFERINGS**

- Live testimony
- Proffer
- Stipulation
- Reports
- Introduction of written evidence (records)

**SERVICES UPDATE/
IMMEDIATE SERVICE/
CASE PLAN
KEY DECISIONS THE
COURT SHOULD MAKE**

- Determine whether the parties, caregivers, CASAs and other interested persons are present, and whether caregivers have been notified
- Determine the child's status as to placement, mental and physical health, education, behavior, etc.
- Determine progress of parents to remediate the issues that brought the child into care
- Determine extent of services provided to child and parents
- Determine whether the agency has made reasonable efforts to finalize the current permanency plan
- Determine whether the agency has made reasonable efforts to meet the needs of the child's placement, mental and physical health, education, safety, connectedness to family, neighborhood and preparation for independence

**KEY COMPONENTS OF
THE COURT'S ORDER**

- Required considerations:
 - _____Extent to which DSS has complied with the law, regulations, state or federal court orders or stipulated agreements regarding provision of services;
 - _____Whether DSS has ensured that:
 - _____a caseworker is promptly assigned and actively responsible for the case at all times;
 - _____the caseworker's identity has been promptly communicated to the court and the parties; and
 - _____the caseworker is knowledgeable about the case and has received all pertinent files and information timely.
- Determine future permanency plan
 - Specify permanency plan and reasons for particular plan. This should include timelines for achievement of the plan.
 - If applicable, specify compelling reasons for choosing a permanency plan outside of reunification, relative placement or adoption, and document why this plan is in the child's best interest
 - Specify whether the agency has made reasonable efforts to finalize the permanency plan and specify the specific efforts that were made or that should have been made
 - Specify custody and placement
 - ***If review hearing, Court must see child if 16 or over before concluding review hearing.***
 - Specify visitation with parents, siblings, others
 - Set date and time of next hearing

Note:

Maryland Properly Conducted Hearings Checklists
Excerpts from the RESOURCE GUIDELINES
National Council of Juvenile and Family Court Judges



SUMMARY

A review can be conducted at any time. A review hearing must be held at least six months after the permanency plan is set to assess progress, evaluate the child’s safety, and change the permanency plan if necessary. Subsequent reviews of the permanency plan are held at least once every six months until the child is in a permanent home.

WHEN

C. & J.P. § 3-823(h)(1)
C. & J.P. § 3-816.1(a)(2)
C. & J.P. § 3-823(h)(3)



Hold a review hearing within six months of setting the permanency plan. It is required for all CINA children who remain committed.



Hold subsequent review hearings at least every six months. The goal is to achieve permanency within 24 months of the out-of-home placement.

F.L. § 5-326(a)(7)
Deontay J., 2009 WL 928352

DSS shall make reasonable efforts to implement a permanency plan within one year.

HEARING

C. & J.P. § 3-816.1
F.L. § 5-326(a)(4)



Give the child’s caregiver ten-days notice. The child’s foster or pre-adoptive parents or relative caregivers have a right to be heard at the review hearing. The caregiver’s attorney is also entitled to notice and an opportunity to be heard. DSS gives notice to the caregivers.

C. & J.P. § 3-823(h)(1)(iii)(3)
C. & J.P. § 3-823(k)

Child must be seen and consulted. The court may not conclude a review hearing unless the court has seen the child in person. In addition, at least every 12 months, the child must be consulted on the record in an age-appropriate manner.

F.L. §§ 5-535 to 5-547



Consider any State Citizen’s Review Board for Children reports. Maryland has local Citizen’s Review Boards for Children. These boards review children in out-of-home placement more than six-months. They examine these cases to determine progress on the permanency plan and send written reports to juvenile court. The State Citizen’s Review Board for Children also monitors compliance with federal law and reviews child fatalities. The timing of their reviews are based on local plans coordinated with the juvenile court.

Md. Rule 5-101(c)(6)
F.L. § 5-545

The Rules of Evidence apply to review hearings. However, in the interest of justice you may decline to require strict application of the rules. You may not dispense with the rules relating to privilege and competency of witnesses.



Can you compel a parent to produce past mental health records at a review hearing? Communications between a patient and a psychiatrist or psychologist are privileged. C. & J.P. § 9-109(b). They may be disclosed if the patient expressly consents. C. & J.P. § 9-109(d)(6). Communications in a court-ordered examination are not privileged. C. & J.P. § 9-109(d)(2). The privilege is also waived if the patients raise their mental condition as an element of their claim or defense. C. & J.P. § 9-109(d)(3)(i).



If DSS requests disclosure, it has the burden of showing that the privilege is waived. *Vanessa C.*, 104 Md. App. 452 (1995). If DSS raises the parent's mental condition first to deprive the parent of custody or visitation, the parent may respond without waiving the privilege. *Matthew R.*, 113 Md. App. 701 (1997).

However, communications between a patient and a professional counselor, social worker, or psychiatric-mental health nursing specialist are *not* privileged in any non-delinquent juvenile or guardianship proceedings. C. & J.P. §§ 9-109.1(e); 9-121(e).

C. & J.P. § 3-816.1(c)



QUESTIONS FOR REVIEW

- Is the child's commitment still necessary and appropriate?
- Are the parties complying with the permanency plan?
- What progress has been made toward achieving the plan?
- When is the child likely to be in a permanent placement?
- Is it in the child's best interests to change the plan?
- Is the child safe? Are other measures necessary to protect the child?

C. & J.P. § 3-823(e)(1)(i)

Permanency Plans	
Return Home	Send the child home to a parent or guardian The relative adopts the child
Guardianship	Appoint the child a permanent guardian
Relative Custody	Make a relative the child's permanent custodian
Adoption	Terminate parental rights and free the child for adoption
Another planned permanent living arrangement	Addresses the individualized needs of the child, including the child's educational plan, emotional stability, physical placement, and socialization needs; and includes goals that promote the continuity of relations with individuals who will fill a lasting and significant role in the child's life
For a detailed discussion of permanency plans, <i>see</i> CL-301.	

F.L. § 9-101

Finding for parental custody returns and unsupervised visitation orders:

The trial court must make a finding that no further likelihood of future harm to a child exists on all custody returns to a parent and unsupervised visitation grants to a parent, where the child was previously removed from the parent's custody due to abuse or neglect.

C. & J.P. § 3-823(h)(2)
(i)-(vi)

Findings to be made at the review hearing. The court shall:

- Determine the continuing necessity for and appropriateness of the commitment;
- Determine and document in its order whether reasonable efforts have been made to finalize the permanency plan that is in effect;

C. & J.P. § 3-823(h)(2)(i)-(vi)

- Determine the extent of progress that has been made toward alleviating or mitigating the causes necessitating commitment;
- Project a reasonable date by which a child in placement may be returned home, placed in a preadoptive home, or placed under a legal guardianship;
- Evaluate the safety of the child and take necessary measures to protect the child; and
- Change the permanency plan if a change in the permanency plan would be in the child's best interest.

ORDER

C. & J.P. § 3-816.1(b)
(2)
F.L. § 5-326(a)(8)
F.L. § 9-101



F.L. § 5-326(a)(8)(iv)
C. & J.P. § 3-816.1
42 U.S.C.A. § 671(a)(15)

REVIEW HEARING ORDER

- Determine the continuing necessity and appropriateness of the commitment.
- Assess compliance with the permanency plan.
- Review the extent of progress made toward achieving the plan.
- Change the permanency plan if it is in the child's best interests.
- Project a reasonable date the permanency plan will be achieved.
- Evaluate the child's safety and order any other measures necessary to protect the child.
- Make case specific findings that the Department has made reasonable efforts since the last hearing, detailing what those efforts are.
- Specify why continuation of the child in the home is contrary to the child's welfare, if this is the first hearing removing the child from home.
- If the child is returned to parent, or unsupervised visitation is granted, make finding that there is no further likelihood of future harm to the child.

In determining if DSS has made reasonable efforts: If you commit the child, evaluate whether services could have safely averted the placement. Also make a reasonable efforts finding if you continue the child's placement. Assess reunification services.

RELATED TOPICS

CL-105 Notice & Service
CL-203 Reasonable efforts
CL-301 Permanency Planning Hearing



SUMMARY

Hold a guardianship review hearing if DSS reports a child is not placed for adoption within 180 days of the date of the guardianship order or when an adoption is not finalized within two years of termination of parental rights. Give the parents notice. Assess efforts to achieve an adoption. Hold subsequent reviews at least every 12 months.

WHEN

F.L. § 5-326(a)(ii) & (2)



The court must hold a guardianship review hearing at least once each year after the initial guardianship review hearing until the court's jurisdiction terminates.

At each guardianship review hearing determine whether:

- the child's current circumstances and placement are in the child's best interests;
- the permanency plan that is in effect is in the child's best interests; and
- reasonable efforts have been made to finalize the permanency plan that is in effect.

F.L. § 5-326(a)(5)(i)



DSS must file a written report with the court. At least 10 days before each guardianship review hearing, a local department shall investigate as needed to prepare a written report that summarizes the child's circumstances and the progress that has been made in implementing the child's permanency plan.

Hold a hearing when you receive this report. You may also schedule guardianship review hearings at termination of parental rights and after a current guardianship review. The hearing may then be cancelled if the child is adopted.

Adoption/Guardianship Nos. 11387 & 11388, 354 Md. 574 (1999)

A parent may request a guardianship review under these circumstances:

- The child is not placed for adoption within nine months of guardianship decree;
- The child has a disrupted placement and a new placement is not made within 120 days (a "disrupted placement" is when a child is permanently removed from the adopting home before a final adoption decree); or
- A final adoption decree has not been entered within two years after the adoption placement.

In addition, DSS must notify the court if any of these circumstances have occurred for a child freed for adoption.

HEARING

F.L. § 5-326(a)(3)(i)
F.L. § 5-326(a)(3)(ii) & (iii)

Unless waived, the parents must be given notice. Notice may be sent by mail. They may waive the right to notice expressly in the consent to guardianship or the guardianship decree.

Adoption/Guardianship Nos. 11387 & 11378, 354 Md. 574 (1999)

A parent is entitled to be heard and to participate at a guardianship review hearing. A parent is not a party solely on the basis of the right to notice or opportunity to be heard or participate at a guardianship review hearing.

F.L. § 5-326(a)(4)(i)

Notice is also required for the local department and the child's attorney. A child's caregiver must be given at least seven days' notice before a guardianship review hearing. The caregiver is entitled to be heard at a guardianship review hearing, but is not a party solely on the basis of the right to notice or opportunity to be heard at a guardianship review hearing.

F.L. § 5-326(a)(8)

C. & J.P. § 3-816.1

42 U.S.C.A. § 671(a)(15)(C)

At the hearing, review the progress made toward the child's permanent placement. Evaluate whether the child's current placement and circumstances are in the child's best interests. Determine whether DSS made reasonable efforts to achieve the permanent placement. You may order whatever action you consider appropriate to meet the child's needs. These orders are not limited to efforts to achieve adoption.



QUESTIONS ON ADOPTIVE PLACEMENT

What efforts have been made to place this child for adoption?

Do you have any prospective adoptive parents?

Is the child placed in an adoptive home?

Is the adoptive placement appropriate?

Has DSS prepared an adoption assistance agreement?

Are post-adoption services being offered?

Has an adoption petition been filed?

Is an adoption hearing scheduled?

When will the final adoption decree be entered?

Are there any barriers for finalization?

SUBSEQUENT REVIEWS

F.L. § 5-326



Hold subsequent review hearings at least every 12 months until the court's jurisdiction ends. You may also order DSS to give you periodic progress reports. Court review continues until the child:

Is adopted;

Is in another long-term family placement; or

Turns 21 years old.

If a long-term placement changes, hold another hearing.

RELATED TOPICS

CL-105 Notice & Service

CL-203 Reasonable Efforts

CL-301 Other Permanent Plans

CL-402 Consent to Guardianship

**RESOURCE
GUIDELINES**

Hold all stakeholders accountable for competently fulfilling their roles and responsibilities.

Have the order available for dissemination to the parties immediately at the conclusion of the hearing.

Set any additional needed hearings before the end of the hearing.

Collaborate and coordinate with all stakeholder groups involved to identify and eliminate barriers to timely permanent placement.

Participate in local, statewide, and national trainings related to permanency practices and processes.

Guardianship Review Hearing

(Initial Guardianship Review hearing must be held w/in six months from the date of the guardianship order. Subsequent guardianship review hearings are to occur at least every 12 months).

**INTRODUCTORY
REMARKS**

- Call case, including child's name, case number, type of hearing
- Introduction of parties/note who is present
- Explanation of proceeding
- Specify whether former parents have waived their right to notice of the hearings
- Advisement of rights (parent(s) who has not waived right to notice and caregivers have opportunity to be heard or participate, possibility of change in permanency plan, etc.)

**ADEQUACY OF NOTICE
AND SERVICE OF
PROCESS ISSUES**

- Address identification and location of parents who have not waived right to notice
- Advise of responsibility to notify court of change of address
- Address whether caregivers have been notified of hearing, and if present, advise of opportunity to be heard

**TROUBLESHOOTING
AND NEGOTIATIONS
BETWEEN PARTIES**

- Motions
- Reports submitted timely (should be provided by DSS at least 10 days prior to hearing)
- Rules

**TESTIMONY/
EVIDENTIARY
OFFERINGS**

- Live testimony
- Proffer
- Stipulation
- Reports, including report by local Citizen's Review Board
- Introduction of written evidence (records)

**SERVICES UPDATE/
IMMEDIATE SERVICE/
CASE PLAN
KEY DECISIONS THE
COURT SHOULD MAKE**

- Determine whether the parties, former parents, former parents' attorneys, if applicable, caregivers, CASAs, and other interested persons have been notified and if so, whether they are present
- Determine the child's status as to placement, mental and physical health, education, behavior, etc.
- Determine extent of services provided to child and caregivers or potential placement options
- Determine whether the agency has made reasonable efforts to finalize the current permanency plan
****Note: The presumption is that the permanency plan, at least at the initial guardianship review hearing, is adoption.****
- Determine whether the agency has made reasonable efforts since the last adjudication of reasonable efforts to meet the needs of the child's placement, mental and physical health, education, safety, connectedness to family, neighborhood and preparation for independence

- Required considerations:
 - _____Extent to which DSS has complied with the law, regulations, state or federal court orders or stipulated agreements regarding provision of services;
 - _____Whether DSS has ensured that:
 - _____a caseworker is promptly assigned and actively responsible for the case at all times;
 - _____the caseworker's identity has been promptly communicated to the court and the parties; and
 - _____the caseworker is knowledgeable about the case and has received all pertinent files and information timely.
- Determine future permanency plan

KEY COMPONENTS OF THE COURT'S ORDER

- Specify permanency plan and reasons for particular plan. This should include timelines for achievement of the plan.
- If applicable, specify compelling reasons for choosing a permanency plan outside of adoption, and document why this plan is in the child's best interest
- Specify whether the agency has made reasonable efforts to finalize the permanency plan and specify the specific efforts that were made or that should have been made
- Specify custody and placement
- Specify visitation with parents, siblings, and others, if applicable
- Set date and time of next hearing

Note:

Maryland Properly Conducted Hearings Checklists
 Excerpts from the RESOURCE GUIDELINES
 National Council of Juvenile and Family Court Judges

400 Guardianship (TPR)



GUARDIANSHIP (TERMINATION OF PARENTAL RIGHTS) *Guardianship Petition*

CL-401

SUMMARY

DSS files a guardianship petition to free a child for adoption. After notice, a parent must file an objection within 30 days to contest the guardianship. A guardianship decree terminates parental rights.

GOALS

F.L. § 5-301
F.L. § 5-302
F.L. § 5-325

Guardianship proceedings free children for adoption. “Guardianship” means guardianship with the right to consent to adoption or long-term care short of adoption. (It is not the same as “guardianship of the person,” which does not terminate the parent’s rights.) Only a minor may be placed under this type of guardianship.

APPOINTMENT OF ATTORNEY

F.L. § 5-307(a)

Parent

The public defender is required to provide representation. The court must also appoint an attorney when the parent whose rights will be terminated is a minor.

To determine whether a disability makes a parent incapable of effectively participating in a case, the juvenile court, on its own motion or motion of a party, may order examination of the parent.

F.L. § 5-307(b)

Child

The court must appoint an attorney to represent a child. The attorney should be the attorney who currently represents the child in a pending CINA case or guardianship case; unless that attorney is not under contract with the Department. Then the court must strike the appearance of that attorney and appoint a different attorney.

F.L. § 5-307(c)

Dual Representation

An attorney or firm may represent more than one party in a case only if the Maryland Rules of Professional Conduct allow.

F.L. § 5-307(d)

Compensation

An attorney appointed under this section may be compensated for reasonable fees, as approved by a juvenile court.

F.L. § 5-303(b)

The goals of the guardianship statute are to:

- Timely provide permanent and safe homes for children consistent with their best interests;
- Protect children from unnecessary separation from their parents;
- Ensure adoption only by individuals fit for the responsibility;
- Protect parents from making hurried or ill-considered decisions to terminate parental rights;
- Protect prospective adoptive parents by giving them information about children and their backgrounds; and
- Protect adoptive parents from future disturbances of their relationships with children by former parents.

C. & J.P. § 3-804

WHEN

F.L. § 5-525.1(a)
F.L. § 5-313(b)

C. & J.P. § 3-823(g)(1)
F.L. § 5-525.1(b)(1) & (2)
42 U.S.C.A. § 675(5)(E)

F.L. § 5-525.1(b)(3)
42 U.S.C.A § 675(5)(E)

F.L. § 5-710(b)

CONTENTS

F.L. § 5-313
F.L. § 5-301(e)
Md. Rule 11-501(d)

Juvenile court has exclusive original jurisdiction over guardianship petitions on CINA children. For any child found to be a CINA, the court also has exclusive original jurisdiction over guardianship and termination of parental rights until the child reaches the age of 21.



If DSS determines adoption is in the child's best interests, it must refer the case to the agency attorney within 60 days. The agency attorney must file a guardianship (TPR) petition within 60 days of receiving the referral. The child's attorney may also file a guardianship petition.



If you order adoption as the child's permanency plan, DSS must file a guardianship petition. At a permanency planning hearing or any other court review, you may order DSS to file a guardianship petition within 30 days, or, if the local department does not support the plan, within 60 days;



DSS must also file a guardianship petition, when ordered, if:

- The child is an abandoned infant;
- The parent has been convicted in Maryland or another state of a crime of violence against the child, other parent, another of the parent's children, or any member of the household;
- The parent has been convicted in Maryland or another state of aiding or abetting, conspiring, or soliciting to commit such a crime; or
- The child has been in foster care at least 15 of the last 22 months (actually 16 months of placement since a child does not "enter" care until 30 days after placement).

There are exceptions to the above situations.

DSS does not have to file a guardianship petition if:

- The child is in relative care;
- DSS has documented a compelling reason why termination is not in the child's best interests; or
- DSS has not provided the family with necessary reunification services consistent with the case plan's time period ("reasonable efforts").



DSS may file a Guardianship (TPR) petition on a maternal drug user.

DSS must offer her drug treatment within 90 days of the child's birth. If the mother is not in the recommended level of drug treatment within 45 days of the DSS offer or if she does not fully participate in the program or its equivalent, DSS may begin guardianship proceedings.

DSS or the individual subject to guardianship files the guardianship petition.

The petition requests DSS be given guardianship of the child with the right to consent to adoption or long-term care short of adoption. It must include the basis for the juvenile court's jurisdiction, the CINA docket number, and must be filed prior to the filing of a petition for adoption. You may order an investigation if necessary.

Md. Rule 9-103
F.L. § 5-301(e)

*Adoption/Guardianship of
Harold H.*, 171 Md. App.
564 (2006)

GUARDIANSHIP PETITION CHECKLIST

- Caption (“In re Adoption/Guardianship of (first name and first initial of last name of prospective adoptee or ward)”)
 - The name, address, age, business or employment, and employer of each petitioner
 - Name, address, and age of each child of each petitioner
 - Child’s name, gender, and date and place of birth
 - Each parent’s name, address, and age
 - Names and addresses of all persons who have had legal or physical care, custody, or control of the child since the child’s birth and the time period of each (if the child is in DSS custody, foster parents—other than the petitioner—do not have to be listed)
 - A statement of how the person to be adopted was located (including names and addresses of all intermediaries or surrogates), attaching a copy of all advertisements used to locate the person, and a copy of any surrogacy contract
 - Interstate Compact compliance statement if the child is from another state
 - Facts known to each petitioner that may indicate that a party has a disability that makes the party incapable of consenting or participating effectively in the proceedings or, if no such facts are known to the petitioner, a statement to that effect
 - Facts known to the petitioner that a parent may be entitled to an attorney
 - If a petitioner desires to change the name of the person to be adopted, the name that is desired
 - As to each petitioner, a statement whether the petitioner has ever been convicted of a crime other than a minor traffic violation and, if so, the offense and the date and place of the conviction
 - That petitioner is not aware of any required consent has been revoked
 - Basis for juvenile court jurisdiction
 - CINA docket number
 - Grounds and factors favoring termination of parental rights if the parent does not consent
 - A request for court approval of adoptive placement, if necessary
 - Verification

Md. Rule 9-103(d)

If DSS does not know a fact required in the petition, it must give the reason in the petition or subsequent affidavit.

25 U.S.C.A. § 1912

The petition should state if the child is an Indian child. If so, it should name the child’s tribe, parents, and any Indian custodian. It must allege that the child will suffer emotional or physical harm if returned home. It must also say DSS made “active efforts” to prevent the placement.

Md. Rule 9-103(b)(2)(A)
& (c)

Guardianship Petition Exhibits
Certified copy of the child's birth certificate
Certified copy of the parent's death certificate, if parent is deceased
Certified copy of the marriage certificate, or divorce decree, of each petitioner, if any
Certified copy of adoptee's temporary custody and guardianship orders, if any
A copy of any existing adoption home study by a licensed child placement agency concerning a petitioner, criminal background reports, or child abuse clearances
Originals of all required consents (including any revocations and whether they are valid)
Affidavits of attempts to locate missing or unknown parents, if applicable
Interstate Compact approval forms, if applicable
A brief statement of the health of each petitioner signed by a physician or other health care provider if applicable

Md. Rule 9-103(d)

If a required exhibit is unavailable, DSS must give the reason in the petition or a subsequent affidavit. DSS must file it as soon as possible if it becomes available.

NOTICE

F.L. § 5-315
F.L. § 5-316
F.L. § 5-322(b)
Md. Rule 9-104
Md. Rule 9-105(c)
25 U.S.C.A § 1912

Notice shall be sent by the clerk of the court within five days after a petition for guardianship of a child is filed with a juvenile court to:

Notice of Guardianship Petition
The local department
Parent (unless notice waived in writing)
Putative father claiming paternity
Child's attorney in CINA proceedings
Parents' attorneys of record in CINA proceedings and any appointed by court
Child's tribe and Indian custodian (if Indian child)
For more information, <i>see</i> CL-105.

OBJECTION

Md. Rule 9-107

A parent must file a notice of objection to contest the guardianship. Any person who may participate in a guardianship may file an objection, including the child. The notice of objection states the reasons for the objection and requests an attorney be appointed. The notice is served by delivery or mail to the parties.

Md. Rule 9-106

Appoint an attorney for an eligible parent who requests one. If the petition shows a parent is entitled to an attorney, appoint one promptly after the petition is filed.

Md. Rule 9-105(b)

Appoint an attorney for a parent with a disability prior to time for objections. Where a parent is alleged to be disabled, the procedure is slightly different. If the parties agree that a party who is not represented has a disability that makes the party incapable of consenting or participating effectively in the proceeding, the court shall appoint an attorney who shall represent the disabled party throughout the proceeding. This attorney would then file the notice of objection, if applicable.

Md. Rule 9-107(b)



Time for Filing Objection:	
Time	Condition
Within 30 days of service of show cause order	If served within Maryland
Within 60 days of service of show cause order	If served outside Maryland
Within 90 days of service of show cause order	If served outside the U.S.
Within 30 days of posting of show cause order	If served by publication
For more information on consents to guardianship, <i>see</i> CL-402	
For more information on contested guardianship, CL-403	

PARENTS WHO FAIL TO RESPOND

The Maryland Court of Appeals has held that a parent who does not file a timely notice of objection after being served the show cause order is deemed by statute to have consented and has no power to revoke that consent. In fact, the judge does not have authority to extend the statutory deadline or consider objections filed late. The parent may also not challenge the decision collaterally for lack of notice. *Adoption No. 93321055*, 344 Md. 458 (1997). However, such a parent does have a right to notice of and to participate in a guardianship review if the child’s adoption is delayed or disrupted. *Adoption/Guardianship Nos. 11387 & 11388*, 354 Md. 574 (1999).



Do children have a right to hearing if the parents do not oppose the guardianship petition? Yes, according to the Maryland Court of Appeals. A child is a party to a guardianship proceeding and a party has a right to notice of the guardianship hearing. This right to notice in turn triggers a right to object to granting the guardianship petition. Once the child objects, the court must hold a hearing. *Adoption/Guardianship No. T97036005*, 358 Md. 1 (2000).



DECREE

You may grant the guardianship petition if each living parent consents.

F.L. § 5-318
F.L. § 5-323(c)

There are three types of consents: Written, Deemed, and Oral.

Md. Rule 9-111
F.L. § 5-319
F.L. § 5-321(c)

Written consent – If a party consents in writing, the court cannot enter the guardianship judgment until after a 30-day revocation period has expired, 30 days after the consent is filed, or 30 days after the child’s birth, whichever is later. If the revocation could be filed in another court, check with that court’s

clerk for any papers filed or get an affidavit that no papers were filed.

F.L. § 5-320(a)(1)(iii)

Deemed consent – A parent who fails to respond to notice is deemed to consent. You may consider the results of any court-ordered investigation as well. Deemed consent cannot be revoked.

F.L. § 5-303(b)

Oral consent – Consent that is knowingly and voluntarily given in open court, cannot be revoked.

F.L. § 5-325

A guardianship decree terminates parental rights. It ends the parent’s rights, duties, and obligations toward the child. It also eliminates the need for the parent’s notice of or consent to the child’s adoption. It empowers DSS to consent to joint guardianship, custody, or other long-term placement that the agency finds in the child’s best interests.

F.L. § 5-325

There is no limitation to granting a ‘joint guardianship’ between DSS and a caregiver. It grants the caregiver limited authority such as the right to consent to medical care and make educational decisions for the child. It does not give the caregiver the authority to consent to adoption. That authority remains with DSS.

RELATED TOPICS

CL-104 Jurisdiction & Venue
 CL-104 Interstate Compact
 CL-105 Notice & Service
 CL-107 Indian Child Welfare Act
 CL-108 Father/Paternity
 CL-301 Guardian of the Person

BEST PRACTICES

Hold all stakeholders accountable for competently fulfilling their roles and responsibilities.

RESOURCE GUIDELINES

Have the order available for dissemination to the parties immediately at the conclusion of the hearing.

Set any additional needed hearings before the end of the hearing.



GUARDIANSHIP (TERMINATION OF PARENTAL RIGHTS) *Consent*

CL-402

SUMMARY

Consensual guardianship requires the consent of the child's mother and any father. The consent must list the parents' rights. A written consent may be revoked within certain timeframes. However, an oral consent given in open court or a consent by failure to object is not revocable.

WHO MUST CONSENT

F.L. § 5-320
F.L. § 5-323
F.L. § 5-322

Must consent to a guardianship. Any parent who fails to respond to notice is deemed to consent. After a contested hearing, the court may terminate the rights of a parent who objects to the guardianship.

A man is the child's father if he:

- Was married to the mother at the child's conception;
- Was married to the mother at the child's birth;
- Has been adjudicated the child's father; or
- Has acknowledged paternity, orally or in writing, and the mother agrees he is the father.

F.L. § 5-306
F.L. § 5-301

In addition, a father includes a man who does not meet the above criteria but is:

- Named as the father on the child's birth certificate;
- Identified by the mother as the child's father; or
- On the basis of genetic testing, the man is indicated to be the child's biological father.

F.L. § 5-301
F.L. § 5-306

However, he is not a father under these circumstances if he signs a denial of paternity or the court determines he is not the child's father.

A minor parent may consent to guardianship. However, the consent is not valid unless a court-appointed counsel attaches an affidavit stating it was knowingly and willingly given. The person's age at the time of signing the consent determines if the parent is a minor.

F.L. § 5-321(a)(3)(v)
F.L. § 5-301

You must hold a contested hearing if the child objects. This is required even if the parents do not object. A child is a party to a guardianship proceeding. A party has a right to notice of the guardianship hearing. This right to notice in turn triggers a right to object to granting the guardianship petition. Once the child objects, the court must hold a hearing over the factors of the child's adjustment and the bond with the parent(s).

Adoption/Guardianship No. T97036005, 358 Md. 1 (2000)

PROCEDURE

F.L. § 5-321(a)(3)(iii)
F.L. § 5-321(c)
Md. Rule 9-102

WRITTEN CONSENT

A consent is not valid unless it contains notice of the parent's rights.

These include the:

- The right to revoke the consent within 30 days of signing it, or 30 days after the consent is filed as required;
- The search rights of adopted persons and biological parents; and
- The right to file a disclosure veto to prevent release of any information on the parent to the adopted person.

Form at Md. Rule 9-102(c) (consent to adoption/guardianship or request for attorney or counseling)

www.lawlib.state.md.us



F.L. § 5-321(b)

Written consent must be served on the other parties.

(1) Whenever a local department receives consent to guardianship of an individual before a guardianship petition is filed, the local department promptly shall:

- (i) file the consent in the individual's CINA case; and
- (ii) serve a copy of the consent on:
 1. each living parent of the individual;
 2. the parent's last attorney of record in the CINA case; and
 3. the individual's last attorney of record in the CINA case.

(2) Whenever a party obtains consent to guardianship after a guardianship petition is filed, the party promptly shall:

- (i) file the consent with the juvenile court in which the petition is pending; and
- (ii) serve a copy of the consent on each other party.

F.L. § 5-321(d)

Invalidation of conditional consent or acquiescence. If, at any time before a juvenile court enters an order for adoption of a child, the juvenile court finds that a condition of consent to guardianship will not be fulfilled, the consent or acquiescence becomes invalid. Failure to satisfy the condition does not automatically invalidate the guardianship.

25 U.S.C.A. § 1913



For an Indian child, the consent to guardianship must be signed before a judge. The judge must certify that the terms and consequences of the consent were explained in detail and were fully understood by the parent. This certificate must note whether the instrument was explained in English or was interpreted into another language the parent understood. Any consent given before or within 10 days after the Indian child's birth is invalid. (*See* CL-107 at page 5.)



F.L. § 303(b)(4)

ORAL CONSENT

You must be satisfied that the oral consent was knowingly and voluntarily given. One of the goals of the guardianship statute is to protect parents from hurried or ill-considered decisions to give up a child.

**ORAL CONSENT TO GUARDIANSHIP QUESTIONS**

- Did the parent request an attorney?
- Did the parent receive counseling?
- Did the parent waive notice of this hearing?
- Has the parent been fully advised of the consequences?
- Is the parent's consent freely and voluntarily given?
- Was the parent promised anything in return for the consent?
- Is the parent aware that the consent cannot be revoked after 30 days?
- Does the parent understand the adoptee's search rights?
- Does the parent want to file a disclosure veto?
- Does the parent understand this decision is final?
- Has the other parent consented or had parental rights terminated?
- What are the child's wishes as to the guardianship?

Is this a consent for guardianship of an Indian child?
 If English is not the parent’s first language, was all information provided to the parent in the parent’s native language, both verbally and in writing?

REVOCATION

F.L. § 5-321(c)
 Md. Rule 9-102(c)



Written Consent

A parent who signs a consent to guardianship may revoke it. The revocation must be within 30 calendar days of executing the consent, or 30 days after the consent is filed as required. The person must revoke by a signed writing actually delivered by mail or in person to the court clerk.

F.L. § 5-320(a)(1)(iii)(C)
Adoption/Guardianship No. T00032005, 141 Md. App. 570 (2001)

Deemed consent – A consent by failure to object is not revocable. The Court of Appeals has held that a parent who does not file a timely notice of objection after being served with a guardianship petition show cause order is deemed by statute to have consented and has no power to revoke that consent. *Adoption/Guardianship No. 93321055*, 344 Md. 458 (1997). However, the proper procedure for admissions is unresolved.

F.L. § 5-321(a)(2)
 F.L. § 5-321(c)(2)

Oral consent – Consent that is knowingly and voluntarily given in open court cannot be revoked. Consent to guardianship entered into before a judge on the record shall include a waiver of a revocation period. This type of consent is irrevocable.

25 U.S.C.A. § 1913

Indian Child Welfare Act Handbook by B.J. Jones (ABA Family Law Section, 1995)



An Indian child’s parent may revoke a consent to guardianship. Indian Child Welfare Act provisions are summarized below:

Revocation of Consent to Guardianship for Indian Child		
If an Indian child’s adoption:	Then the parent or Indian custodian may:	And the court must:
Is not yet final;	Revoke the consent at any time;	Return the child to the parent or Indian custodian.
Has been final less than two years;	Revoke the consent if it was obtained through fraud or duress;	Return the child to the parent or Indian custodian.
Has been final for two years;	Never revoke the consent;	Reject requests to revoke.
Is set aside or vacated;	Petition for return of the child;	Grant the petition unless there is a showing that it would not be in the child’s best interests.

RELATED TOPICS

- CL-103 Parent’s Right to Counsel
- CL-105 Notice & Service
- CL-107 Indian Child Welfare Act
- CL-108 Paternity
- CL-505 Search Rights of Adoptee’s
- CL-505 Disclosure Veto



SUMMARY

You may terminate parental rights if it is in the best interests for a child who has been abandoned or had a CINA finding. Proof must be by clear and convincing evidence.

GROUNDS FOR TPR

F.L. § 5-323(b)
M.L.B. v. S.L.J., 519 U.S.
 102 (1996)
Adoption/Guardianship No.
A91-71A, 334 Md. 538
 (1994)

Adoption/Guardianship No.
T97036005, 358 Md. 1
 (2000)

If a parent withholds their consent to a guardianship petition, the court must consider whether termination of parental rights (TPR) is in the child's best interests. Parents have a constitutional right to raise their children. They are entitled to due process in a TPR proceeding. Termination is a drastic procedure that must be strictly scrutinized and clearly justified to avoid improperly depriving parents of a child.

You must also hold a hearing if the child objects, even if the parents do not. A child is a party to a guardianship proceeding. A party has a right to notice of the guardianship hearing. This right to notice in turn triggers a right to object to granting the guardianship petition. Once a party objects, the court must hold a hearing.

Guardianship (TPR) must be in the child's best interests.

F.L. § 5-323(c)

F.L. § 5-301
 F.L. § 5-306



I. Abandoned Child

Abandonment—the identity of the child's parents must be unknown. You must find no one has claimed to be the child's parent within the last 60 days. DSS must have made a thorough investigation. DSS must expedite termination of parental rights on behalf of abandoned infants.

After an abandonment finding, you may terminate the parental rights. If the child is abandoned, you need not consider the factors listed below.

II. Child Not Abandoned

Required factors to be addressed on the record:

In determining what is in the child's best interest, you must give **primary consideration to the health and safety of the child.**

You must also give **consideration to other factors** in determining whether terminating a parent's rights is in the child's best interest, including:

- All services offered to the parent, the timeliness and nature of the services, and if the parent or DSS fulfilled their obligations under a services contract. (The court need not consider this if reunification efforts were waived under C. & J.P. § 3-812, or if a parent committed acts listed under F.L. § 5-323(d)(3)(iii) – (v).)
- The parent's effort to change circumstances, condition or conduct to make it in the child's best interest to be returned home. This includes: if the parent maintained regular contact with the child, DSS, and child's caregiver (if feasible).

- The parent's contribution to the child's support
- A parental disability that makes the parent consistently unable to care for the child, or
- If additional services would be likely to bring about a lasting parental adjustment so that the child could be returned to the parent within a time not to exceed 18 months from the date of placement.
- Whether the parent abused or neglected the child or another minor, and the seriousness of the abuse or neglect; or if the parent involuntarily lost the parental rights to a sibling
- The child's emotional ties with and feelings toward the child's parents, siblings and others who may affect the child's best interests and adjustment to community, home, placement and school.

See Factors, CL-404 for more detailed analysis.

ADDITIONAL MANDATORY CONSIDERATIONS

Rashawn H., 402 Md. 477
(2007)

Substantive Presumption of Best Interest

In addition to the court's careful consideration of the above statutory factors, and the specific findings based on the evidence for each of the factors, the court's ruling must specifically address the substantive presumption – a presumption of law and fact – that it is in the best interest of children to maintain the parental relationship.

Rebutting the Substantive Presumption

The presumption protecting the parental right may be rebutted upon a showing either that the parent is “unfit” or that “exceptional circumstances” exist that would make continuation of the relationship with the parent detrimental to the best interest of the child.

“The facts must demonstrate an unfitness to have a continued parental relationship with the child, or exceptional circumstances that would make a continued parental relationship detrimental to the best interest of the child.” (*Rashawn H.* at 499.)

Standard of Proof: Clear and Convincing Evidence

The kind of unfitness or exceptional circumstances necessary to rebut the substantive presumption must be established by clear and convincing evidence. (*Id.*) The court must state the specific facts that meet the evidentiary standard.

The court's role in making this determination:

“The court's role in TPR cases is to give the most careful consideration to the relevant statutory factors, to make specific findings based on the evidence with respect to each of them, and, mindful of the presumption favoring a continuation of the parental relationship, determine expressly whether those findings suffice either to show an unfitness on the part of the parent to remain in a parental relationship with the child or to constitute an exceptional circumstance that would make a continuation of the parental relationship detrimental to the best interest of the child.” (*Rashawn H.* at 501.)

The governing TPR/Guardianship statute, F.L. § 5-323, was amended to

F.L. § 5-323(d)

adopt the holding of in *Rashawn H.*, and requires a trial court considering the factors in the statute to articulate by clear and convincing evidence whether parental unfitness or exceptional circumstances rebuts the presumption that maintaining a parental relationship is in the best interest of a child.

25 U.S.C.A. § 1912

Best Interests Factors	
All Cases	CINA Cases
Child's health and safety	Parental disability
DSS efforts to reunify	Abuse or Neglect
Services before placement	Repeated neglect
Case plan compliance	Drug-addicted infant
Parent's progress	Aggravated circumstances
Child's emotional ties	
Child's adjustment	
For a detailed discussion of each factor, see CL-404.	

25 U.S.C.A. § 1912(d)

For an Indian child, proof of harm must be shown in addition to state grounds. An Indian child's parents cannot have their rights terminated unless continuing custody with the parent would result in serious emotional or physical damage to the child. A qualified expert witness must testify to this. Proof must be beyond a reasonable doubt.

PRETRIAL

Md. Rule 9-107(f)

DSS must also show "active efforts" to prevent termination. Before terminating the parent's rights under the Indian Child Welfare Act, the state must satisfy the court that "active efforts" have been made to provide remedial services and rehabilitative programs to prevent the breakup of Indian families and that these efforts have proved unsuccessful.

Md. Rule 9-107(d) & (e)

Inspection of court record. If the person filing the notice of objection has standing and the notice is timely, you may permit the person to inspect the court record. You may impose reasonable conditions in your inspection order.

F.L. § 5-307



DSS may file a response to the notice of objection. DSS may challenge the standing of the person filing the notice of its timeliness. The response must be filed within 10-days after service of the notice. If DSS files a response, you must hold a hearing promptly to consider the issues raised in the response.

Md. Rule 11-501(e)

Parents subject to TPR are entitled to court-appointed counsel. Appoint an attorney for each unrepresented parent, who objects, is a minor, or is disabled.

TPR TRIAL

F.L. § 5-319(a)
Abigail C., 138 Md. App. 570 (2001)
 Md. Rule 9-109(a)
 Md. Rule 11-501(f)

You may consolidate the CINA and TPR cases. If the cases involve the same respondent child, you may consolidate or sever the cases as justice requires.

Trial must be held within 180 days after the petition is filed.

Md. Rule 5-101

F.L. § 5-317

C. & J.P. § 3-816

C. & J.P. § 3-822

C. & J.P. § 3-822(a)(2)(ii)

F.L. § 5-323(b)

Santosky v. Kramer, 455 U.S.
745 (1982)*Adoption/Guardianship No.*
94339058, 120 Md. App. 88
(1998)

Hold a hearing in all contested actions. Only a judge may preside at a TPR trial.

The Rules of Evidence apply at a TPR trial.

Supplemental Report. Before entering a judgment of guardianship, you may require a supplemental report from a neutral investigator.

Admissibility of Reports

Studies and examinations of the child, family, environment, and other relevant matters are admissible at a CINA disposition, but not a CINA adjudication. According to *Adoption/Guardianship No. 95195062*, 116 Md. App. 443(1997), this provision does not apply to TPR proceedings. The court found that a psychiatric report on the mother was also not admissible under the “existing mental, emotional, and physical condition” exception because the declarant was the psychiatrist not the mother. In addition, it was not admissible as a “business record” because it involved an expert opinion and no custodian of the records authenticated the report. The psychiatrist should have testified.

Admit any prior court findings on the child’s parentage. Findings at prior CINA hearing on the identity of each parent may be used in termination proceedings for that child.

Admit any prior court findings on the whereabouts of the child’s parents. At each prior CINA hearing, the court has informed the parents present of their continuing obligation to keep the clerk of the court apprised of their current address.

The standard of proof for TPR is clear and convincing evidence. Clear and convincing evidence is greater than preponderance of the evidence but less than beyond a reasonable doubt. Evidence should be “clear”—certain, obvious, and unambiguous—and “convincing”—reasonable, persuasive, and believable.



CLEAR AND SUCCINCT “HOW TO” ADVICE FOR FINDING UNFITNESS OR EXCEPTIONAL CIRCUMSTANCES IN ALL POST-RASHAWN GUARDIANSHIPS:

“[T]he court will have to make clear and specific findings with respect to each of the relevant statutory factors and, to the extent that any amalgam of those findings lead to a conclusion that exceptional circumstances exist sufficient to rebut the presumption factoring the parental relationship, explain clearly how and why that is so.” *Rashawn H.*, 402 Md. at 505.

RELATED TOPICS

CL-102 Parental Findings
CL-103 Right to Counsel
CL-105 Notice & Service
CL-106 Evidence
CL-107 Indian Child Welfare Act
CL-109 Appeals

Guardianship/Termination of Parental Rights Hearing

(Should be held within 180 days from filing of petition. Petition should be filed within 30 days from change of plan to adoption, or within 60 days if department does not agree with court's plan of adoption.)

INTRODUCTORY
REMARKS

- Call case, including child's name, case number, type of hearing
- Introduction of parties/note who is present
- Explanation of proceeding/standard of clear and convincing evidence
- Advisement of rights (right to counsel, establishment of paternity)

ADEQUACY OF NOTICE
AND SERVICE OF
PROCESS ISSUES

- Motions concerning defects in service

TROUBLESHOOTING
AND NEGOTIATIONS
BETWEEN PARTIES

- Motions
- Reports submitted timely

TESTIMONY/
EVIDENTIARY
OFFERINGS

- Live testimony
- Proffer
- Stipulation
- Reports
- Judicial Notice

SERVICES UPDATE/
IMMEDIATE SERVICE/
CASE PLAN
KEY DECISIONS THE
COURT SHOULD MAKE

- Determine if all parties were properly identified and served
- If voluntary, determine if consents were voluntary and informed
- Determine if termination is in the best interest of the child (Evidence must be clear and convincing)
- Required considerations (*see above*, F.L. § 5-323 (c) & (d))
- Determine if reasonable efforts were made to finalize the permanency plan

KEY COMPONENTS OF
THE COURT'S ORDER

- Specify all persons present and how any absent parent was provided with appropriate notice
- If applicable, specify efforts that were made by the Court to determine whether consent was voluntary/valid
- Specify whether TPR is in the best interest of the child. If so, apply the facts of the case to the statutory factors
- Specify whether the agency made reasonable efforts to finalize the permanency plan
- Specify custody and placement, visitation, if applicable
- Set date and time of next hearing, i.e., guardianship review hearing or CINA review hearing (w/in 180 days)

Note:

Maryland Standards for Properly Conducted Hearings
Excerpts from the RESOURCE GUIDELINES
National Council for Juvenile and Family Court Judges



Factors

SUMMARY

In terminating parental rights, address the statutory factors for all cases when determining whether TPR is in the child’s best interests. Address all factors for each child in your order.

STATUTORY FACTORS

Adoption/Guardianship No. 87A262, 323 Md. 12 (1991)

Adoption/Guardianship No. 94339058, 120 Md. App. 88 (1998)

F.L. § 5-323

Adoption/Guardianship No. 87A262, 323 Md. 12 (1991)

Adoption/Guardianship No. 95195062, 116 Md. App. 443 (1997)

F.L. § 5-323(d)

F.L. § 5-323(d)

F.L. § 5-323(d)(1)

F.L. § 5-323(e)

F.L. § 5-323(d)(1)

You must weigh all the statutory factors when making your decision. If one factor is against termination, it does not mandate you dismiss the action. Consider all factors together and determine what is in the child’s best interests. The child’s best interests are paramount.

Each factor should be addressed in your opinion. This is mandated if you terminate parental rights. If the TPR trial involves more than one child, address each factor separately for each child. However, it is not reversible error if you do not address each factor when you dismiss a termination of parental rights petition.

Consider these factors in determining the child’s best interests:

- Child’s health and safety;
- DSS efforts to reunify;
- Services before placement;
- Case plan compliance;
- Parent’s progress;
- Child’s emotional ties; and
- Child’s adjustment.

Child’s Health and Safety—This is the primary consideration.

DSS’s Efforts to Reunify—Consider the services DSS offered to facilitate the child’s reunification with the parent. Evaluate the timeliness, nature, and extent of reunification services. You may waive reunification efforts if there is clear and convincing evidence it is in the child’s best interests.

REUNIFICATION EFFORTS

In *Adoption/Guardianship No. 94339058*, 120 Md. App. 88 (1998), DSS made adequate reunification efforts toward an incarcerated father by offering him a service agreement after his release even though its plan was adoption. The father’s efforts were “too little and too late” given his failure to contact the agency before its decision to terminate. DSS did not have to wait for the full six-months agreed on in the service agreement to pass before filing for guardianship when there was no progress after two-months.

Services before Placement—Assess any services offered to the parent before the child’s placement. Include services offered by any agency or professional.

F.L. § 5-323(d)(1)

Case Plan Compliance—Look at any agreement between DSS and the parent. Determine the extent of each party's compliance with it.

F.L. § 5-323(d)(2)

Parent's Progress—Evaluate the results of the parent's efforts to adjust circumstances, conduct, or conditions to make reunification in the child's best interests. Do not give significant weight to incidental visits, communication, or contributions. Also, you may not consider whether denying TPR would induce the parent to rehabilitate.

Adoption/Guardianship No. J9610436 & J9711031, 368 Md. 666 (2002)



QUESTION ON PARENT'S PROGRESS

Did the parent maintain regular contact with the child?
 Did the parent pay reasonable support, if financially able?
 Did the parent maintain regular contact with the child's custodian?
 Would more services likely result in reunification within 18 months of the child's placement?

F.L. 5-323(d)(4)(i)

Child's Emotional Ties—Consider the child's feelings towards and emotional ties to:

- Parents;
- Siblings; or
- Other persons who may significantly affect the child's best interests.

F.L. § 5-323(d)(4)(ii)

Child's Adjustment—Factor in the child's adjustment to home, school, and community.

Victor A., 386 Md. 288 (2005)

ADJUSTMENT TO FOSTER HOME

You may consider any changes in the child after being placed in foster care under the adjustment factor. For example, in *Adoption/Guardianship No. 94339058*, 120 Md. App. 88 (1998), the Court of Special Appeals agreed with the juvenile court judge that the children's adjustment to the foster home was a factor that favored TPR. When the eight-year-old entered care, he suffered from language problems, attention deficit disorder, and depression. At the time of the TPR, he was an "A" student in elementary school. His seven-year-old brother also had developmental delays at placement but had since successfully completed Headstart.

F.L. § 5-323

Adoption/Guardianship No. 94339058, 120 Md. App. 88 (1998)

If the child has been adjudicated CINA, you must also consider whether any of the following continuing or serious conditions or acts exist:

- Parental disability;
- Abuse or neglect;
- Repeated neglect;
- Drug-addicted infant;
- Aggravated circumstances; or

This section is satisfied if any one of these conditions exist.

F.L. § 5-323(d)(2)(iii)

Parental Disability—The disability renders the parent consistently unable to meet the child’s needs for long periods of time. These needs may be immediate or ongoing and physical or psychological.

(Note: This is not the Md. Rule 9-105 disability, *see* CL-401.)

Adoption/Guardianship of Harold H., 171 Md. App. 564 (2006)

Types of Disability		
Type	Definition	Citation
Mental Disorder	A behavioral or emotional illness that results from a psychiatric or neurological disorder, including a mental illness, that so substantially impairs the mental or emotional functioning of an individual as to make care or treatment necessary or advisable for the welfare of the individual or the safety of the person or property of another, but not including mental retardation of a minor child placed in a facility that provides formal programs of basic care, social work, and health care services.	Health-Gen. § 10-101(f)
Mental Retardation	A developmental disability that is evidence by significantly sub-average intellectual functioning and impairment in the adaptive behavior of an individual.	Health-Gen. § 7-101(1)
Alcohol or Drug Dependence	A disease that is characterized by a pattern of pathological use of alcohol or a drug with repeated attempts to control its use and with significant negative consequences in at least one of the following areas of life: medical, legal, financial, or psycho-social along with physical symptoms of withdrawal or tolerance.	Health-Gen. § 8-101(d), (e), (j), (k)

F.L. § 5-323(d)(3)(i)

Abuse or Neglect—The parent has abused or neglected any child in the family and the seriousness of the abuse and neglect.

F.L. § 5-323(d)(3)(iii)

Repeated Neglect—The parent failed repeatedly to give the child adequate food, clothing, shelter, and education. Alternatively, the parent repeatedly failed to give the child any other care or control necessary for the child’s physical, mental, or emotional health. The parent must be physically and financially able to provide such care. Spiritual treatment alone cannot be a basis for finding neglect.

F.L. § 5-323(d)(3)(ii)

Drug-Exposed Infant—The child was born addicted to or tests showed the child had a significant presence of cocaine, heroin, or a derivative of either and the mother refused admission or failed to fully participate in the recommended level of drug treatment.

F.L. § 5-323(d)(3)(iv) & (v)

Aggravated Circumstances—The parent has:

- Subjected the child to torture, chronic abuse, or sexual abuse;
- Subjected the child to chronic and life-threatening neglect;
- Been convicted in Maryland or another state of a crime of violence against the child, other parent, another of the parent’s children, or any member of the household;
- Been convicted in Maryland or another state of aiding or abetting, conspiring, or soliciting to commit such a crime; or
- Involuntarily lost parental rights to the child’s siblings.

C. & J.P. § 3-812
C.P. § 14-101

Crimes of Violence
Abduction
Arson in the first degree
Assault in the first degree or with intent to murder, rape, rob, or commit a sexual offense in the first or second degree
Carjacking
Kidnapping
Manslaughter, except involuntary manslaughter
Mayhem and maiming
Murder
Rape
Robbery
Sexual offense in the first or second degree
Use of a handgun in the commission of a felony
Attempt to commit any of the above crimes

F.L. § 5-323

You *may* waive reunification efforts if you find any of these aggravated circumstances.



You must also make specific findings as to whether or not returning the child to the parent poses an unacceptable risk to the child’s future safety. This is relevant when you address the factor on DSS efforts to reunify.

**MANDATORY
ADDITIONAL
CONSIDERATIONS**

Rashawn H., 402 Md. 477 (2007)

Substantive Presumption of Best Interest

In addition to the court’s careful consideration to the above statutory factors, and the specific findings based on the evidence for each of the factors, the court must recognize that there is a substantive presumption – a presumption of law and fact – that it is in the best interest of children to maintain the parental relationship.

Rebutting the Substantive Presumption

The presumption protecting the parental right may be rebutted upon a showing either that the parent is “unfit” or that “exceptional circumstances” exist which would make continuation of the relationship with the parent detrimental to the best interest of the child.

“The facts must demonstrate an unfitness to have a continued parental

relationship with the child, or exceptional circumstances that would make a continued parental relationship detrimental to the best interest of the child.” (*Rashawn H.* at 499.)

Standard of Proof: Clear and Convincing Evidence

The kind of unfitness or exceptional circumstances necessary to rebut the substantive presumption must be established by clear and convincing evidence. The court must state the specific facts that meet the evidentiary standard.

The court’s role in making this determination:

“The court’s role in TPR cases is to give the most careful consideration to the relevant statutory factors, to make specific findings based on the evidence with respect to each of them, and, mindful of the presumption favoring a continuation of the parental relationship, determine expressly whether those findings suffice either to show an unfitness on the part of the parent to remain in a parental relationship with the child or to constitute an exceptional circumstance that would make a continuation of the parental relationship detrimental to the best interest of the child.” (*Id.* at 501.)

GUARDIANSHIP/TPR ORDER CHECKLIST

- Child’s health and safety
- DSS efforts to reunify
- Services before placement
- Case plan compliance
- Parent’s progress
- Child’s emotional ties
- Child’s adjustment
- Parental disability
- Abuse or neglect
- Repeated neglect
- Drug-addicted infant
- Aggravated circumstances
- Do these factors rebut the substantive presumption of best interest, as discussed in *Rashawn H.* by clear and convincing evidence that the parents are unfit or that exceptional circumstances exist that would make continuation of that relationship detrimental to the best interest of the child?

RELATED TOPICS

- CL-101 Juvenile Court Goals
- CL-203 Reasonable Efforts
- CL-203 Aggravated Circumstances
- CL-207 Spiritual Treatment
- CL-207 Drug-Exposed Infants
- CL-401 Maternal Drug Abuse

500 Adoption



ADOPTION (AFTER TERMINATION OF PARENTAL RIGHTS) *Petition*

CL-501

SUMMARY

An adoptive parent may be single or married. DSS must do a criminal records check on adopting parents. An adoption petition for a CINA child is filed in juvenile court. Notice must be given to all parties.

WHO MAY ADOPT

F.L. § 5-345(b)(1)

Any adult may petition a juvenile court for an adoption.

F.L. § 5-345(b)(2)

Married adopting parents must file jointly. A joint petition is not required if the spouse is:

- Separated under circumstances that give the petitioner grounds for divorce or annulment; or
- Not competent to join in the petition.

F.L. § 5-345(d)

An adopting parent whose marital status changes before the final adoption decree must amend the petition to reflect the marital status change.

PLACEMENT

42 U.S.C. § 671(a)(20)

DSS must do a background check on the adopting parents. It must check for criminal records before approval. Potential adoptive parents may not be approved if they were convicted of child abuse or neglect, spousal abuse, a crime against children (including child pornography), or a violent crime such as rape, sexual assault, or homicide. Someone with a felony conviction within the last five years for physical assault, battery, or a drug-related offense also may not be approved. This requirement does not apply to foster parents, who go through criminal checks when licensed.

42 U.S.C.A. § 671(a)(23)

DSS cannot deny or delay placing a child in an approved out-of-state adoptive home. DSS must offer a fair hearing to approved out-of-state adoptive parents who believe Maryland has delayed or denied the placement. This requirement applies to all states. Violations could result in loss of federal funds.

42 U.S.C.A. § 1996
25 U.S.C.A. § 1901 *et seq.*

DSS may not deny or delay a child's placement because of race. The only exception is to follow tribal placement preferences for an Indian child.

25 U.S.C.A. § 1915(a)

For Indian children, DSS must follow tribal placement preferences. Under the Indian Child Welfare Act, preference must be given, in the absence of good cause to the contrary, to:

- Extended family members;
- Other members of the child's tribe; or
- Other Indian families.

PETITION CONTENTS

Md. Rule 9-103(a) & (b)

ADOPTION PETITION CHECKLIST

A petition for adoption must be signed and verified by each petitioner and must contain the following information:

- Caption ("In re Adoption/Guardianship of [adoptee])"
- The name, address, age, business or employment, and employer of each petitioner

- The name, sex, and date and place of birth of the person to be adopted
- The name, address, and age of each parent of the person to be adopted
- The relationship, if any, of the person to be adopted to each petitioner
- The name, address, and age of each child of each petitioner
- A statement of how the person to be adopted was located (all advertisements or surrogacy contract must be attached)
- If adoptee is a minor, names and addresses of all persons who have had legal or physical care, custody, or control of the child since the child's birth and the time period of each (if the child is in DSS custody, foster parents—other than the petitioner—do not have to be listed)
- Interstate Compact compliance statement if a minor adoptee is from another state
- Reason why petitioner's spouse is not joining the petition, if applicable
- Agency or person with guardianship and custody of the child and proceeding in which the guardian was appointed, if applicable
- Facts known to each petitioner that may indicate that a party has a disability that makes the party incapable of consenting or participating effectively in the proceedings, or, if no such facts are known to the petitioner, a statement to that effect
- Facts known to the petitioner that the adoptee or parent may be entitled to an attorney
- Child's full name after adoption if name change desired
- Statement of any criminal convictions of adopting parents along with date and place of conviction (excluding minor traffic violations)
- That petitioner is not aware of any required consent that has been revoked
- A request for court approval of adoptive placement, if necessary
- Verification

Md. Rule 9-103(d) & (e)

If the petitioner does not know a fact required in the petition, the petitioner must give the reason in the petition or a subsequent affidavit. If DSS knows but declines to disclose a fact to the adopting parents, it must disclose it in writing to the court when the petition is filed.

Md. Rule 9-103(b)(2)(A)
F.L. § 5-345

Adoption Petition Exhibits
Certified copy of the adoptee's birth certificate
Certified copy of adopting parents' marriage certificate, if applicable
Certified copy of each adopting parent's divorce judgment, if applicable
Certified copy of any death certificate of a person whose consent would be required if that person were living.
Certified copy of adoptee's temporary custody and guardianship orders
Copy of any pre-placement home study report on the adopting parents
Documentation of all adopting parent's annual income
Originals of all required consents (including any revocations and whether they are valid)

Proof of guardianship or relinquishment of parental rights granted by an administrative, executive, or judicial body of a state or other jurisdiction; a certification that the guardianship or relinquishment was granted in compliance with the jurisdiction's laws

Affidavit describing attempts to locate missing or unknown parents, if applicable

Copy of any agreement between parent and adopting parents

Interstate Compact approval forms, if applicable

Brief doctor's statement on each adopting parent's health

If applicable, notice of filing of adoption for CINA adoption

Md. Rule 9-103(b)(2)(B)

Documents that shall be filed before a judgment of adoption is entered:

- Any post-placement report relating to the adoption, if applicable
- A brief statement of the health of the child by a physician or other health care provider
- If required by law, an accounting of all payments and disbursements of any money or item of value made by or on behalf of each petitioner in connection with the adoption
- An affidavit of counsel for a child, if the child is represented
- The required post-placement ICPC form, if applicable

Juvenile court has exclusive original jurisdiction over CINA adoptions. A petition to adopt a child found to be a "child in need of assistance" must be filed in the juvenile court.

NOTICE

FL. § 5-346
Md. Rule 9-104

Notice of Adoption Petition

Requirement. -- Within five days after a petition for adoption of a child is filed with a juvenile court, the clerk shall send a copy of the petition, with the notice of filing that was attached to the petition, to:

- (1) the local department; and
- (2) the child's last attorney of record in the guardianship case.

RELATED TOPICS

CL-101 Multiethnic Placement Act - Interethnic Adoption Provisions (MEPA-IEP)
CL-104 Jurisdiction & Venue
CL-104 Interstate Compact on the Placement of Children (ICPC)
CL-105 Notice & Service
CL-107 Indian Child Welfare Act (ICWA)

BEST PRACTICES

Strictly limit continuances to when a party or witness is ill or when service of process has not taken place.

RESOURCE GUIDELINES

Hold all stakeholders accountable for competently fulfilling their roles and responsibilities.

Collaborate and coordinate with all stakeholder groups involved in adoptions to identify and eliminate barriers to timely adoptions.

Participate in local, statewide, and national trainings related to adoption practices and processes.



ADOPTION (AFTER TERMINATION OF PARENTAL RIGHTS) *Decree*

CL-502

SUMMARY

Determine if all required consents to adoption have been filed. Hold a hearing and enter the adoption decree. A final adoption decree cannot be invalidated after one year.

CONSENTS

F.L. § 5-350(a)

DSS must consent to the adoption of a CINA child. An adoptee that is age 10 or older must also consent.

F.L. § 5-350(b)

DSS may not withhold consent solely because of race, religion, color, or national origin. Not consenting to the child's adoption because the pre-adoptive parents are of a different race, religion, color, or national origin than the child is prohibited.

Md. Rule 9-106(a)
F.L. § 5-307

You shall appoint an attorney for the child. The court must appoint an attorney to represent a child. The attorney should be the attorney who currently represents the child in a pending CINA case or guardianship case, unless that attorney is not under contract with the Department. Then the court must strike the appearance of that attorney and appoint a different attorney.

PRE-ADOPTION HEARING CHECKLIST

Md. Rule 9-109(b)(2)
F.L. § 5-349

Items to have been investigated prior to the hearing:

- Have the necessary consents been filed?
- Has any required consent been revoked?
- Have the appropriate notices been served?
- Have all questioned or disputed issues been resolved?
- Are the adopting parents fit and proper to be the child's parents?
- Will the child's best interests be served by the adoption?
- Have other appropriate matters been resolved?

Md. Rule 9-103(b)(2)(B)

Before the court enters a final adoption decree, the adopting parent must also file:

- Any post-placement report on the adoption (Md. Rule 9-111(c))
- Brief doctor's statement on the minor adoptee's health
- An accounting of all payments made to petitioners related to the adoption, if required (Md. Rule 9-110)
- An affidavit of counsel if a minor or incompetent parent is consenting
- Interstate Compact post-placement form, if required
- Proposed adoption decree
- Department of Health and Mental Hygiene certificate of adoption form.

Md. Rule 9-103(d)

If a required exhibit is unavailable, the petitioner must give the reason in the petition or a subsequent affidavit. The petitioner must file it as soon as possible if it becomes available.

MEDICAL HISTORY

F.L. § 5-356
F.L. § 5-357
F.L. § 5-360
Md. Rule 9-113

DSS must compile a medical history. It must include the biological parents' pertinent medical and mental health history. It may not contain any identifying information on the biological parents. It may be shared with prospective adoptive parents. Adoptive parents are entitled to the child's medical records, excluding any identifying information on the biological parents.

HEARING

Md. Rule 9-109(a) & (b)(1)
F.L. § 5-347

F.L. §§ 5-401 to 5-415

JUDGMENT

F.L. § 5-352
Md. Rule 9-111(d)

Hall v. Vallandingham, 75
Md. App. 187 (1988)
*Adoption/Guardianship
No. 11137*, 106 Md.
App. 308 (1995)

F.L. § 5-353

25 U.S.C.A. § 1913

Hold a hearing on the adoption petition. Hold a hearing even if it is not contested. The court shall hold a hearing and make findings on the record on the merits of a guardianship or adoption petition as provided by the Family Law Article. The adopting parents and the adoptee must be present unless excused for good cause. The public may be excluded at the discretion of the court.

Consider the following in approving an adoption petition:

Any adoption subsidy to be paid by the state.



Enter a final adoption decree. If the child's name is changed, include this in your order.

The adopting parents become the child's legal parents. The child becomes their legal child. The biological parents are relieved of all parental duties and divested of all parental rights. It makes the biological parents "legal strangers" to the child. The adopted child inherits intestate from the adoptive parents but not the biological parents. This is true under an inter-locutory or final adoption decree.



A final adoption decree cannot be invalidated one year after entry. The only exception is under the Indian Child Welfare Act.

Revocation of Consents to Guardianship

If an Indian child's adoption:	Then the parent or Indian custodian may:	And the court must:
Is not yet final;	Revoke the consent at any time;	Return the child to the parent or Indian custodian.
Has been final less than two years;	Revoke the consent if it was obtained through fraud or duress;	Return the child to the parent or Indian custodian.
Has been final for two years;	Never revoke the consent;	Reject requests to revoke.
Is set aside or vacated;	Petition for return of the child;	Grant the petition unless there is a showing that it would not be in the child's best interests.

RELATED TOPICS

CL-104 Interstate Compact
CL-105 Notice & Service
CL-107 Indian Child Welfare Act

BEST PRACTICES

Have the Decree available for dissemination to the parties immediately at the conclusion of the hearing.

RESOURCE GUIDELINES

Set any additional needed hearings before the end of the adoption hearing.



ADOPTION

CL-503

(WITHOUT PRIOR TERMINATION OF PARENTAL RIGHTS)

Petition

SUMMARY

A Part III Adoption applies when there has been no prior guardianship or termination of parental rights. An adoptive parent may be single or married. DSS must do a criminal records check on adopting parents. An adoption petition for a CINA child is filed in juvenile court. Notice must be given to all parties.

WHO MAY ADOPT

Any adult may petition a juvenile court for an adoption.

F.L. § 5-331(b)(1)

Married adopting parents must file jointly. A joint petition is not required if the spouse is:

F.L. § 5-331(b)(2)

- Separated under circumstances that give the petitioner grounds for divorce or annulment; or
- Not competent to join in the petition.

F.L. § 5-331(d)

An adopting parent whose marital status changes before the final adoption decree must amend the petition to reflect the marital status change.

APPOINTMENT OF ATTORNEY

F.L. § 5-307(a), (b), (c), (d)

Unless the public defender is required to provide representation, the court must appoint an attorney to represent a parent who has a disability that makes the parent incapable of effectively participating in the case. The court must also appoint an attorney when the petitioner for guardianship or adoption is a minor.

To determine whether a disability makes a parent incapable of effectively participating in a case, the juvenile court, on its own motion or motion of a party, may order examination of the parent.

The court must appoint an attorney to represent a child unless the court finds that it is not in a child's best interests, in which case the court must decide:

- If the attorney who currently represents the child in a pending CINA case or guardianship case is appropriate to represent the child; or
- If the attorney who currently represents the child is not under contract with the Department, the court must strike the appearance of that attorney.

An attorney or firm may represent more than one party in a case only if the Maryland Lawyers' Rules of Professional Conduct allow.

An attorney appointed under this section may be compensated for reasonable fees, as approved by a juvenile court.

F.L. § 5-307(a)

The juvenile court may assign counsel fees and costs among the parties to a case as the juvenile court considers appropriate and the parties' economic situations allow.

PLACEMENT

F.L. § 5-301(g)

DSS places the child with an adoptive family. Placement for adoption means the child lives with a person or family who intends to adopt the child and is approved by DSS to adopt.

42 U.S.C. § 671(a)(20)

DSS must do a background check on the adopting parents. It must check for criminal records before approval. Potential adoptive parents may not be approved if they were convicted of child abuse or neglect, spousal abuse, a crime against children (including child pornography), or a violent crime such as rape, sexual assault, or homicide. Someone with a felony conviction within the last five years for physical assault, battery, or a drug-related offense also may not be approved. This requirement does not apply to foster parents, who go through criminal checks when licensed.

42 U.S.C.A. § 671(a)(23)

DSS cannot deny or delay placing a child in an approved out-of-state adoptive home. DSS must offer a fair hearing to approved out-of-state adoptive parents who believe Maryland has delayed or denied the placement. This requirement applies to all states. Violations could result in loss of federal funds.

42 U.S.C.A. § 1996

25 U.S.C.A. § 1901 *et seq.*

DSS may not deny or delay a child's placement because of race. The only exception is to follow tribal placement preferences for an Indian child.

25 U.S.C.A. § 1915(a)

For Indian children, DSS must follow tribal placement preferences. Under the Indian Child Welfare Act, preference must be given, in the absence of good cause to the contrary, to:

- Extended family members;
- Other members of the child's tribe; or
- Other Indian families.

PETITION CONTENTS

Md. Rule 9-103(a) & (b)

ADOPTION PETITION CHECKLIST

A petition for adoption must be signed and verified by each petitioner and must contain the following information:

- Caption (“In re Adoption/Guardianship of [adoptee]”)
- The name, address, age, business or employment, and employer of each petitioner
- The name, sex, and date and place of birth of the person to be adopted
- The name, address, and age of each parent of the person to be adopted
- The relationship, if any, of the person to be adopted to each petitioner
- The name, address, and age of each child of each petitioner
- A statement of how the person to be adopted was located (all advertisements or surrogacy contract must be attached)
- If adoptee is a minor, names and addresses of all persons who have had legal or physical care, custody, or control of the child since the child's birth and the time period of each (if the child is in DSS custody, foster parents—other than the petitioner—do not have to be listed)
- Interstate Compact compliance statement if a minor adoptee is from another state
- Reason why petitioner's spouse is not joining the petition, if applicable
- Agency or person with guardianship and custody of the child and proceeding in which the guardian was appointed, if applicable
- Facts known to each petitioner that may indicate that a party has a disability that makes the party incapable of consenting or participat-

- ing effectively in the proceedings, or, if no such facts are known to the petitioner, a statement to that effect
- Facts known to the petitioner that the adoptee or parent may be entitled to an attorney
- Child's full name after adoption if name change desired
- Statement of any criminal convictions of adopting parents along with date and place of conviction (excluding minor traffic violations)
- That petitioner is not aware of any required consent that has been revoked
- A request for court approval of adoptive placement, if necessary
- Verification

Md. Rule 9-103(d) & (e)

If the petitioner does not know a fact required in the petition, the petitioner must give the reason in the petition or a subsequent affidavit. If DSS knows but declines to disclose a fact to the adopting parents, it must disclose it in writing to the court when the petition is filed.

Md. Rule 9-103(b)(2)(A)
E.L. § 5-331

Adoption Petition Exhibits
Certified copy of the adoptee's birth certificate
Certified copy of adopting parents' marriage certificate, if applicable
Certified copy of each adopting parent's divorce judgment, if applicable
Certified copy of any death certificate of a person whose consent would be required if that person were living.
Certified copy of adoptee's temporary custody and guardianship orders
Copy of any pre-placement home study report on the adopting parents
Documentation of all adopting parents' annual income
Originals of all required consents (including any revocations and whether they are valid)
Proof of guardianship or relinquishment of parental rights granted by an administrative, executive, or judicial body of a state or other jurisdiction; a certification that the guardianship or relinquishment was granted in compliance with the jurisdiction's laws
Affidavit describing attempts to locate missing or unknown parents, if applicable
Copy of any agreement between parent and adopting parents
Interstate Compact approval forms, if applicable
Brief doctor's statement on each adopting parent's health
If applicable, notice of filing of adoption for CINA adoption

Md. Rule 9-103(b)(2)(B)

Documents that shall be filed before a judgment of adoption is entered:

- Any post-placement report relating to the adoption, if applicable
- A brief statement of the health of the child by a physician or other health care provider
- If required by law, an accounting of all payments and disbursements of any money or item of value made by or on behalf of each petitioner in connection with the adoption

- An affidavit of counsel for a child, if the child is represented.
- The required post-placement ICPC form, if applicable.

C. & J.P. § 3-804(a)

Juvenile court has exclusive original jurisdiction over CINA adoptions.

A petition to adopt a child found to be a “child in need of assistance” must be filed in the juvenile court.

NOTICE

F.L. § 5-333
Md. Rule 9-104

Notice Requirement

Within five days after a petition for adoption of a child is filed under this Part III of this subtitle with a juvenile court, the clerk shall send a copy of the petition, with the notice of filing that was attached to the petition, to:

- the local department with custody of the child;
- each of the child’s living parents who has not waived the right to notice;
- each living parent’s last attorney of record in the CINA case; and
- the child’s last attorney of record in the CINA case.

Method -- Notice under this section shall be by first-class mail.

Parental address -- Notice to a parent under this section shall be sent to the parent’s last address known to the juvenile court.

25 U.S.C.A. § 1912

Indian Child

If the child is the member of an Indian tribe, the parent or Indian custodian and the Indian child’s tribe shall be notified by registered mail with return receipt requested. If the tribe is unknown, the Secretary of the Interior shall receive the notice.

No foster care placement or termination of parental rights proceeding shall be held until at least ten days after receipt of notice by the parent or Indian custodian and the tribe or the Secretary.

RELATED TOPICS

CL-101 Interethnic Placement Act (IEPA)
CL-104 Jurisdiction & Venue
CL-104 Interstate Compact on the Placement of Children (ICPC)
CL-105 Notice & Service
CL-107 Indian Child Welfare Act (ICWA)

BEST PRACTICES

Strictly limit continuances to when a party or witness is ill or when service of process has not taken place.

RESOURCE GUIDELINES

Hold all stakeholders accountable for competently fulfilling their roles and responsibilities.

Collaborate and coordinate with all stakeholder groups involved in adoptions to identify and eliminate barriers to timely adoptions.

Participate in local, statewide, and national trainings related to adoption practices and processes.



ADOPTION

CL-504

(WITHOUT PRIOR TERMINATION OF PARENTAL RIGHTS)

Decree

SUMMARY

Determine if all required consents to adoption have been filed. Hold a hearing and enter the adoption decree. A final adoption decree cannot be invalidated after one year.

CONSENTS

F.L. § 5-338(a)(1),(2) & (3)

Consents must be obtained.

DSS must consent to the adoption of a CINA child.

An adoptee that is age 10 or older must also consent. A child under the age of 10 must not object.

A parent's consent must be:

- from at least one of the child's parents, who is represented by an attorney; and
- the parent has had an opportunity to receive adoption counseling and guidance services; and
- the parent consents to the adoption;
 - in writing; or
 - knowingly and voluntarily, on the record before the juvenile court; and
- if the parent does not consent, then the parent:
 - is dead; or
 - despite reasonable efforts as provided in F.L. § 5-316, cannot be located; or
 - has not contacted the local department with custody of the child or the child for at least 180 days immediately before the filing of the petition; and
 - fails to respond to a show cause order served under F.L. § 5-334.

F.L. § 5-338(b)

DSS may not withhold consent solely because of race, religion, color, or national origin. Not consenting to the child's adoption because the pre-adoptive parents are of a different race, religion, color, or national origin than the child is prohibited.

Md. Rule 9-104(c)

F.L. § 5-334

F.L. § 5-339

Each person whose consent is required must be given notice. Service may be made by entry and service of a show cause order to the person's last known address. Notice is not required if the right is waived in the written consent. Receipt of notice does not give parent standing at the adoption.

PRE-ADOPTION HEARING CHECKLIST

Md. Rule 9-109(b)(2)

F.L. § 5-337

Items to have been investigated prior to the hearing:

- Have the necessary consents been filed?
- Has any required consent been revoked?
- Have the appropriate notices been served?
- Have all questioned or disputed issues been resolved?
- Are the adopting parents fit and proper to be the child's parents?
- Will the child's best interests be served by the adoption?
- Have other appropriate matters been resolved?

Md. Rule 9-103(b)(2)(B)

Md. Rule 9-103(d)

F.L. § 5-356

F.L. § 5-357

F.L. § 5-360

Md. Rule 9-113

HEARING

F.L. § 5-336

Md. Rule 9-109(a) & (b)(1)

F.L. § 5-335

F.L. § 5-401 to 5-415

JUDGMENT

F.L. § 5-341

Md. Rule 9-111(d)

Hall v. Vallandigham, 75
Md. App. 187 (1988)
Adoption/Guardianship No.
11137, 106 Md. App. 308
(1995)

F.L. § 5-342

Before the court enters a final adoption decree, the adopting parent must also file:

- Any post-placement report on the adoption (Md. Rule 9-111(c))
- Brief doctor's statement on the minor adoptee's health
- An accounting of all payments made to petitioners related to the adoption, if required (Md. Rule 9-110)
- An affidavit of counsel if a minor or incompetent parent is consenting
- Interstate Compact post-placement form, if required
- Proposed adoption decree
- Department of Health and Mental Hygiene certificate of adoption form

If a required exhibit is unavailable, the petitioner must give the reason in the petition or a subsequent affidavit. The petitioner must file it as soon as possible if it becomes available.

MEDICAL HISTORY

DSS must compile a medical history. It must include the biological parents' pertinent medical and mental health history. It may not contain any identifying information on the biological parents. It may be shared with prospective adoptive parents. Adoptive parents are entitled to the child's medical records, excluding any identifying information on the biological parents.

Timing of Hearing

A juvenile court may not enter an order for adoption of a child under this Part III of this subtitle before the later of:

- 30 days after the birth of the child;
- expiration of the time set for revocation of consent, and not waived, under F.L. § 5-339; or
- expiration of the time to respond to show cause orders issued under this subtitle.

Hold a hearing on the adoption petition. You must hold a hearing. The adopting parents and the adoptee must be present unless excused for good cause. The public is excluded at the discretion of the court.

Consider the following in approving an adoption petition:

- Any adoption subsidy to be paid by the state.

Enter a final adoption decree. If the child's name is changed, include this in your order.

The adopting parents become the child's legal parents. The child becomes their legal child. The biological parents are relieved of all parental duties and divested of all parental rights. It makes the biological parents "legal strangers" to the child. The adopted child inherits intestate from the adoptive parents but not the biological parents. This is true under an interlocutory or final adoption decree.

Revocation of Consent to Guardianship for Indian Child		
If an Indian child's adoption:	Then the parent or Indian custodian may:	And the court must:
Is not yet final;	Revoke the consent at any time;	Return the child to the parent or Indian custodian.
Has been final less than two years;	Revoke the consent if it was obtained through fraud or duress;	Return the child to the parent or Indian custodian.
Has been final for two years;	Never revoke the consent;	Reject requests to revoke.
Is set aside or vacated;	Petition for return of the child;	Grant the petition unless there is a showing that it would not be in the child's best interests.

25 U.S.C.A. § 1913

RELATED TOPICS

BEST PRACTICES

RESOURCE GUIDELINES

A final adoption decree cannot be invalidated one year after entry. The only exception is under the Indian Child Welfare Act.

- CL-104 Interstate Compact
- CL-105 Notice & Service
- CL-107 Indian Child Welfare Act

Have the Decree available for dissemination to the parties immediately at the conclusion of the hearing.

Set any additional needed hearings before the end of the adoption hearing.

**SUMMARY**

Adoption records prior to the year 2000 are closed but those after are open to adult adoptees. Biological parents and adult adoptees may apply for reunion services. They may also seek a match through the adoption registry.

ACCESS

F.L. § 5-356 *et. seq.*
Md. Rule 9-112(b)

The child placement agency may release medical or non-identifying information to the adoptee or biological parent. Medical information for the adoptee may only be obtained from the biological parent if the court appoints an intermediary to obtain it. Under no circumstances may the court order the biological parents' identity or location be released to the adoptee.

An adult adoptee age 21 or older may apply to the Department of Health and Mental Hygiene for access to an original birth certificate and final adoption decree. The biological parent is entitled to these along with the adoptee's new birth certificate. If either a biological parent or an adoptee age 20 or older files a disclosure veto, any information about the individual is not released.

25 U.S.C.A § 1917

Adult adoptees are entitled to information on their Indian heritage. An adopted Indian child who reaches age 18 may petition the court that entered the adoption decree for information on their Indian heritage. The court must inform them of their tribal affiliation and give them any other information necessary to protect any rights flowing from the tribal relationship.

REUNION SERVICES

F.L. §§ 5-4B-01 to 5-4B-12

Adult adoptees and biological parents may apply for reunion services. A biological parent or adoptee age 21 or older may apply to DSS for search, contact, and reunion services. A confidential intermediary looks at adoption records and then meets with the person the applicant is seeking. If that person consents to disclosure, the information is released to the applicant. If the person does not consent, cannot be found, or is deceased, the information is not disclosed. Parents whose rights were involuntarily terminated may not use this service.

F.L. §§ 5-4C-01 to 5-4C-07

Maryland also has an adoption registry. Adoptees over age 21 as well as biological mothers, fathers, and siblings may register. If there is a "match" (the adoptee and both biological parents or two or more sibling have registered), then the registrants are notified through a confidential contact. Under some circumstances, a match may be made if the adoptee and only one parent having registered. An adoptee with a biological sibling under age 21 with the same adoptive parents may not register.

RELATED TOPICS

CL-102 Confidentiality of Court Records
CL-107 Indian Child Welfare Act
CL-502 Adoptee's Medical History