LAWRENCE J. HOGAN, JR., Governor Ch. 423

Chapter 423

**(Senate Bill 765)**

AN ACT concerning

**CINA, Guardianship, Adoption, Custody, and Visitation – Disability of Parent, Guardian, Custodian, or Party**

FOR the purpose of establishing that, in any custody or visitation proceeding, the disability of a party is relevant only to the extent that the court finds, based on evidence in the record, that the disability affects the best interest of the child; requiring, in a certain custody or visitation proceeding, the party alleging that the disability of the other party affects the best interest of the child to bear a certain burden of proof; altering the definition of “disability” in certain provisions of law; providing for the construction of “disability” in certain provisions of law; and generally relating to the disability of certain individuals in certain CINA, guardianship, adoption, custody, and visitation proceedings.

BY repealing and reenacting, with amendments,

Article – Courts and Judicial Proceedings

Section 3–819(b)(2) and 3–819.2(a)

Annotated Code of Maryland

(2013 Replacement Volume and 2015 Supplement)

BY repealing and reenacting, without amendments,

Article – Courts and Judicial Proceedings

Section 3–819.2(g)

Annotated Code of Maryland

(2013 Replacement Volume and 2015 Supplement)

BY repealing and reenacting, with amendments,

Article – Family Law

Section 5–338(b), 5–350, 5–3A–35(b), 5–3B–19, 5–525(a), and

9–107

Annotated Code of Maryland

(2012 Replacement Volume and 2015 Supplement)

BY repealing and reenacting, without amendments,

Article – Family Law

Section 5–3A–35(a) and 5–525(d) and (j)

Annotated Code of Maryland

(2012 Replacement Volume and 2015 Supplement)

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

**Article – Courts and Judicial Proceedings**

3–819.

(b) (2) (i) 1. In this paragraph, “disability” means:

1. A physical or mental impairment that substantially limits one or more of an individual’s major life activities;
2. A record of having a physical or mental impairment that substantially limits one or more of an individual’s major life activities; or
3. Being regarded as having a physical or mental impairment that substantially limits one or more of an individual’s major life activities.

2. “Disability” shall be construed in accordance with the   
ADA Amendments Act of 2008, P.l. 110–325.

(ii) In, making a disposition on a CINA petition under this subtitle, a   
disability of the child’s parent, guardian, or custodian is relevant only to the extent that the court finds, based on evidence in the record, that the disability affects the ability of the parent, guardian, or custodian to give proper care and attention to the child and the child’s needs.

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3–819.2.

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| (a) | 1. In this section, “disability” means: |
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1. A physical or mental impairment that substantially limits one or more of an individual’s major life activities;
2. A record of having a physical or mental impairment that substantially limits one or more of an individual’s major life activities; or
3. Being regarded as having a physical or mental impairment that substantially limits one or more of an individual’s major life activities.

(2) “Disability” shall be construed in accordance with the ADA Amendments Act of 2008, P.l. 110–325.

(g) In determining whether to grant custody and guardianship to a relative or   
a nonrelative under this section, a disability of the relative or nonrelative is relevant only to

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the extent that the court finds, based on evidence in the record, that the disability affects the best interest of the child.

**Article – Family Law**

5–338.

(b) (1) (i) In this subsection, “disability” means:

1. A physical or mental impairment that substantially limits one or more of an individual’s major life activities;
2. A record of having a physical or mental impairment that substantially limits one or more of an individual’s major life activities; or
3. Being regarded as having a physical or mental impairment that substantially limits one or more of an individual’s major life activities.

(II) “Disability” shall be construed in accordance with the ADA Amendments Act of 2008, P.l. 110–325.

(2)A local department may not withhold consent for the sole reason that:

1. the race, religion, color, or national origin of a prospective adoptive parent differs from that of the child or parent; or
2. a prospective adoptive parent has a disability.

5–350.

(a) A juvenile court may enter an order for a child’s adoption under this Part IV   
of this subtitle only if:

1. for an individual under the age of 18 years, the individual’s guardian consents; and
2. for an individual who is at least 10 years old, the individual consents.

(b) (1) (i) In this subsection, “disability” means:

1. A physical or mental impairment that substantially limits one or more of an individual’s major life activities;
2. A record of having a physical or mental impairment that substantially limits one or more of an individual’s major life activities; or
3. Being regarded as having a physical or mental impairment that substantially limits one or more of an individual’s major life activities.

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(II) “Disability” shall be construed in accordance with the ADA Amendments Act of 2008, P.l. 110–325.

(2) A guardian may not withhold consent for the sole reason that:

1. the race, religion, color, or national origin of a prospective   
   adoptive parent differs from that of the child or parent; or
2. a prospective adoptive parent has a disability.

5–3A–35.

(a) A court may enter an order for a child’s adoption under this subtitle only if:

1. the child placement agency consents; and
2. for a child who is at least 10 years old, the child consents.

(b) (1) (i) In this subsection, “disability” means:

1. A physical or mental impairment that substantially limits one or more of an individual’s major life activities;
2. A record of having a physical or mental impairment that substantially limits one or more of an individual’s major life activities; or
3. Being regarded as having a physical or mental impairment that substantially limits one or more of an individual’s major life activities.

(Ii) “Disability” shall be construed in accordance with the ADA Amendments Act of 2008, P.l. 110–325.

(2)A child placement agency may not withhold consent for the sole   
reason that:

1. the race, religion, color, or national origin of a prospective   
   adoptive parent differs from that of the child or parent; or
2. a prospective adoptive parent has a disability.

5–3B–19.

(a) In ruling on a petition for a prospective adoptee’s adoption under this subtitle,

a court shall consider:

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1. all factors necessary to determine the prospective adoptee’s best interests; and
2. any report prepared for the court.

(b) (1) (i) In this subsection, “disability” means:

1. A physical or mental impairment that substantially limits one or more of an individual’s major life activities;
2. A record of having a physical or mental impairment that substantially limits one or more of an individual’s major life activities; or
3. Being regarded as having a physical or mental impairment that substantially limits one or more of an individual’s major life activities.

(II) “Disability” shall be construed in accordance with the ADA Amendments Act of 2008, P.l. 110–325.

1. In ruling on an adoption petition under this subtitle, a court may   
   not deny the petition solely because the petitioner:
2. is single or unmarried; or
3. has a disability.

5–525.

(a) (1) In this section, “disability” means:

1. A physical or mental impairment that substantially limits one or more of an individual’s major life activities;
2. A record of having a physical or mental impairment that substantially limits one or more of an individual’s major life activities; or
3. Being regarded as having a physical or mental impairment that substantially limits one or more of an individual’s major life activities.

(2) “Disability” shall be construed in accordance with the ADA Amendments Act of 2008, P.l. 110–325.

(d) (1) The local department shall provide 24–hour a day care and supportive

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services for a child who is committed to its custody or guardianship in an out–of–home placement on a short–term basis or placed in accordance with a voluntary placement agreement.

(2) (i) A child may not be committed to the custody or guardianship of

a local department and placed in an out–of–home placement solely because the child’s parent or guardian lacks shelter or has a disability or solely because the child’s parents are financially unable to provide treatment or care for a child with a developmental disability or mental illness.

(ii) The local department shall make appropriate referrals to emergency shelter services and other services for the homeless family with a child which lacks shelter.

(j) The Administration shall adopt regulations that:

(1) establish goals and specify permanency planning procedures that:

1. maximize the prospect for reducing length of stay in out–of–home placement in the best interests of children; and
2. implement the intent of this section;

(2) prohibit a local department from seeking the custody or

guardianship of a child for placement in foster care solely because the child’s parent or guardian lacks shelter or has a disability or solely because the child’s parents are financially unable to provide treatment or care for a child with a developmental disability or mental illness;

(3) specify the compelling reasons for placing a child in a local jurisdiction

other than the local jurisdiction where the child’s parent or guardian resides, under subsection (f)(3)(ii) of this section;

(4) require the local department to make appropriate referrals to emergency shelter and other services for families with children who lack shelter;

(5) establish criteria for investigating and approving foster homes,

including requirements for window coverings in accordance with § 5–505 of this subtitle;

(6) for cases in which the permanency plan recommended by the local department or under consideration by the court includes appointment of a guardian and rescission of the local department’s custody or guardianship of a child:

1. establish criteria for investigating and determining the suitability of prospective relative or nonrelative guardians; and
2. require the filing of a report with the court as provided in §

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3–819.2 of the Courts Article; and

(7) ensure that all children in foster care who are at least 18 years of age

have a birth certificate, a Social Security card, health insurance information, medical records, and a driver’s license or State–issued identification card at emancipation.

9–107.

(a) (1) In this section, “disability” means:

(2) (I) “Disability” means**:**

1. A physical or mental impairment that substantially limits one or more of an individual’s major life activities;
2. A record of having a physical or mental impairment that substantially limits one or more of an individual’s major life activities; or
3. Being regarded as having a physical or mental impairment that substantially limits one or more of an individual’s major life activities.

(ii) “Disability” shall be construed in accordance with the ADA Amendments Act of 2008, P.l. 110–325.

**(3)** “Supportive parenting services” means services that may assist an individual with a disability in the effective use of techniques and methods to enable the individual to discharge the individual’s responsibilities to a child as successfully as an individual who does not have a disability, including nonvisual techniques for individuals who are blind.

(b) (1) In any custody or visitation proceeding, the disability of a party is relevant only to the extent that the Court finds, based on evidence in the record, that the disability affects the best interest of the child.

(2) The party alleging that the disability of the other party affects the best interest of the child bears the burden of proving that the disability of the other party affects the best interest of the child.

(3) If the burden of proof is met, the party who has a disability shall have the opportunity to prove that supportive parenting services would prevent a finding that the disability affects the best interest of the child.

(4) If the court finds that the disability of a party affects the best interest of the child and denies or limits custody or visitation, the court shall specifically state in writing:

(I) The basis for the finding; and

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(II)The reason that the provision of supportive parenting services is not a reasonable accommodation to prevent the finding.

SECTION 2. AND BE IT FURTHER ENACTED, that this act shall take effect October 1, 2016.

**Approved by the Governor, May 10, 2016.**

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