IN THE
COURT OF APPEALS OF MARYLAND

SEPTEMBER TERM, 2015

CASE NO. 24

IN RE ADOPTION/GUARDIANSHIP OF DUSTIN R.

ON APPEAL FROM THE CIRCUIT COURT FOR ANNE ARUNDEL COUNTY,
SITTING AS A JUVENILE COURT
(The Honorable Paul F. Harris, Jr., Judge)

BRIEF OF AMICI CURIAE FIRST STAR, INC., ET AL., IN SUPPORT OF PETITIONER DUSTIN R.

JONATHAN G. CEDARBAUM
PAUL R.Q. WOLFSON
(admission pro hac vice pending)
SHIRLEY C. WOODWARD
(admission pro hac vice pending)
LAUREN N. MOORE
(admission pro hac vice pending)
WILMER CUTLER PICKERING HALE AND
DORR LLP
1875 PENNSYLVANIA AVENUE NW
WASHINGTON, DC 20006
(202) 663-6315
JONATHAN.CEDARBAUM@WILMERHALE.COM

ATTORNEYS FOR AMICI CURIAE

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STATEMENT OF THE CASE, QUESTIONS PRESENTED, AND STATEMENT OF FACTS

Amici adopt and incorporate by reference the Statement of the Case, Questions Presented, and Statement of Facts set forth in Petitioner's Brief.

INTERESTS OF AMICI CURIAE

Amici curiae include non-profit organizations, professional associations, and private law firms dedicated to protecting the rights of children and at-risk populations. This brief is joined by First Star, Inc.; Advocates for Children and Youth; the Baltimore Child Abuse Center; the Coalition to Protect Maryland's Children; the Family Tree; the Franklin Law Group, P.C.; Hope Forward, Inc.; the Law Offices of Darlene A. Wakefield, P.A.; the Maryland Chapter of the National Association of Social Workers; the Maryland State Council on Child Abuse and Neglect; Public Justice Center; and Randall & Sonnier, LLC.

First Star, Inc., is a national 501(c)(3) public charity that promotes practices that improve life for abused, neglected, and at-risk children in the United States. First Star uses research, public engagement, policy, education, and litigation to strengthen children's rights and advocate for system reform. First Star regularly provides testimony and other information to lawmakers and has filed numerous legal briefs as amicus curiae regarding issues affecting abused, neglected, and at-risk children. First Star has a direct interest in ensuring that disabled individuals continue to have vital, indeed life-saving, support and care as they reach age 21 and transition out of the foster care system.

Advocates for Children and Youth (ACY) is a non-profit organization founded by a group of community leaders in 1987 to improve the lives of Maryland children through policy change and program improvement. ACY works with government agencies and elected officials to continuously improve each child's present and future. Specifically, ACY advocates for the state's children in the community, the media, and the public policy arena. Through a multi-issue

platform, ACY advocates on a systemic basis to improve outcomes for foster youth in Maryland and champions solutions to child welfare, education, health and juvenile justice issues. ACY has an interest in ensuring that foster youth have access to continued support and care as they transition to adulthood.

The Baltimore Child Abuse Center (BCAC) is a non-profit agency that provides victims of child sexual abuse, trauma, and other adverse childhood experiences and their non-offending caretakers with comprehensive forensic interviews, medical treatment, and mental health treatment. BCAC advocates for the protection and care of child victims, along with other vulnerable youth and adults, on the local, state, and federal levels. BCAC has a direct interest in ensuring that Maryland's vulnerable populations receive the best resources the state has to offer, including resources that are vital to maintaining the quality of life that every individual deserves.

The Coalition to Protect Maryland's Children (CPMC) is a non-profit coalition of 17 organizational members and 5 individual members. CPMC uses its collective voice to propose policy reform, initiate legislation, engage in public education and media advocacy, and identify opportunities to promote meaningful child welfare reform. CPMC's mission is to combine and amplify the power of organizations and citizens working together to keep children safe from abuse and neglect. CPMC also strives to secure the resources needed to make meaningful and measurable improvements in safety, permanence, and well-being.

The Family Tree is a non-profit organization in Maryland dedicated to providing families with proven solutions to prevent child abuse and neglect. Through education and support, the Family Tree provides families with the tools they need to help children grow into healthy, productive, and competent adults. Through programs that nurture children and provide family education and support as well as community education and advocacy, the Family Tree helps to break cycles of child abuse and secure the welfare and protection of at-risk children.

The Franklin Law Group, P.C., is a U.S.-based child advocacy law firm located in Baltimore, Maryland. The Franklin Law Group is dedicated to the recognition and protection of children and youth's human rights. As strong advocates for justice and equality, the Franklin Law Group is committed to providing children—particularly the most marginalized—with a humane life. Since 2007, the Franklin Law Group has provided legal representation to over 4,000 abused and neglected children and youth—ages 0-21—in five counties in the State of Maryland. The Franklin Law Group has an interest in the care and protection of vulnerable dependents, including foster youth and disabled children.

Hope Forward, Inc., (formerly known as the Maryland Foster Youth Resource Center) is a non-profit organization founded in 2008 by an individual with personal foster care experience. Hope Forward's mission is to connect transitioning and former foster youth aged 17-25 to housing, employment, educational resources and supportive networks. Hope Forward strives to ensure that all young people aging out of the foster care system are provided with resources to avoid or recover from negative statistical outcomes, including incarceration, homelessness, and unemployment. The organization also works to include youth voices in child welfare programming and policies through advocacy. Over the past six years, Hope Forward has worked with over 600 youth and has partnered with public and private child welfare agencies in the State of Maryland and the District of Columbia to provide direct services to youth transitioning out of the foster care system.

The Law Offices of Darlene A. Wakefield, P.A., is the largest private child advocacy law firm in the State of Maryland. Over the course of the last 21 years, our attorneys have represented well over 30,000 abused and/or neglected child clients in Child In Need of Assistance and Termination of Parental Rights cases throughout the State. As child advocates, the Law Offices of Darlene A. Wakefield have a keen interest in this case due to its broad implications for young adults aging out of the foster care system. Equally important to our clients is the

issue of maintaining juvenile court authority to order government agencies to protect and provide for the best interests and welfare of at-risk children.

The National Association of Social Workers (NASW) is the largest membership organization of professional social workers in the world. The Maryland Chapter represents 4,000 social workers statewide. NASW has a dual mission—working to advance professional social work practice and promoting human rights and social and economic justice. Guided by a comprehensive Code of Ethics, social workers are committed to advancing social policies and advocating for the vulnerable and voiceless. NASW-Maryland Chapter has a strong interest in protecting the rights and interests of vulnerable and at-risk youth in the State of Maryland.

The Maryland State Council on Child Abuse and Neglect (SCCAN) is one of three citizen review panels required by the Federal Child Abuse Prevention and Treatment Act and the Family Law Article of the Maryland Code. SCCAN is an advisory body that evaluates the extent to which State and local agencies are effectively discharging their child protection responsibilities. SCCAN also provides public outreach and comment to assess the impact of current procedures and practices on children and families in the community. Representatives to SCCAN include professional and advocacy groups, private social service agencies, and medical, education, and religious communities with interest and expertise in child abuse and neglect. SCCAN has a direct interest in ensuring that abused and neglected children, especially those with life-threatening disabilities, continue to receive support and care as they reach age 21 and transition out of the foster care system. *SCCAN representatives from the Department of Human Resources and the Department of Health and Mental Hygiene abstained from participating in the Council's decision to support this brief.*

The Public Justice Center (PJC) is a non-profit civil rights and anti-poverty legal services organization founded in 1985. PJC's programs include its Appellate Advocacy Project, which seeks to improve the representation of indigent and

disadvantaged persons and their interests before state and federal appellate courts. The PJC has submitted or joined in briefs of amicus curiae in cases involving the child welfare system, family law, children's rights, and the rights of disabled persons, among other issues. The PJC has an interest in this case because of its implications for individuals dependent upon appropriate *parens patriae* care from government agencies and the checks and balances necessary to ensure that state agencies fulfill their responsibilities.

Randall & Sonnier, LLC, represents clients in various family and juvenile law matters, including child custody, adoption, and Child In Need of Assistance proceedings throughout the State of Maryland. The Dustin R. matter involves issues of paramount concern to children throughout Maryland and will have a significant impact on the children that Randall & Sonnier currently represents, as well as future clients and children represented by other law firms in similar matters.

ARGUMENT

Although the facts of this case—involving an individual who is extraordinarily fragile and who is likely to lose his life if he does not receive round-the-clock skilled nursing care—are dramatic, the circumstances facing Dustin R. are, unfortunately, far from unique. Numerous disabled children in Maryland and elsewhere face dramatic changes in their living situations, including loss of access to necessary medical care, when they reach age 21 and "age out" of the foster care system. Before age 21, those children have the dual protection of foster parents and supervision by the juvenile court, as well as the assistance of state agencies like the Department of Social Services (DSS) and the Department of Health and Mental Hygiene (DHMH). After age 21, they stand to lose much of that assistance, even though some of those individuals will not be able to live fully independently due to their disabilities.

The State of Maryland, through legislation enacted by the General Assembly against the background of the common law and equitable principles, has determined that disabled children who cannot live fully independently after age 21 and who require continuing care should not thereafter be completely dependent on the judgment of state welfare agencies like DHMH—professional though that judgment may be in most cases. Instead, the General Assembly has wisely determined that the juvenile court, in exercising its equitable powers, may, before it relinquishes jurisdiction over the individual at age 21, make appropriate arrangements for his transition and medical care after that, to protect the child against a traumatic loss of necessary services. Juvenile court orders requiring a plan of care for disabled children who are transitioning to adulthood—such as the one at issue here—are expressly contemplated by the guardianship statute and the underlying principles upon which that statute is based.

The juvenile court's order should be affirmed for three reasons. First, Maryland Family Law Code § 5-324 provides ample textual authority for the juvenile court to require DHMH to ensure the provision of ongoing, life-sustaining services after a disabled child turns 21. The text reflects the statute's underlying purpose of advancing the best interests and welfare of children under guardianship. Second, broader equitable principles provide further support for the juvenile court's authority to protect disabled children who are transitioning to adulthood. The historical role of equitable jurisdiction—to ensure the care and protection of those who cannot care for themselves—is evident in the text and purpose of Maryland's Family Law Article. In addition, the doctrine of *parens patriae* supports the juvenile court's power to protect the welfare of vulnerable populations, including minors and the disabled. Finally, practical concerns support the conclusion that the Maryland Legislature empowered juvenile courts to ensure that children like Dustin receive appropriate care after reaching the age of maturity. Adopting DHMH's position would have broad and potentially devastating implications. Although the needs of disabled children like Dustin are

acute, Section 7 of Maryland Family Law Code § 5-324(b)(1)(ii) applies to *all* juvenile guardianship cases. The powers of the juvenile court in *all* such cases are therefore implicated. As a consequence, if DHMH's position were accepted by the Court of Appeals here, the juvenile court would lose a critical aspect of its authority, which could have devastating effects on the juvenile courts' overall ability to protect the health and welfare of at-risk children. Because the juvenile court here acted well within the scope of its legal authority, its order directing DHMH to enter into a plan of care for Dustin after he turned 21 should be affirmed.

I. The Juvenile Court Did Not Exceed Its Statutory Authority When It Directed DHMH To Enter Into A Plan To Maintain Dustin's Level Of Care After He Turned 21

The juvenile court ordered DHMH to provide ongoing care and services to Dustin based on two provisions of the guardianship statute: Maryland Family Law Code (FL) § 5-324(b)(1)(ii)(7)(B) and § 5-324(b)(1)(ii)(8).[1] Those provisions

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[1] Maryland Family Law Code §§ 5-324(b)(1)(ii)(7) and (8) provide that a juvenile court:

> (7) shall direct the provision of any other service or taking of any other action as to the child's education, health, and welfare, including:
>
> A. for a child who is at least 16 years old, services needed to help the child's transition from guardianship to independence; or
>
> B. for a child with a disability, services to obtain ongoing care, if any, needed after the guardianship case ends; and
>
> (8) may co-commit the child to the custody of the Department of Health and Mental Hygiene and order the Department of Health and Mental Hygiene to provide a plan for the child of clinically appropriate services in the least restrictive setting, in accordance with federal and State law.

Md. Code Ann., Fam. Law §§ 5-324(b)(1)(ii)(7)-(8).

afford the juvenile court ample authority to issue that order, as demonstrated by the plain text and purpose of the statute. The purpose of the guardianship statute is to protect the child's best interests and welfare. The plain text of the statute effectuates that purpose by granting the juvenile court the authority: to (1) "direct the provision" of "any . . . service" to protect the child's "health" and "welfare," including "services to obtain ongoing care" after the disabled child turns 21 and ages out of the juvenile system; and (2) to co-commit the disabled child to DHMH custody and to order DHMH to provide a plan of clinically appropriate care for that child after age 21. That is precisely what the juvenile court did here. The juvenile court co-committed Dustin to DHMH custody and ordered DHMH to provide a plan of clinically appropriate services to obtain "ongoing care" for Dustin after he turned 21. Under the plain meaning and purpose of the statute, the juvenile court was well within its legal authority to do so.

A. The Plain Text Of Maryland Family Law Code § 5-324 Makes Clear That The Juvenile Court Had Authority To Order DHMH To Maintain Dustin's Level Of Care After He Turned 21

The text of FL § 5-324 provides the juvenile court with clear authority to issue the order challenged in this case, as cogently detailed in Petitioner's Brief (28-37). From amici's perspective, several additional aspects of the statutory scheme merit particular emphasis. Sections 7(B) and 8 together are, by their plain text, addressed to a specific subset of individuals—disabled children in the juvenile welfare system who are co-committed to the custody of DHMH, who will require ongoing care after age 21, and who therefore must have a plan for that care in place *before* the guardianship case (and the juvenile court's power to order the provision of that care) ends at age 21. For that subset of children, any gaps or lapses in care during the transition out of the child welfare system can be particularly dangerous—or even life-threatening as in Dustin's case. The statute is designed to protect those particularly vulnerable children by ensuring that a plan

of clinically appropriate services is put in place—and enforced by the juvenile court—*before* the "hand-off" to the adult system takes place.

The plain text of the statute makes this clear. Under § 7(A), the statute provides the juvenile court with the authority to "direct the provision" of services to protect the health and welfare of a child to "help the child's transition from guardianship to independence." That section recognizes that, in many circumstances, a child under guardianship will require assistance in the transition to adulthood to avoid difficult or dangerous lapses in care and supervision. At the same time, § 7(A) contemplates that those children will in fact "transition" to independence at some point, even though they may need assistance, which the juvenile court can order to bridge the period between "guardianship" and "independence."

By contrast, the relevant provisions here—§ 7(B) and § 8—are specifically addressed to disabled children who may not be able to attain full independence. *See* FL § 5-525(a)(2)(vi) (defining "disability" as including developmental disability, as defined in Health-General § 7-101(f)(3), as a condition that is "likely to continue indefinitely"); *compare* FL § 5-324(b)(1)(ii)(7)(A) (for non-disabled children, the juvenile court must direct the provision of any services "needed to help the child's transition *from guardianship to independence*" (emphasis added)); *with* FL § 5-324(b)(1)(ii)(7)(B) (for a child with a disability, the juvenile court must direct the provision of "services to obtain ongoing care . . . needed after the guardianship case ends").

These children will transition to adulthood by chronological age, but some will never transition to independence, and even those who attain a measure of independence may well require ongoing care. The statute accordingly recognizes that disabled children may require continued, ongoing care even after they turn 21. For that reason, the statute grants the juvenile court the power to order that the necessary care be put in place *before* the court loses jurisdiction when the child turns 21. DHMH's reading of the statute would make it difficult if not impossible

for a disabled child like Dustin to secure exactly what the statute recognizes he needs—continuous, "ongoing" and uninterrupted care extending beyond the end of the guardianship case at age 21.

Moreover, adopting DHMH's position could have broader and potentially grave effects on the overall ability of the juvenile court to protect the health and welfare of children under guardianship—not just those, like Dustin, who require continuous and uninterrupted medical care. Section 7 of FL § 5-324(b)(1)(ii) applies to *all* children under guardianship. As such, adopting DHMH's position here could significantly curtail the juvenile courts' authority, not just over a relatively small subset of children, but over *all* guardianship cases. In the 1980's, the Maryland Legislature granted the juvenile court the power to supervise state welfare agencies, with the specific intent to strengthen the juvenile courts' authority, in response to demonstrated problems and weaknesses in the existing child welfare system. *See infra*, Section I.C. Curtailing—indeed eviscerating—that authority could have devastating effects on the functioning of the juvenile court and its ability to protect the health and welfare of children under its jurisdiction.

B. The Purpose Of The Statute Reinforces Its Plain Textual Meaning And The Juvenile Court's Authority To Require DHMH To Provide Dustin With Ongoing Care After He Turned 21

The animating purpose of FL § 5-324 reinforces the juvenile court's authority to direct DHMH to maintain Dustin's level of care after he turned 21. The overarching goal of the guardianship statute is to ensure the child's best interests and welfare are protected. *See, e.g.*, FL § 5-303(b)(1) (purpose of subtitle includes the "timely [provision of] permanent and safe homes for children consistent with their best interests"); *id.* § 5-324(b)(1)(ii) (guardianship determinations require the juvenile court to act "consistent with the child's best interests"); *id.* § 5-324(b)(1)(ii)(7) (requiring the juvenile court to direct the provision of any service or action "as to the child's education, health, and

welfare"). The best-interest standard also underlies FL § 5-324(b)(1)(ii)(8). That statutory section empowers the juvenile court—using a best-interest standard to determine what is clinically appropriate—to order DHMH to provide a clinically appropriate plan of services, to reject a plan that is not clinically appropriate, and to decide what services are clinically appropriate if DHMH fails to do so on its own.

These provisions recognize that children under guardianship who are approaching adulthood—and who will lose the protections of the child welfare system when they reach age 21—face significant challenges in making that transition. For example, a non-disabled child under guardianship may require employment preparation, continuing education, housing assistance, or other services to successfully navigate the transition to independence. *See* Madelyn Freundlich, *Adolescents in the Child Welfare System: Improving Permanency and Preparation for Adulthood Outcomes*, A Comprehensive Look at a Prevalent Child Welfare Issue at 4, Univ. of Minn. School of Social Work (Spring 2009) (describing federal and state programs for transitional youth). The guardianship statute recognizes that fact and therefore the need for the juvenile court to be able to protect the child during and through that transition. To effectuate that purpose, the statute expressly grants the juvenile court the authority to order the provision of necessary services to protect the health and welfare of the "child's transition from guardianship to independence." § 7(A).

Children with disabilities face even more significant challenges and require particular attention to ensure that their health and welfare are protected when they age out of the child welfare system. As noted, some disabled children may never transition to "independence." *See* FL § 5-525(a)(2)(vi) (defining "disability" as including developmental disability that is "likely to continue indefinitely" (citing Health-General § 7-101(f)(3))). Those disabled children for whom attainment of independence is not within reach at age 21 will transition from one system of ensuring their health and welfare (the child welfare system) to another (the adult

care system). Because continuity of care for disabled individuals like Dustin is literally a matter of life or death, avoiding any gaps or lapses in care is essential.

The Maryland Legislature has recognized that the purpose behind the child welfare system—ensuring the health and welfare of children under guardianship—requires empowering the juvenile court to order that the appropriate level of ongoing care be provided *after* the child turns 21. And because the juvenile court loses jurisdiction over the guardianship case when the child turns 21, the juvenile court must be able to issue such orders *before* the child ages out of the system. To that end, the statute expressly grants the juvenile court the authority to issue such orders before the guardianship case ends for services to be provided after the child ages out of the juvenile system. *See* § 7(B) (a juvenile court "shall direct the provision of any other service or taking of any other action as to the child's education, health, and welfare, including: . . . for a child with a disability, services to obtain ongoing care . . . after the guardianship case ends"). DHMH's position, which reads out of the statute the juvenile court's power to issue and enforce orders like the one here, would seriously undermine the purposes behind the guardianship law.

This Court's decisions in a related context, involving the Child In Need of Assistance (CINA) Subtitle, further support the juvenile court's broad authority to act in the best interests of any child in its care,[2] and in so doing to direct state agencies to act accordingly. For example, *In re Justin D.* involved a challenge to juvenile court orders providing that child visitation would occur at the direction of DSS. 357 Md. 431 (2000). The Court held that DSS lacked authority to impose more onerous visitation restrictions than those set forth in the juvenile court's

[2] A "CINA" is a child in need of assistance who requires juvenile court intervention because: "(1) The child has been abused, has been neglected, has a developmental disability, or has a mental disorder; and (2) [t]he child's parents, guardian, or custodian are unable or unwilling to give proper care and attention to the child and the child's needs." Md. Code Ann., Cts. & Jud. Proc. § 3-801(f)-(g).

orders. The Court explained that "DSS acts, in many respects, as the court's agent in attempting to remedy the problems that led to the CINA finding and removal of the child in the first instance." *Id.* at 449. The Court also described the juvenile court's authority as particularly compelling in child welfare cases, where "[the court] is usually dealing with a more volatile situation—a child at risk, a troubled child with special needs—that requires much closer monitoring than does a routine custody dispute between two parents." *Id.*

Similarly, in *In re Najasha B.*, this Court addressed whether a juvenile court could withdraw a CINA petition at the unilateral request of DSS over the objection of the child. 409 Md. 20 (2009). The Court held that DSS lacked unilateral authority to withdraw a CINA petition and that the child was entitled to an adjudication by the juvenile court to ensure that she was receiving proper care and attention. In so holding, the Court acknowledged the state's general "'interest in caring for those, such as minors, who cannot care for themselves.'" *Id.* at 33 (quoting *In re Mark M.*, 365 Md. 687, 705-06 (2001)). To advance that interest, the juvenile court was directed to occupy a "clear and continuous supervisory role" in child welfare proceedings. 409 Md. at 39 (internal citation and quotation marks omitted). The decision in *Najasha B.* reflects Maryland's judgment that, when children are unable to secure their own protection, "[t]he juvenile court, 'acting under the State's *parens patriae* authority, is in the unique position to marshal the applicable facts, assess the situation, and determine the correct means of fulfilling a child's best interests.'" *Id.* at 34 (quoting *In re Mark M.*, 365 Md. at 707).

The same broad concerns for child welfare articulated in the CINA context apply here. The guardianship statute accordingly uses language similar to the CINA Subtitle, requiring the provision of services during a transition to be "consistent with the child's best interests." *See* FL § 5-324(b)(1)(ii). This "best-interests" language reflects not only the same child-protection goals, but also the

accompanying legislative intent to apply the same broad supervisory powers to the juvenile court under FL § 5-324.

C. The Legislative History Of The Child Welfare Laws Further Supports The Juvenile Court's Authority to Supervise And Direct Child Welfare Agencies

The legislative history of Maryland's child welfare laws further refutes DHMH's argument that juvenile courts lack the authority to order state welfare agencies to provide a plan of services for children after they turn 21. The Maryland Legislature, when confronted with demonstrated weaknesses in the child welfare system, has repeatedly acted to improve the juvenile system by ensuring that the courts have broad authority to protect children in that system. The Legislature has done so by strengthening the juvenile court's express statutory authority and thus making clear that these courts have supervisory power over services ordered and placements made by state welfare agencies.

For example, in response to decisions of the Court of Special Appeals that limited the authority of the juvenile court in CINA and delinquency cases by holding that the juvenile court lacked the power to direct agencies to place children in specific facilities,[3] the Maryland Legislature amended the Juvenile Causes Act in 1986 to allow juvenile courts to commit the child "on terms the court considers appropriate," "including designation of the type of facility where the child is to be placed." CJP § 3-819(b)(1)(iii)(2)(C); *see also* FL § 5-324(b)(1)(ii)(1)-(2) (authorizing the juvenile court to place children in specific facilities or to direct the provision of services by a local department). The Legislature thus empowered the juvenile court to commit the child to the agency

[3] *See In re George G.*, 64 Md. App. 70 (Md. Ct. Spec. App. 1985) (holding that the juvenile court lacked statutory authority to commit a child to a specific facility); *Md. State Dep't of Health & Mental Hygiene v. Prince George's Cnty. Dep't of Soc. Servs.* (Linda G.), 47 Md. App. 436 (Md. Ct. Spec. App. 1980) (reversing an order of the juvenile court directing DHMH to pay the cost of a juvenile's placement at a private institution).

on terms the court deemed appropriate, including specification of the type of placement. This statutory authority was clearly designed to give the juvenile court supervisory powers—even though the exercise of those powers could well affect the state agency's budget.

The Legislature took further steps to strengthen the juvenile courts' powers after additional problems and abuses in the child welfare system arose. The Legislature, in 2005, further specified that in CINA cases, juvenile courts can specifically order a local DSS to provide *all needed services* that the agency is authorized to provide under state law. Also in 2005, the juvenile courts were vested with comparable power in guardianship cases under FL § 5-324(b)(1)(ii)(7).

Contrary to the State's argument, the Legislature has not hesitated to vest the juvenile courts with full authority to protect children in the system even when the necessary exercise of those powers might have a budgetary effect on the state agencies. In fact, the evolution of the child welfare statutory scheme clearly demonstrates the Legislature's intent to vest the juvenile court with specific power to hold state welfare agencies accountable and to ensure that they provide all necessary services to children under their jurisdiction.

II. Equitable Principles Provide Further Support For The Juvenile Court's Authority To Ensure That Dustin Received The Same Level Of Care After He Turned 21

FL § 5-324's grant of authority to protect children under guardianship has its roots in the State's historical equitable responsibility to protect those who lack the capacity to protect themselves, particularly children and the disabled. Although the Maryland Legislature has transferred jurisdiction over cases like Dustin's from the equity courts to the juvenile court, equitable principles remain the foundation of the child welfare system and the guardianship statute. Accordingly, the guardianship statute vests in the juvenile courts broad equitable authority to fashion relief for juveniles in need.

A. Historical Equitable Principles Provide The Foundational Context To FL § 5-324 That Further Supports The Juvenile Court's Authority

Modern guardianship law, including FL § 5-324, has its roots in English feudal law. *See* Joan L. O'Sullivan & Diane E. Hoffman, *The Guardianship Puzzle: Whatever Happened to Due Process?*, 7 Md. J. Contemp. L. Issues 11, 13-25 (1995-1996) (discussing history of guardianship law in Maryland). Under early English law, the Crown had a duty to protect the property of subjects who lacked the capacity to manage their own affairs. *See id.* at 13.

After the American Revolution, the former colonies assumed the same *parens patriae* authority to protect those who could not protect themselves. *See* O'Sullivan & Hoffman at 15; *see also Developments in the Law: Civil Commitment of the Mentally Ill*, 87 Harv. L. Rev. 1190, 1208 (1974). That "prerogative of parens patriae" was considered "inherent in the supreme power of every State." *Late Corp. of the Church of Jesus Christ of Latter-Day Saints (Mormon Church) v. United States*, 136 U.S. 1, 57 (1890).

Contrary to the assumptions apparently underlying the State's arguments about separation of powers, from the very beginning, many States, including Maryland, vested principal authority to supervise the affairs of incompetent persons in the courts—in particular, the courts of equity, which inherited the full jurisdiction and powers of the English courts of equity. *See Bliss v. Bliss*, 133 Md. 61, 71 (1918) ("In this country after the Revolution, the care and custody of persons of unsound mind, and the possession and control of their estates, which in England belonged to the King as part of his prerogative, were deemed to be vested in the people, and the courts of equity of the various states have, either by inheritance from the English Courts of Chancery or by express constitutional or statutory provisions, full and complete jurisdiction over the persons and property of [disabled individuals]."); *see also Mormon Church*, 136 U.S. at 57 ("[the] prerogative of *parens patriae* is inherent in the supreme power of every State, . . .

and exercised . . . for the prevention of injury to those who cannot protect themselves"); O'Sullivan & Hoffman at 15-16 (describing historical background, including Maryland Legislature Act of 1785 authorizing court of chancery to exercise equity jurisdiction over the property and persons of disabled individuals). These courts had plenary power to fashion appropriate relief. *See, e.g*., *Bliss*, 133 Md. at 73 (noting that circuit courts in Maryland had "all the power" formerly exercised by courts of equity to superintend the affairs of those unable to attend to them themselves); *see also* 27 Am. Jur. 2d Equity § 69.

Although, in more recent times, state legislatures (including the Maryland General Assembly) have updated and rationalized provisions governing the care of incompetent and disabled persons and have assigned some of the authority to assist those persons to administrative agencies as well as the courts, courts exercising equitable powers have generally retained a central role in ensuring the needs of disabled persons are met when those individuals cannot provide for those needs themselves. *See, e.g.*, CJP § 3-819(b)(1)(ii) (requiring the juvenile court to: (1) order local agencies to assess whether a child is in need of assistance; and (2) evaluate agency recommendations in a CINA adjudication); *In re Adoption/Guardianship of Victor A.*, 386 Md. 288 (2005) (reviewing equity court's grant of DSS petition for termination of parental rights based on the best interests of the disabled child); Judge Leonard P. Edwards, *The Juvenile Court and the Role of the Juvenile Court Judge*, 43 Juv. & Fam. Ct. J. 1, 1-2, 15-16, 23 (1992) (noting that while social services agencies provide various services, juvenile courts retain responsibility to monitor the services provided and retain the ultimate authority to protect children).

FL § 5-324 was enacted against the historical backdrop of courts exercising these equitable powers. Maryland has long recognized this historical source of its courts' equitable powers and those equity courts' plenary authority to resolve the disputes before them. *See, e.g., Wells v. Price*, 183 Md. 443, 452 (1944) ("equity principles are broad and comprehensive"); *Hamilton v. Traber*, 78 Md. 26, 29

(1893) (noting that equitable jurisdiction was "derived by delegation from the crown . . . [as] a portion of the King's executive power . . .").

More specifically, this Court has underscored the broad equitable authority of the courts of this State in child welfare cases. In 1884, the Court of Appeals explained that, in the context of an infant's estate, "[t]he Court … has the power to order any expenditures and disbursements for the benefit of an infant thus placed under its protection." *Jenkins v. Whyte*, 62 Md. 427, 432-433 (1884). The equity court was given "a large and liberal discretion in these particulars, and in all others relating to the welfare of its ward[.]" *Id.* at 433. This Court has also noted the "power of courts of equity over minors," observing that such authority "should be exercised with the paramount purpose in view of securing the welfare and promoting the best interest of the children." *Barnard v. Godfrey*, 157 Md. 264, 267 (1929).

These principles remain unaffected by the Maryland Legislature's transfer of jurisdiction over cases like Dustin's from the equity courts to the juvenile court. Child guardianship cases in Maryland were initially adjudicated in the general courts of equity, pursuant to the full discretion vested in those courts. *See, e.g.*, *Coleman v. Coleman*, 228 Md. 610, 611 (1962) (appeal from an order of the equity court granting custody of a minor child); *Barnard*, 157 Md. at 267 (court of general jurisdiction charged with adjudicating the custody and guardianship of a minor). Those equity courts traditionally had the power to order state agencies to provide services for children whose parental rights had been terminated and who were placed under DSS guardianship. Under this system, the juvenile courts had exclusive jurisdiction over CINA cases, while the general equity court retained jurisdiction over the custody or guardianship of a child. *See, e.g., In re Arlene G.*, 301 Md. 355, 360-61 (1984) (comparing the statutory jurisdiction of juvenile courts to the general equity courts). In 1996, the Legislature overhauled the child welfare statutes, moving termination of parental rights and guardianship cases from the general equity courts to the juvenile court. *See* FL § 1-201(b)(5) (equity

court has jurisdiction over cases involving the "custody or guardianship of a child except for a child who is under the jurisdiction of any juvenile court and who previously has been adjudicated to be a child in need of assistance").

Because DSS agencies had previously claimed that the juvenile court could not overrule agencies' permanency plans,[4] the statute expressly gives the juvenile court full and final authority to determine the permanency plan and to change it as needed; to "determine the extent of compliance with the permanency plan"; to "enter any order . . . appropriate to implement the permanency plan"; to "evaluate the child's safety and act as needed to protect the child"; and to "take all other action . . . in the child's best interests." CJP §§ 3-823(e)(1), (h)(2)(v)-(vi); FL §§ 5-326(a)(8)(i), (iii), (v), (vii), (viii). This legislative reform expressly set forth the jurisdictional provisions for CINA, termination of parental rights, and guardianship cases; there was no suggestion that a child under guardianship would lose the *parens patriae* protections that had previously existed in the general courts of equity. *See* FL § 1-201(d) (The transfer of jurisdiction from the equity courts to the juvenile court "[did] not take away or impair the jurisdiction of a juvenile court . . . with respect to the custody, guardianship, visitation, and support of a child").

When it transferred jurisdiction over guardianship cases involving children like Dustin from the general equity courts to the juvenile court, the Legislature did not disavow the foundational equitable principles underlying the guardianship statute. Rather, the guardianship statute incorporates and reflects those principles

[4] Permanency plans are designed to give dependents in the child welfare system a permanent home in a timely manner. A permanency plan may be:
(1) reunification with the parent or guardian; (2) placement with a relative for adoption or custody and guardianship; (3) adoption by a non-relative; (4) custody and guardianship by a non-relative; or (5) another planned permanent living arrangement that addresses the individualized needs of the child and includes goals that promote the continuity of relations with individuals who will fill a lasting and significant role in the child's life. CJP § 3-823(e)(1)(i).

by expressly granting the juvenile court the power to order the provision of *any* services needed for the "child's education, health, and welfare." FL § 5-324(b)(1)(ii)(7) (emphasis added); *see also id.* § 5-324(b)(1)(ii)(7)(B) (for a disabled child, the juvenile court is further required to direct the provision of services to obtain any ongoing care needed after the child turns 21). Moreover, the juvenile court was given the broad and explicit mandate to "provide for the care, protection, safety, and mental and physical development of any child coming within the provisions of [the] subtitle" and to advance "the child's best interests." CJP §§ 3-802(a)(1), (2). The juvenile court therefore has the same broad power to protect a child in a guardianship case that equity courts had before guardianship jurisdiction was moved to the juvenile court.

B. The Equitable Doctrine Of *Parens Patriae* Further Supports The Juvenile Court's Authority To Direct The Provision Of Ongoing Care After Dustin Turned 21

The juvenile court's broad authority to make provision for the ongoing care of Dustin finds further support in the equitable doctrine of *parens patriae*. As noted, the *parens patriae* doctrine has its roots in English feudal law and recognizes the state's obligation to protect those who lack the capacity to manage their own affairs. Maryland courts have applied this doctrine to exercise "the State's sovereign power of guardianship over minors and other persons under disability." *Wentzel v. Montgomery Gen. Hosp., Inc.*, 293 Md. 685, 702 (1982) (citing 67A C.J.S. *Parens Patriae* at 159 (1978); *Black's Law Dictionary* 1003 (5th ed. 1979)). And Maryland courts have observed that this *parens patriae* authority is "plenary so as to afford whatever relief may be necessary to protect the individual's best interests." *Id.*

Like the historical equitable principles discussed in Section II.A., *supra*, the *parens patriae* doctrine is reflected in Maryland statutory law. The juvenile court is required by statute to act in the best interests of the child and to rest its substantive determinations on the child's best interests and welfare. *See, e.g.*, CJP

§ 3-802(a)(1) (the purpose of the juvenile court is to "provide for the care, protection, safety, and mental and physical development of any child coming within the provisions of this subtitle"); CJP § 3-823(e)(1)(i) (requiring the juvenile court to provide a permanency plan that is "consistent with the best interests of the child"); FL § 5-320(a)(2) (providing that a juvenile court may grant guardianship if the termination of parental rights is in the child's best interests); FL § 5-326(a)(2) (requiring the juvenile court to assess the child's best interests at each guardianship review hearing).

The *parens patriae* doctrine has particular force in the case of a disabled child like Dustin who cannot care for himself, and that doctrine informs the legislative decision to give the juvenile court express authority to order state agencies to provide services to disabled children like Dustin after they turn 21. *See, e.g., In re Najasha B.*, 409 Md. at 33. As this Court has instructed, based on the *parens patriae* interest in protecting juvenile dependents, "the child's welfare is a consideration . . . *of transcendent importance* when the child might be in jeopardy." *Id.* (internal citation and quotation marks omitted) (emphasis added). For that reason, the juvenile court "stands as a guardian of all children, and may interfere *at any time* and *in any way* to protect and advance [the child's] welfare and interests." *Montgomery Cnty. Dep't of Soc. Servs. v. Sanders*, 38 Md. App. 406, 418 (1978) (emphasis added) (citation omitted).

The *parens patriae* doctrine provides an important foundation for the court's action here. The state has ultimate responsibility for the health and welfare of those under guardianship—particularly for children like Dustin who have not been adopted after the termination of parental rights and for whom severe disabilities require uninterrupted, ongoing care even after the age of 21. Even if the statute here did not provide unambiguously sufficient authority for the juvenile court's order (which it does), the *parens patriae* doctrine would empower the juvenile court to act as it did here: to enter and enforce an order requiring DHMH

to have life-sustaining ongoing care in place for Dustin after he turns 21 and leaves the protection of the child welfare system.

III. Practical Concerns Support The Juvenile Court's Authority To Direct DHMH To Ensure That Children Like Dustin Receive Appropriate Ongoing Care After Reaching The Age Of Maturity

The plain text, purpose, and foundational principles underlying the guardianship statute all compel the conclusion that the juvenile court was well within its legal authority to issue the order here. Practical considerations compel the same conclusion.

It is undisputed that Dustin requires the continuation of his care to survive. The dispute is over who has the final word to decide what care Dustin will receive as he transitions out of the child welfare system—the juvenile court or DHMH. For several practical reasons, vesting that ultimate authority with the juvenile court is the only workable option, as the Legislature recognized. The challenges that children face when they age out of the juvenile guardianship system are well known and documented. *See, e.g.*, Madelyn Freundlich, *Adolescents in the Child Welfare System: Improving Permanency and Preparation for Adulthood Outcomes*, A Comprehensive Look at a Prevalent Child Welfare Issue at 4, Univ. of Minn. School of Social Work (Spring 2009) (children aging out of the child welfare system often struggle to secure employment, housing, and other services that were once provided at the direction of the juvenile court). Disabled children face particularly acute challenges. For certain disabled individuals like Dustin, *any* gaps or lapses in medical care can be life-threatening.

If the juvenile court were not authorized to direct that clinically appropriate care be in place *before* the child ages out of the child welfare system, gaps or outright lapses in care would almost certainly occur. Allowing such vital care to lapse would violate the juvenile court's "transcendent" obligation to act in the best interests of the child. This is not to suggest that the court should disregard the expertise of DHMH when the court ascertains the appropriate level of care for

disabled children, but it is more efficient and effective for the juvenile court—which already has jurisdiction and has been managing the guardianship case—to minimize the chance of any lapse by managing the transition and ensuring that appropriate care is in place *before* the child ages out of juvenile care.

In addition, ceding the authority to state agencies to decide the level of care that the child will receive when he turns 21 could create conflicts of interest that might compromise the child's care, and in this case threaten the child's life. The juvenile court exercises its authority without regard to any consideration other than the child's best interests. *See, e.g.*, CJP § 3-802(a)(2) (directing the juvenile court to act consistent with the child's best interests); FL § 5-324(b)(1)(ii) (same); *In re Najasha B.*, 409 Md. at 33 ("[T]he child's welfare is a consideration that is of transcendent importance . . . ." (internal citation and quotation marks omitted)). Agencies like DHMH, by contrast, have many competing demands on their resources and attention. Even granting that agency professionals are dedicated to pursuing the best interests of children and that those professionals have considerable experience in managing care for disabled persons, any agency like DHMH inevitably faces bureaucratic and budgetary pressures that have the potential to place care for individuals like Dustin at risk. An impulse to cut costs, or to allocate them elsewhere, could inadvertently affect DHMH's substantive determinations about the quality and type of services to provide for children like Dustin. At the very least, such conflicting pressures could result in delay and lapses in care—lapses that would be life threatening to Dustin.

In addition, adopting DHMH's position here could have far-reaching effects on at-risk children. Specifically, adopting DHMH's position could adversely affect not only disabled children but other children under guardianship. If DHMH's position were to prevail, the loss of juvenile court power to order and enforce the provision of necessary care for children under its jurisdiction could have a grave effect on guardianship cases. In short, DHMH's position would strip the juvenile court of its ability to enter numerous orders for which its authority had

previously been unquestioned. For example, in Dustin's case, in early 2005, shortly *before* Section 7 was added to the guardianship statute, the juvenile court ordered DSS to assure that Dustin received 24:7, private-duty nursing services. DSS did not appeal—demonstrating that an order directing DSS to provide or obtain specific services was the type of order that had long been commonly accepted. DHMH's current position would upend that consensus and could jeopardize the health and welfare of all children under guardianship.

Moreover, the sheer breadth of juvenile court orders that would be precluded under DHMH's view would work a sea change in the practical—and long unquestioned—operation of the juvenile court. Such a change would have significant if not disastrous consequences, not only for guardianship children but for the administrability of the child welfare system. The juvenile courts are responsible for managing guardianship cases and determining the appropriate level of care for guardianship children, and in that capacity juvenile courts have routinely ordered state agencies to provide a broad array of services—everything from drug treatment, psychological and neuropsychological evaluations, therapy and medical devices to housing assistance, vocational training, and transportation assistance. Precluding the juvenile court from issuing such orders, as DHMH's position here would do, would fundamentally alter the juvenile court's authority, and would, as a practical matter, strip that court of its central role in managing guardianship cases. Not only would such a result be harmful to guardianship children, but it would also create serious fiscal and administrative problems for the state. If the juvenile court is found to lack the authority to order state agencies to provide the broad range of services that it currently orders, then disputes over whether the service is necessary and who should pay for it will be pursued through the administrative appeal process. That route will be expensive, cumbersome, and inefficient—serving neither the interests of guardianship children or the state.

The Legislature no doubt recognized these practical concerns when it crafted the guardianship statute. As such, the Legislature gave the juvenile court

the express power to order DHMH to ensure the provision of appropriate ongoing care and services to Dustin *after* he turned 21. The juvenile court was well within its legal authority when it used that power to enter the order at issue here.

CONCLUSION

For the foregoing reasons, the juvenile court's order should be affirmed.

This brief was prepared in 13-point Times New Roman font.

/s/ Jonathan G. Cedarbaum
Jonathan G. Cedarbaum
Paul R.Q. Wolfson
(admission pro hac vice pending)
Shirley C. Woodward
(admission pro hac vice pending)
Lauren N. Moore
(admission pro hac vice pending)
WILMER CUTLER PICKERING HALE
AND DORR LLP
1875 Pennsylvania Avenue NW
Washington, DC 20006
(202) 663-6315
Jonathan.Cedarbaum@wilmerhale.com

Counsel for Amici Curiae

VERBATIM TEXT OF PERTINENT
STATUTES, RULES, AND REGULATIONS

MARYLAND CODE ANNOTATED
COURTS AND JUDICIAL PROCEEDINGS ARTICLE

§ 3-801: Definitions

(a) In this subtitle the following words have the meanings indicated.
(b) "Abuse" means:
(1) Sexual abuse of a child, whether a physical injury is sustained or not; or
(2) Physical or mental injury of a child under circumstances that indicate that the child's health or welfare is harmed or is at substantial risk of being harmed by:
(i) A parent or other individual who has permanent or temporary care or custody or responsibility for supervision of the child; or
(ii) A household or family member.
(c) "Adjudicatory hearing" means a hearing under this subtitle to determine whether the allegations in the petition, other than the allegation that the child requires the court's intervention, are true.
(d) "Adult" means an individual who is at least 18 years old.
(e) "Child" means an individual under the age of 18 years.
(f) "Child in need of assistance" means a child who requires court intervention because:
(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.
(g) "CINA" means a child in need of assistance.
(h) "Commit" means to transfer custody.
(i) "Court" means the circuit court for a county sitting as the juvenile court.
(j) "Custodian" means a person or governmental agency to whom custody of a child has been given by order of court, including a court other than the juvenile court.
(k) "Custody" means the right and obligation, unless otherwise determined by the court, to provide ordinary care for a child and determine placement.
(l) "Developmental disability" means a severe chronic disability of an individual that:
(1) Is attributable to a physical or mental impairment, other than the sole diagnosis of mental illness, or to a combination of mental and physical impairments;
(2) Is likely to continue indefinitely;
(3) Results in an inability to live independently without external support or continuing and regular assistance; and
(4) Reflects the need for a combination and sequence of special, interdisciplinary, or generic care, treatment, or other services that are individually planned and coordinated for the individual.
(m) "Disposition hearing" means a hearing under this subtitle to determine:
(1) Whether a child is in need of assistance; and
(2) If so, the nature of the court's intervention to protect the child's health, safety, and well-being.
(n) "Guardian" means a person to whom guardianship of a child has been given by order of court, including a court other than the juvenile court.

(o) “Guardianship” means an award by a court, including a court other than the juvenile court, of the authority to make ordinary and emergency decisions as to the child’s care, welfare, education, physical and mental health, and the right to pursue support.
(p) “Local department” means:
(1) The local department of social services for the county in which the court is located; or
(2) In Montgomery County, the county department of health and human services.
(q)(1) “Mental disorder” means a behavioral or emotional illness that results from a psychiatric or neurological disorder.
(2) “Mental disorder” includes 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 for the safety of the person or property of another.
(3) “Mental disorder” does not include mental retardation.
(r) “Mental injury” means the observable, identifiable, and substantial impairment of a child’s mental or psychological ability to function.
(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.
(t) “Parent” means a natural or adoptive parent whose parental rights have not been terminated.
(u)(1) “Party” means:
(i) A child who is the subject of a petition;
(ii) The child’s parent, guardian, or custodian;
(iii) The petitioner; or
(iv) An adult who is charged under § 3-828 of this subtitle.
(2) “Party” does not include a foster parent.
(v) “Reasonable efforts” means efforts that are reasonably likely to achieve the objectives set forth in § 3-816.1(b)(1) and (2) of this subtitle.
(w) “Relative” means an individual who is:
(1) Related to the child by blood or marriage within five degrees of consanguinity or affinity under the civil law; and
(2)(i) At least 21 years old; or
(ii) 1. At least 18 years old; and
2. Lives with a spouse who is at least 21 years old.
(x)(1) “Sexual abuse” means an act that involves sexual molestation or sexual exploitation of a child by:
(i) A parent or other individual who has permanent or temporary care or custody or responsibility for supervision of the child; or
(ii) A household or family member.
(2) “Sexual abuse” includes:
(i) Allowing or encouraging a child to engage in:

1. Obscene photography, films, poses, or similar activity;
2. Pornographic photography, films, poses, or similar activity; or
3. Prostitution;

(ii) Human trafficking;
(iii) Incest;
(iv) Rape;
(v) Sexual offense in any degree;
(vi) Sodomy; and
(vii) Unnatural or perverted sexual practices.

(y) "Shelter care" means a temporary placement of a child outside of the home at any time before disposition.

(z) "Shelter care hearing" means a hearing held before disposition to determine whether the temporary placement of the child outside of the home is warranted.

TPR proceeding

(aa) "TPR proceeding" means a proceeding to terminate parental rights.

Voluntary placement

(bb) "Voluntary placement" means a placement in accordance with § 5-525(b)(1)(i) or (iii) or (3) of the Family Law Article.

(cc) "Voluntary placement hearing" means a hearing to obtain a judicial determination as to whether continuing a voluntary placement is in the best interests of the child.

§ 3-802: Purposes of subtitle and authority of court

(a) The purposes of this subtitle are:

(1) To provide for the care, protection, safety, and mental and physical development of any child coming within the provisions of this subtitle;

(2) To provide for a program of services and treatment consistent with the child's best interests and the promotion of the public interest;

(3) To conserve and strengthen the child's family ties and to separate a child from the child's parents only when necessary for the child's welfare;

(4) To hold parents of children found to be in need of assistance responsible for remedying the circumstances that required the court's intervention;

(5) Except as otherwise provided by law, to hold the local department responsible for providing services to assist the parents with remedying the circumstances that required the court's intervention;

(6) If necessary to remove a child from the child's home, to secure for the child custody, care, and discipline as nearly as possible equivalent to that which the child's parents should have given;

(7) To achieve a timely, permanent placement for the child consistent with the child's best interests; and

(8) To provide judicial procedures for carrying out the provisions of this subtitle.

(b) This subtitle shall be construed liberally to effectuate these purposes.

(c)(1) In all judicial proceedings conducted in accordance with this subtitle or § 5-326 of the Family Law Article, the court may direct the local department to provide services to a child, the child's family, or the child's caregiver to the extent that the local department is authorized under State law.

(2) The court shall exercise the authority described in paragraph (1) of this subsection to protect and advance a child's best interests.

§ 3-819: Disposition hearing to determine whether child is a CINA

(a)(1) Unless a CINA petition under this subtitle is dismissed, the court shall hold a separate disposition hearing after an adjudicatory hearing to determine whether the child is a CINA.

(2) The disposition hearing shall be held on the same day as the adjudicatory hearing unless on its own motion or motion of a party, the court finds that there is good cause to delay the disposition hearing to a later day.

(3) If the court delays a disposition hearing, it shall be held no later than 30 days after the conclusion of the adjudicatory hearing unless good cause is shown.

(b)(1) In making a disposition on a CINA petition under this subtitle, the court shall:

(i) Find that the child is not in need of assistance and, except as provided in subsection (e) of this section, dismiss the case;

(ii) Hold in abeyance a finding on whether a child with a developmental disability or a mental illness is a child in need of assistance and:

1. Order the local department to assess or reassess the family's and child's eligibility for placement of the child in accordance with a voluntary placement agreement under § 5-525(b)(1)(i) of the Family Law Article;

2. Order the local department to report back to the court in writing within 30 days unless the court extends the time period for good cause shown;

3. If the local department does not find the child eligible for placement in accordance with a voluntary placement agreement, hold a hearing to determine whether the family and child are eligible for placement of the child in accordance with a voluntary placement agreement; and

4. After the hearing:

A. Find that the child is not in need of assistance and order the local department to offer to place the child in accordance with a voluntary placement agreement under § 5-525(b)(1)(i) of the Family Law Article;

B. Find that the child is in need of assistance; or

C. Dismiss the case; or

(iii) Subject to paragraph (2) of this subsection, find that the child is in need of assistance and:

1. Not change the child's custody status; or

2. Commit the child on terms the court considers appropriate to the custody of:

A. A parent;

B. Subject to § 3-819.2 of this subtitle, a relative, or other individual; or

C. A local department, the Department of Health and Mental Hygiene, or both, including designation of the type of facility where the child is to be placed.

(2)(i) 1. In this paragraph, "disability" means:

A. A physical disability, infirmity, malformation, or disfigurement that is caused by bodily injury, birth defect, or illness, including epilepsy;

B. A mental impairment or deficiency;

C. A record of having a physical or mental impairment as defined under this paragraph; or

D. Being regarded as having a physical or mental impairment as defined under this paragraph.

2. "Disability" includes:

A. Any degree of paralysis or amputation;

B. Blindness or visual impairment;

C. Deafness or hearing impairment;

D. Muteness or speech impediment;

E. Physical reliance on a service animal or a wheelchair or other remedial appliance or device; and

F. Intellectual disability, as defined in § 7-101 of the Health--General Article, and any other mental impairment or deficiency that may have necessitated remedial or special education and related services.

(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.

(3) Unless good cause is shown, a court shall give priority to the child's relatives over nonrelatives when committing the child to the custody of an individual other than a parent.

(b-1)(1) If the court finds that a child enrolled in a public elementary or secondary school is in need of assistance and commits the child to the custody of a local department, the court may notify the county superintendent, the supervisor of pupil personnel, or any other official designated by the county superintendent of the fact that the child has been found to be in need of assistance and has been committed to the custody of a local department.

(2) If the court rescinds the commitment order for a child enrolled in a public elementary or secondary school, the court may notify the county superintendent, the supervisor of pupil personnel, or any other official designated by the county superintendent of the fact that the child is no longer committed to the custody of a local department of social services.

(3) The notice authorized under paragraphs (1) and (2) of this subsection may not include any order or pleading related to the child in need of assistance case.

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

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

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

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

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

(d) If guardianship of a child is awarded to the local department under this subtitle, the local department shall notify the parents of the child and their attorneys as soon as practicable of any emergency decision made by the guardian with respect to the child under § 3-801(o) of this subtitle.

(e) If the allegations in the petition are sustained against only one parent of a child, and there is another parent available who is able and willing to care for the child, the court may not find that the child is a child in need of assistance, but, before dismissing the case, the court may award custody to the other parent.

(f) 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.

(g) A guardian appointed under this section has no control over the property of the child unless the court expressly grants that authority.

(h) The court may not commit a child for inpatient care and treatment in a psychiatric facility unless the court finds on the record based on clear and convincing evidence that:

(1) The child has a mental disorder;

(2) The child needs inpatient medical care or treatment for the protection of the child or others;

(3) The child is unable or unwilling to be voluntarily admitted to such facility; and

(4) There is no less restrictive form of intervention available that is consistent with the child's condition and welfare.

(i) The court may not commit a child for inpatient care and treatment in a facility for the developmentally disabled unless the court finds on the record based on clear and convincing evidence that:

(1) The child is developmentally disabled;

(2) The condition is of such a nature that for the adequate care or protection of the child or others, the child needs in-residence care or treatment; and

(3) There is no less restrictive form of care and treatment available that is consistent with the child's welfare and safety.

(j)(1)(i) Each commitment order issued under subsection (h) or (i) of this section shall require the custodian to file progress reports with the court at intervals no greater than every 6 months during the life of the order.

(ii) The custodian shall provide each party or attorney of record with a copy of each report, which shall be considered at the next scheduled hearing.

(iii) After the first 6 months of the commitment and at 6-month intervals thereafter, on the request of any party, the custodian, or the facility, the court shall hold a hearing to determine whether the standards specified in subsection (h) or (i) of this section continue to be met.

(2)(i) If an individualized treatment plan developed under § 10-706 of the Health-General Article recommends that a child no longer meets the standards specified in subsection (h) of this section, the court shall grant a hearing to review the commitment order.

(ii) The court may grant a hearing at any other time to determine whether the standards specified in subsection (h) of this section continue to be met.

(3)(i) If an individualized plan of habilitation developed under § 7-1006 of the Health-General Article recommends that a child no longer meets the standards specified in subsection (i) of this section, the court shall grant a hearing to review the commitment order.

(ii) The court may grant a hearing at any other time to determine whether the standards specified in subsection (i) of this section continue to be met.

(k) An order vesting legal custody of a child in a person or agency is effective for an indeterminate period of time, but is not effective after the child reaches the age of 21.

(l) After giving the parent a reasonable opportunity to be heard, and determining the income of the parent, the court may order either parent or both parents to pay a sum in the amount the court directs to cover wholly or partly the support of the child under this subtitle.

§ 3-823: Permanent child placements

(a) In this section, "out-of-home placement" has the meaning stated in § 5-501 of the Family Law Article.

(b)(1) The court shall hold a permanency planning hearing to determine the permanency plan for a child:

(i) No later than 11 months after a child committed under § 3-819 of this subtitle or continued in a voluntary placement under § 3-819.1(b) of this subtitle enters an out-of-home placement; or

(ii) Within 30 days after the court finds that reasonable efforts to reunify a child with the child's parent or guardian are not required based on a finding that a circumstance enumerated in § 3-812 of this subtitle has occurred.

(2) For purposes of this section, a child shall be considered to have entered an out-of-home placement 30 days after the child is placed into an out-of-home placement.

(3) If all parties agree, a permanency planning hearing may be held on the same day as the reasonable efforts hearing.

(c)(1) On the written request of a party or on its own motion, the court may schedule a hearing at any earlier time to determine a permanency plan or to review the implementation of a permanency plan for any child committed under § 3-819 of this subtitle.

(2) A written request for review shall state the reason for the request and each issue to be raised.

(d) At least 10 days before the permanency planning hearing, the local department shall provide all parties and the court with a copy of the local department's permanency plan for the child.

(e)(1) At a permanency planning hearing, the court shall:

(i) Determine the child's permanency plan, which, to the extent consistent with the best interests of the child, may be, in descending order of priority:

1. Reunification with the parent or guardian;

2. Placement with a relative for:

A. Adoption; or

B. Custody and guardianship under § 3-819.2 of this subtitle;

3. Adoption by a nonrelative;

4. Custody and guardianship by a nonrelative under § 3-819.2 of this subtitle; or

5. Another planned permanent living arrangement that:

A. Addresses the individualized needs of the child, including the child's educational plan, emotional stability, physical placement, and socialization needs; and

B. Includes goals that promote the continuity of relations with individuals who will fill a lasting and significant role in the child's life; and

(ii) For a child who has attained the age of 16 years, determine the services needed to assist the child to make the transition from placement to independent living.

(2) In determining the child's permanency plan, the court shall consider the factors specified in § 5-525(f)(1) of the Family Law Article.

(f) The court may not order a child to be continued in a placement under subsection (e)(1)(i)5 of this section unless the court finds that the person or agency to which the child is committed has documented a compelling reason for determining that it would not be in the best interest of the child to:

(1) Return home;

(2) Be referred for termination of parental rights; or

(3) Be placed for adoption or guardianship with a specified and appropriate relative or legal guardian willing to care for the child.

(g) In the case of a child for whom the court determines that the plan should be changed to adoption under subsection (e)(1)(i)3 of this section, the court shall:

(1) Order the local department to file a petition for guardianship in accordance with Title 5, Subtitle 3 of the Family Law Article within 30 days or, if the local department does not support the plan, within 60 days; and

(2) Schedule a TPR hearing instead of the next 6-month review hearing.

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

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

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

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

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

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

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

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

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

(iv) 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;

(v) Evaluate the safety of the child and take necessary measures to protect the child; and

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

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

(i) At a review hearing under this section, the court shall consider any written report of a local out-of-home care review board required under § 5-545 of the Family Law Article.

(j)(1) At least every 12 months at a hearing under this section, the court shall consult on the record with the child in an age-appropriate manner to obtain the child's views on permanency.

(2)(i) If, after a hearing or with the agreement of all parties, the court determines that the child is medically fragile and that it is detrimental to the child's physical or mental health to be transported to the courthouse, the court may, subject to subparagraph (ii) of this paragraph:

1. Visit the child at the child's placement and use appropriate technology to document the consultation for the record; or
2. Use video conferencing to consult with the child on the record during the hearing.

(ii) If the court visits the child at the child's placement under subparagraph (i)1 of this paragraph or uses video conferencing under subparagraph (i)2 of this paragraph, the court shall give each party notice and an opportunity to attend the visit or the video conferencing, unless the court determines that it is not in the best interest of the child for a party to attend the visit or the video conferencing.

(3) Subject to the provisions of paragraph (2)(ii) of this subsection, if the child's placement is outside the State and, after a hearing or with the agreement of all parties, the court determines that it is not in the best interest of the child to be transported to the court, the court may use video conferencing to consult with the child on the record during the hearing.

MARYLAND CODE ANNOTATED
FAMILY LAW ARTICLE

§ 1-201: Jurisdiction of equity court

(a) For the purposes of subsection (b)(10) of this section, "child" means an unmarried individual under the age of 21 years.
(b) An equity court has jurisdiction over:
(1) adoption of a child, except for a child who is under the jurisdiction of any juvenile court and who previously has been adjudicated to be a child in need of assistance;
(2) alimony;
(3) annulment of a marriage;
(4) divorce;
(5) custody or guardianship of a child except for a child who is under the jurisdiction of any juvenile court and who previously has been adjudicated to be a child in need of assistance;
(6) visitation of a child;
(7) legitimation of a child;
(8) paternity;
(9) support of a child; and
(10) custody or guardianship of an immigrant child pursuant to a motion for Special Immigrant Juvenile factual findings requesting a determination that the child was abused, neglected, or abandoned before the age of 18 years for purposes of § 101(a)(27)(J) of the federal Immigration and Nationality Act.
(c) In exercising its jurisdiction over the custody, guardianship, visitation, or support of a child, an equity court may:
(1) direct who shall have the custody or guardianship of a child, pendente lite or permanently;
(2) determine who shall have visitation rights to a child;
(3) decide who shall be charged with the support of the child, pendente lite or permanently;
(4) from time to time, set aside or modify its decree or order concerning the child; or
(5) issue an injunction to protect a party to the action from physical harm or harassment.
(d) This section does not take away or impair the jurisdiction of a juvenile court or a criminal court with respect to the custody, guardianship, visitation, and support of a child

§ 5-303: Statement of findings; purposes

(a) The General Assembly finds that the policies and procedures of this subtitle are desirable and socially necessary.
(b) The purposes of this subtitle are to:
(1) timely provide permanent and safe homes for children consistent with their best interests;
(2) protect children from unnecessary separation from their parents;

(3) ensure adoption only by individuals fit for the responsibility;
(4) protect parents from making hurried or ill-considered agreements to terminate parental rights;
(5) protect prospective adoptive parents by giving them information about children and their backgrounds; and
(6) protect adoptive parents from future disturbances of their relationships with children by former parents.

§ 5-320: Authority to grant guardianship

(a) A juvenile court may grant guardianship of a child only if:
(1)(i) the child does not object;
(ii) the local department:
1. filed the petition; or
2. did not object to another party filing the petition; and
(iii) 1. each of the child's living parents consents:
A. in writing;
B. knowingly and voluntarily, on the record before the juvenile court; or
C. by failure to file a timely notice of objection after being served with a show-cause order in accordance with this subtitle;
2. an administrative, executive, or judicial body of a state or other jurisdiction has granted a governmental unit or person other than a parent the power to consent to adoption, and the unit or person consents; or
3. parental rights have been terminated in compliance with the laws of a state or other jurisdiction, as described in § 5-305 of this subtitle; or
(2) in accordance with § 5-323 of this subtitle, the juvenile court finds termination of parental rights to be in the child's best interests without consent otherwise required under this section or over the child's objection.
(b) A governmental unit or person:
(1) may condition consent or acquiescence on adoption into a specific family that a local department approves for the placement; but
(2) may not condition consent or acquiescence on any factor other than placement into a specific family.

§ 5-324: Contents of order

(a) In a separate order accompanying an order denying guardianship of a child, a juvenile court shall include:
(1) a specific factual finding on whether reasonable efforts have been made to finalize the child's permanency plan;
(2) any order under Title 3, Subtitle 8 of the Courts Article in the child's best interests; and

(3) a date, no later than 180 days after the date of the order, for the next review hearing under Title 3, Subtitle 8 of the Courts Article.

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

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

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

1. may place the child:

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

B. with a specific individual;

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

A. the child; or

B. the child's caregiver;

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

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

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

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

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

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

B. for a child with a disability, services to obtain ongoing care, if any, needed after the guardianship case ends; and

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

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

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

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

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

(2)(i) Except for emergency commitment in accordance with § 10-617 of the Health--General Article or as expressly authorized by a juvenile court in accordance with the standards in § 3-819(h) or (i) of the Courts Article, a child

may not be committed or otherwise placed for inpatient care or treatment in a psychiatric facility or a facility for the developmentally disabled.

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

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

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

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

(c) A juvenile court shall send a copy of an order entered under this section to:

(1) each party or, if represented, counsel;

(2) each of the child's living parents who has not waived the right to notice;

(3) each living parent's last attorney of record in the CINA case; and

(4) the child's last attorney of record in the CINA case.

§ 5-326: Review hearings

(a)(1) A juvenile court shall hold:

(i) an initial guardianship review hearing as scheduled under § 5-324(b)(1)(vi) of this subtitle to establish a permanency plan for the child; and

(ii) at least once each year after the initial guardianship review hearing until the juvenile court's jurisdiction terminates, a guardianship review hearing.

(2) At each guardianship review hearing, a juvenile court shall determine whether:

(i) the child's current circumstances and placement are in the child's best interests;

(ii) the permanency plan that is in effect is in the child's best interests; and

(iii) reasonable efforts have been made to finalize the permanency plan that is in effect.

(3)(i) A juvenile court shall give at least 30 days' notice before each guardianship review hearing for a child to:

1. the local department;

2. the child's attorney; and

3. each of the child's living parents who has not waived the right to notice and that parent's attorney.

(ii) A parent is entitled to be heard and to participate at a guardianship review hearing.

(iii) 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.

(4)(i) A local department shall give a child's caregiver at least 7 days' notice before a guardianship review hearing.

(ii) A caregiver is entitled to be heard at a guardianship review hearing.

(iii) A caregiver is not a party solely on the basis of the right to notice or opportunity to be heard at a guardianship review hearing.

(5)(i) At least 10 days before each guardianship review hearing, a local department shall:

1. 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; and
2. send a copy of the report to:
   A. the child's attorney; and
   B. each of the child's living parents who has not waived the right to notice and that parent's attorney.

(ii) Notice to a parent under this paragraph shall be sent to the parent's last address known to the juvenile court.

(6) A child's permanency plan may be, in order of priority:

(i) adoption of the child;
(ii) custody and guardianship of the child by an individual; or
(iii) another planned permanent living arrangement that:

1. addresses the individualized needs of the child, including the child's educational plan, emotional stability, physical placement, and socialization needs; and
2. includes goals that promote the continuity of relations with individuals who will fill a lasting and significant role in the child's life.

(7) Every reasonable effort shall be made to implement a permanency plan within 1 year.

(8) At each guardianship review hearing for a child, a juvenile court shall:

(i) evaluate the child's safety and act as needed to protect the child;
(ii) consider the written report of a local out-of-home placement review board required under § 5-545 of this title;
(iii) determine the extent of compliance with the permanency plan;
(iv) make a specific factual finding on whether reasonable efforts have been made to finalize the child's permanency plan and document the finding;
(v) subject to subsection (b) of this section, change the child's permanency plan if a change would be in the child's best interests;
(vi) project a reasonable date by which the permanency plan will be finalized;
(vii) enter any order that the juvenile court finds appropriate to implement the permanency plan; and
(viii) take all other action that the juvenile court considers to be in the child's best interests, including any order allowed under § 5-324(b)(1)(ii) of this subtitle.

(9) A juvenile court may approve a permanency plan other than adoption of a child only if the juvenile court finds that, for a compelling reason, adoption is not in the child's best interests.

(10)(i) At a guardianship review hearing held 1 year or more after a juvenile court enters an order for guardianship of a child, the juvenile court may designate an individual guardian of the child if:

1. the local department certifies the child's successful placement with the individual under the supervision of the local department or its agent for at least 180 days or a shorter period allowed by the juvenile court on recommendation of the local department;
2. the local department files a report by a child placement agency, completed in accordance with department regulations, as to the suitability of the individual to be the child's guardian; and
3. the juvenile court makes a specific finding that:
A. for a compelling reason, adoption is not in the child's best interests; and
B. custody and guardianship by the individual is in the child's best interests and is the least restrictive alternative available.

(ii) Designation of a guardian under this paragraph terminates the local department's legal obligations and responsibilities to the child.

(iii) After designation of a guardian under this paragraph, a juvenile court may order any further review that the juvenile court finds to be in the child's best interests.

(b)(1) Whenever a juvenile court orders a specific placement for a child, a local department may remove the child from the placement before a hearing only if:

(i) removal is needed to protect the child from serious immediate danger;

(ii) continuation of the placement is contrary to the child's best interests; or

(iii) the child's caregiver asks for the child's immediate removal.

(2)(i) On the next day on which the circuit court sits after a local department changes a placement under this subsection, the juvenile court shall hold an emergency review hearing on the change.

(ii) A juvenile court shall give reasonable notice of an emergency review hearing to:

1. the child's attorney;
2. each of the child's living parents who has not waived the right to notice and that parent's attorney; and
3. each other party's attorney.

(iii) At an emergency review hearing, the standard of review as to a change shall be the standard for continued shelter care in a hearing under § 3-815 of the Courts Article.

(iv) Unless all of the parties agree to a juvenile court's order entered at an emergency review hearing, the juvenile court shall hold a full review hearing on the change within 30 days after the date of removal or, if agreed to by the parties, a later date.

(c)(1) At least every 12 months at a hearing under this section, the court shall consult on the record with the child in an age-appropriate manner to obtain the child's views on permanency.

(2)(i) If, after a hearing or with the agreement of all parties, the court determines that the child is medically fragile and that it is detrimental to the child's physical

or mental health to be transported to the courthouse, the court may, subject to subparagraph (ii) of this paragraph:

1. visit the child at the child's placement and use appropriate technology to document the consultation for the record; or

2. use video conferencing to consult with the child on the record during the hearing.

(ii) If the court visits the child at the child's placement under subparagraph (i)1 of this paragraph or uses video conferencing under subparagraph (i)2 of this paragraph, the court shall give each party notice and an opportunity to attend the visit or the video conferencing, unless the court determines that it is not in the best interest of the child for a party to attend the visit or the video conferencing.

(3) Subject to the provisions of paragraph (2)(ii) of this subsection, if the child's placement is outside the State and, after a hearing or with the agreement of all parties, the court determines that it is not in the best interest of the child to be transported to the court, the court may use video conferencing to consult with the child on the record during the hearing.

§ 5-525: Creation of foster care program

(a)(1) In this section, "disability" means:

(i) a physical disability, infirmity, malformation, or disfigurement that is caused by bodily injury, birth defect, or illness, including epilepsy;

(ii) a mental impairment or deficiency;

(iii) a record of having a physical or mental impairment as defined under this subsection; or

(iv) being regarded as having a physical or mental impairment as defined under this subsection.

(2) "Disability" includes:

(i) any degree of paralysis or amputation;

(ii) blindness or visual impairment;

(iii) deafness or hearing impairment;

(iv) muteness or speech impediment;

(v) physical reliance on a service animal or a wheelchair or other remedial appliance or device; and

(vi) intellectual disability, as defined in § 7-101 of the Health--General Article, and any other mental impairment or deficiency that may have necessitated remedial or special education and related services.

(b)(1) The Administration shall establish a program of out-of-home placement for minor children:

(i) who are placed in the custody of a local department, for a period of not more than 180 days, by a parent or legal guardian under a voluntary placement agreement;

(ii) who are abused, abandoned, neglected, or dependent, if a juvenile court:

1. has determined that continued residence in the child's home is contrary to the child's welfare; and

2. has committed the child to the custody or guardianship of a local department; or

(iii) who, with the approval of the Administration, are placed in an out-of-home placement by a local department under a voluntary placement agreement subject to paragraph (2) of this subsection.

(2)(i) A local department may not seek legal custody of a child under a voluntary placement agreement if the child has a developmental disability or a mental illness and the purpose of the voluntary placement agreement is to obtain treatment or care related to the child's disability that the parent is unable to provide.

(ii) A child described in subparagraph (i) of this paragraph may remain in an out-of-home placement under a voluntary placement agreement for more than 180 days if the child's disability necessitates care or treatment in the out-of-home placement and a juvenile court makes a finding that continuation of the placement is in the best interests of the child.

(iii) Each local department shall designate, from existing staff, a staff person to administer requests for voluntary placement agreements for children with developmental disabilities or mental illnesses.

(iv) Each local department shall report annually to the Administration on the number of requests for voluntary placement agreements for children with developmental disabilities or mental illnesses that have been received, the outcome of each request, and the reason for each denial.

(v) On receipt of a request for a voluntary placement agreement for a child with a developmental disability or a mental illness, a local department shall discuss the child's case at the next meeting of the local care team for the purpose of determining whether any alternative or interim services for the child and family may be provided by any agency.

(3)(i) The Administration shall establish a program of out-of-home placement for former CINAs:

1. whose commitment to a local department was rescinded after the individuals reached the age of 18 years but before the individuals reached the age of 20 years and 6 months; and

2. who did not exit foster care due to reunification, adoption, guardianship, marriage, or military duty.

(ii) The Administration shall adopt regulations that include eligibility requirements in accordance with federal law and regulations for providing assistance to individuals at least 18 years old.

(iii) A local department may not seek legal custody of a former CINA under a voluntary placement agreement.

(iv) A former CINA described in subparagraph (i) of this paragraph may remain in an out-of-home placement under a voluntary placement agreement for more than 180 days if the former CINA continues to comply with the voluntary placement agreement and a juvenile court makes a finding that the continuation of the placement is in the best interests of the former CINA.

(c) In establishing the out-of-home placement program the Administration shall:

(1) provide time-limited family reunification services to a child placed in an out-of-home placement and to the parents or guardian of the child, in order to facilitate the child's safe and appropriate reunification within a timely manner;

(2) concurrently develop and implement a permanency plan that is in the best interests of the child; and

(3) provide training on an annual basis for the staff at each local department who administer requests for voluntary placement agreements for children with developmental disabilities or mental illnesses under subsection (b) of this section.

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

(e)(1) Unless a court orders that reasonable efforts are not required under § 3-812 of the Courts Article or § 5-323 of this title, reasonable efforts shall be made to preserve and reunify families:

(i) prior to the placement of a child in an out-of-home placement, to prevent or eliminate the need for removing the child from the child's home; and

(ii) to make it possible for a child to safely return to the child's home.

(2) In determining the reasonable efforts to be made and in making the reasonable efforts described under paragraph (1) of this subsection, the child's safety and health shall be the primary concern.

(3) Reasonable efforts to place a child for adoption or with a legal guardian may be made concurrently with the reasonable efforts described under paragraph (1) of this subsection.

(4) If continuation of reasonable efforts to reunify the child with the child's parents or guardian is determined to be inconsistent with the permanency plan for the child, reasonable efforts shall be made to place the child in a timely manner in accordance with the permanency plan, including consideration of both in-State and out-of-state placements, and to complete the steps to finalize the permanent placement of the child.

(f)(1) In developing a permanency plan for a child in an out-of-home placement, the local department shall give primary consideration to the best interests of the child, including consideration of both in-State and out-of-state placements. The local department shall consider the following factors in determining the permanency plan that is in the best interests of the child:

(i) the child's ability to be safe and healthy in the home of the child's parent;

(ii) the child's attachment and emotional ties to the child's natural parents and siblings;

(iii) the child's emotional attachment to the child's current caregiver and the caregiver's family;

(iv) the length of time the child has resided with the current caregiver;

(v) the potential emotional, developmental, and educational harm to the child if moved from the child's current placement; and

(vi) the potential harm to the child by remaining in State custody for an excessive period of time.

(2) To the extent consistent with the best interests of the child in an out-of-home placement, the local department shall consider the following permanency plans, in descending order of priority:

(i) returning the child to the child's parent or guardian, unless the local department is the guardian;

(ii) placing the child with relatives to whom adoption, custody and guardianship, or care and custody, in descending order of priority, are planned to be granted;

(iii) adoption in the following descending order of priority:

1. by a current foster parent with whom the child has resided continually for at least the 12 months prior to developing the permanency plan or for a sufficient length of time to have established positive relationships and family ties; or

2. by another approved adoptive family; or

(iv) another planned permanent living arrangement that:

1. addresses the individualized needs of the child, including the child's educational plan, emotional stability, physical placement, and socialization needs; and

2. includes goals that promote the continuity of relations with individuals who will fill a lasting and significant role in the child's life.

(3) Subject to paragraphs (1) and (2) of this subsection and to the extent consistent with the best interests of a child in an out-of-home placement, in determining a permanency plan, the local department shall consider the following in descending order of priority:

(i) placement of the child in the local jurisdiction where the child's parent or guardian resides; or

(ii) if the local department finds, based on a compelling reason, that placement of the child as described in item (i) of this paragraph is not in the best interest of the child, placement of the child in another jurisdiction in the State after considering:

1. the availability of resources to provide necessary services to the child;

2. the accessibility to family treatment, if appropriate; and

3. the effect on the local school system.

(g)(1) The local department shall:

(i) prepare the permanency plan in writing within 60 days of the date the child comes into care;

(ii) if the child is under the jurisdiction of the juvenile court, furnish the plan to the child's parents, the child or the child's counsel, and to the juvenile court; and

(iii) maintain the plan in the agency's case record.

(2) The local department shall amend the plan promptly as necessary in light of the child's situation and any court orders which affect the child.

(h) Unless a child has received a review from the local board of review of foster care under § 5-544 of this subtitle, the local department shall perform an administrative review every 6 months to determine the success of the efforts to meet the goals set out in the permanency plan or the agreement with the parents or guardians in voluntary placements.

(i)(1) Foster parents who wish to adopt a foster child in their care and who wish to contest the agency's decision to place the child with another adoptive family may, within 30 days from the removal of the child, file with the agency a request for a hearing.

(2) Within 10 days after receipt of a request for a hearing under paragraph (1) of this subsection, the agency shall notify the Office of Administrative Hearings, which shall hold the hearing and issue a decision within 45 days of the receipt of the request.

(j) The Administration shall adopt regulations that:

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

(i) maximize the prospect for reducing length of stay in out-of-home placement in the best interests of children; and

(ii) 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; and

(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:

(i) establish criteria for investigating and determining the suitability of prospective relative or nonrelative guardians; and

(ii) require the filing of a report with the court as provided in § 3-819.2 of the Courts Article.

(k)(1) At least one time each year, the Administration shall provide a child in an out-of-home placement who is at least 13 years old information regarding benefits available to the child on leaving out-of-home care.

(2) The information provided under paragraph (1) of this subsection shall include information regarding tuition assistance, health care benefits, and job training and internship opportunities.

(3) The Administration may provide the child the information required under paragraph (1) of this subsection:

(i) at a permanency planning hearing or review hearing held in accordance with § 3-823 of the Courts Article; or

(ii) by certified mail.

MARYLAND CODE ANNOTATED
HEALTH – GENERAL ARTICLE

§ 7-101: Definitions

(a) In this title the following words have the meanings indicated.
(b) "Administration" means the Developmental Disabilities Administration.
(c)(1) "Admission" means the process by which an individual with an intellectual disability is accepted as a resident in a State residential center.

(2) "Admission" includes the physical act of the individual entering the facility.

(d)(1) "Alternative living unit" means a residence that:

(i) Provides residential services for individuals who, because of developmental disability, require specialized living arrangements;

(ii) Admits not more than 3 individuals; and

(iii) Provides 10 or more hours of supervision per unit, per week.

(2) "Alternative living unit" does not include a residence that is owned or rented by:

(i) 1 or more of its residents; or

(ii) A person who:

1. Is an agent for any of the residents; but

2. Is not a provider of residential supervision.

(e) "Deputy Secretary" means the Deputy Secretary for Developmental Disabilities.
(f) "Developmental disability" means a severe chronic disability of an individual that:

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

(2) Is manifested before the individual attains the age of 22;

(3) Is likely to continue indefinitely;

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

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

(g) "External support" means:

(1) Periodic monitoring of the circumstances of an individual with respect to:

(i) Personal management;

(ii) Household management; and

(iii) The use of community resources; and

(2) Rendering appropriate advice or assistance that may be needed.

(h) "Group home" means a residence that:

(1) Provides residential services for individuals who, because of developmental disability, require specialized living arrangements;

(2) Admits at least 4 but not more than 8 individuals; and

(3) Provides 10 or more hours of supervision per home, per week.

(i) "Habilitation" means a process by which a provider of services enables an individual to acquire and maintain life skills to cope more effectively with the demands of the

individual's own person and environment and to raise the level of the individual's mental, physical, social, and vocational functioning.

(j)(1) “Individual support services” means an array of services that are designed to increase or maintain an individual's ability to live alone or in a family setting.

(2) “Individual support services” include:

(i) In-home assistance with meals and personal care;

(ii) Counseling;

(iii) Physical, occupational, or other therapies;

(iv) Architectural modification; and

(v) Any other services that the Administration considers appropriate to meet the individual's needs.

(3) “Individual support services” does not include full day or residential services.

(k) “Intellectual disability” means a developmental disability that is evidenced by significantly subaverage intellectual functioning and impairment in the adaptive behavior of an individual.

(l) “Live independently” means:

(1) For adults:

(i) Managing personal care, such as clothing and medication;

(ii) Managing a household, such as menu planning, food preparation and shopping, essential care of the premises, and budgeting; and

(iii) Using community resources, such as commercial establishments, transportation, and services of public agencies; or

(2) For minors, functioning in normal settings without the need for supervision or assistance other than supervision or assistance that is age appropriate.

(m) “Release” means a permanent, temporary, absolute, or conditional release of an individual from a State residential center.

(n) “Services” means residential, day, or other services that provide for evaluation, diagnosis, treatment, care, supervision, assistance, or attention to individuals with developmental disability and that promote habilitation of these individuals.

(o) “Services coordination” means a service that consists of the following 3 major functions that are designed to assist an individual in obtaining the needed services and programs that the individual desires in order to gain as much control over the individual's own life as possible:

(1) Planning services;

(2) Coordinating services; and

(3) Monitoring service delivery to the individual.

(p) “State residential center” means a place that:

(1) Is owned and operated by this State;

(2) Provides residential services for individuals with an intellectual disability and who, because of that intellectual disability, require specialized living arrangements; and

(3) Admits 9 or more individuals with an intellectual disability.

(q) “Treatment” means any education, training, professional care or attention, or other program that is given to an individual with developmental disability.

(r) “Vocational services” means a service that provides job training and placement, supported employment and training in acceptable work behaviors, and vocationally-related social and other skills.

CERTIFICATE OF SERVICE

I hereby certify that on the 21st day of September, 2015, a true and correct copy of the foregoing Brief of *Amici Curiae* in Support of Petitioner Dustin R. was filed with the Clerk of the Court of Appeals using the Maryland Electronic Court System (MDEC). The following participants in the case will be served by MDEC:

Counsel for Petitioner
Margaret F. Holmes
Legal Aid Bureau, Inc.
P.O. Box 907
229 Hanover Street
Annapolis, MD 21404
mholmes@mdlab.org

Mitchell Y. Mirviss
Venable LLP
One Church Street, 5th Floor
Rockville, MD 21850
mymirviss@venable.com

Counsel for Respondent
Julia Doyle Bernhardt
Assistant Attorney General
Office of the Attorney General
200 Saint Paul Place, 20th Floor
Baltimore, MD 21202
jbernhardt@oag.state.md.us

Kathleen A. Ellis
Assistant Attorney General
Dept. of Health and Mental Hygiene
300 West Preston Street, Suite 302
Baltimore, MD 21201
kathleen.ellis@maryland.gov

/s/ Jonathan G. Cedarbaum
Jonathan G. Cedarbaum
Paul R.Q. Wolfson
(admission pro hac vice pending)
Shirley C. Woodward
(admission pro hac vice pending)
Lauren N. Moore
(admission pro hac vice pending)
WILMER CUTLER PICKERING HALE
AND DORR LLP
1875 Pennsylvania Avenue NW
Washington, DC 20006
(202) 663-6315
Jonathan.Cedarbaum@wilmerhale.com

Counsel for Amici Curiae