

CINA (Foster Care)

Purposes

The purposes of the CINA laws are:

- (1) To provide for the care, protection, safety, and mental and physical development of any child coming within its jurisdiction;
- (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;
- (8) To provide judicial procedures for carrying out the provisions of this subtitle.

Cts. 3-802

Child in need of assistance (CINA) proceedings do not seek to sever the parent-child relationship.
In re Karl H., 394 Md. 402 (2006)

Venue

Cts. §3-805

A petition alleging that a child is a CINA shall be filed in the county where the child is residing or where act alleged occurred. A court may transfer the case to another county if there is another case pending in another county, a parent resides in another county or for some other reason in the best interests of the child. A voluntary placement petition shall be filed in the county where the parent or legal guardian resides. If delinquency is alleged, the proceedings shall be brought in the county where the alleged delinquent acts occurred.

Jurisdiction Cts. §3-803

The Juvenile Court has exclusive jurisdiction over

- (1) Voluntary placement hearings;
- (2) Proceedings arising from a petition alleging that a child is a CINA;
- (3) Proceedings arising under the Interstate Compact on the Placement of Children;
- (4) Proceedings to terminate parental rights after a CINA proceeding;
- (5) Guardianship review proceedings after a TPR proceeding; and
- (6) Adoption proceedings, if any, after a TPR proceeding.

The court has concurrent jurisdiction over:

- (1) Custody, visitation, support, and paternity of a child whom the court finds to be a CINA; and
- (2) Emergency custody of a child alleged to be a CINA and in state guardianship

Termination of jurisdiction Cts. §3-804

Jurisdiction terminates when child reaches 21, but can only be commenced if child is under 18.

Shelter Care

Methods for taking a child into custody §3-814

A child may be taken into custody by the following means

- 1) By court order
- 2) Under Family Law §5-709, child abuse and neglect, by a local department temporarily.
- 3) By law enforcement with reasonable grounds to believe that the child is in immediate danger and that removal is necessary for the child's protection.

When a law enforcement officer takes a child into custody, the officer must

- 1) Immediately notify the child's parent guardian, or custodian
- 2) Immediately notify the local department
- 3) Keep custody only until the local department takes custody or authorizes release of the child unless the officer determines it is safe to return the child.

A local department may authorize shelter care for a child who may be a CINA and has been taken into custody.

Emergency shelter care without hearing

The child may be placed in emergency shelter care, without a hearing if:

- 1) Placement is required to protect the child from serious immediate danger, and;
 - 2) No parent, guardian, custodian,, relative or other person is able to provide supervision and;
 - 3) Either;
 - a) Remaining in the child's home is contrary to the welfare of the child and removal is reasonable under the circumstances to provide for the safety of the child;
 - or
 - b) Unsuccessful reasonable efforts have been made in preventing or eliminating the need for removal from the child's home and reasonable efforts are being made to return the child to the child's home.
- Whenever a child is not returned to the child's parent, guardian, or custodian, the local department shall immediately file a petition to authorize continued shelter care.

Shelter Care Hearing

The court shall hold a shelter care hearing on the petition before disposition to determine whether the temporary placement of the child outside of the home is warranted. If the child's parents, guardian, custodian, or relatives can be located reasonable notice shall be given. A court may not order shelter care for more than 30 days. The court may extend the time by 30 days after a finding that continued shelter care is needed to provide for the safety of the child.

An alleged CINA may not be placed in detention, or a mental health facility, unless committed involuntarily in accordance with the Health General article.

Any child placed in shelter care in accordance with a petition filed under this section is provided appropriate services provided by multiple state agencies including:

- (i) Health care services;

- (ii) Mental health care services;
- (iii) Counseling services;
- (iv) Education services;
- (v) Social work services;
- (vi) Drug and alcohol abuse assessment or treatment services; and
- (vii) Visitation with siblings and biological family.

Petition

Cts. §3-809

Decision to file

Upon receipt of complaint, the local department will file a petition if it determines that the court has jurisdiction and that filing a petition is in the best interest of a child. Within 5 days of deciding not to file a petition the department must inform, in writing:

- (1) A child over the age of 10 who would have been the subject of the petition, if appropriate;
- (2) The parent, guardian, or custodian of the child who would have been the subject of the petition;
- (3) Each person or agency that requested that a petition be filed.

The person or agency requesting the petition may request a review of the decision not to file a petition by the Secretary of Human Resources within 15 days of the decision not to file. If the Secretary finds that a petition should have been filed, they must instruct the local department to file a petition within 5 days.

Contents

A CINA petition shall allege that a child is in need of assistance and set forth in clear and simple language the facts supporting that allegation. A voluntary placement petition shall allege that continuation of a voluntary placement is in the best interests of the child and set forth in clear and simple language the facts supporting that allegation. A separate petition shall be filed for each child.

Cts. §3-811, **Md. Rules §11-103**

The Maryland Rules apply to the format of the petition, other pleadings and procedures of the court for CINA cases. All documents served on parents in CINA cases must include information on the Department of Human Services website.

Cts. §3-810

Case Study

After a petition is filed, the court may order the local department or another agency to make or arrange for an evaluation of the child, the child's family, the child's environment, and other matters relevant to the disposition of the case by a qualified professional.

The court may not order an inpatient evaluation unless, after a hearing, the court finds that an inpatient evaluation is necessary and there are no less restrictive means to obtain an evaluation. Placement in an inpatient facility may not exceed 21 days unless the court finds good cause. The report of a study is admissible as evidence at a disposition hearing but not at an adjudicatory hearing. The attorney for each party has the right to receive the report at least 5 days before its presentation to the court, to challenge or impeach its findings and to present appropriate evidence with respect to it.

Cts. §3-816

Hearings

Adjudication hearing, rules of evidence and standard

After a CINA petition is filed under this subtitle, the court shall hold a hearing to determine whether the allegations in the petition, other than the allegation that the child requires the court's intervention, are true. The rules of evidence under Title 5 of the Maryland Rules shall apply at an adjudicatory hearing. The allegations shall be proved by a preponderance of the evidence.

Cts. §3-817

Disposition hearing, timing

Unless a CINA petition is dismissed, the court shall hold a separate disposition hearing after an adjudicatory hearing to determine whether the child is a CINA. The disposition hearing shall be held on the same day as the adjudicatory hearing, without good cause shown. In such cases, the court may delay the disposition hearing up to 30 days.

Cts. § 3-819

Masters in Juvenile Court

Masters may conduct hearings, make findings of fact, conclusions of law and recommendations for an order. The findings and the recommendations must be in writing and must be filed and served to the parties within 10 days. A party may file exceptions and request a hearing, either de novo or on the record, before the court. This hearing is limited to the issues raised in the exceptions. If there are no exceptions, the court will review the findings and recommendations and may adopt them in an order. If the court does not adopt the Master's findings or recommendations, the court shall conduct a hearing.

Cts. §3-807

Public Access to Proceedings

The court may exclude the public from CINA proceedings and limit attendance to those with a direct interest in the case and their representatives. The court shall exclude the public from any proceedings involving confidential information from the child abuse and neglect report and record, or any information obtained from the child welfare agency concerning a child or family who is receiving Title IV-B child welfare services or Title IV-E foster care or adoption assistance.

Cts. §3-810

Right to counsel

A party is entitled to counsel at all stages of proceedings if indigent; under the age of 18 years; or incompetent by reason of mental disability. The court may assess against any party reasonable compensation for the services of an appointed attorney.

Cts. §3-813

Right to Jury

There is no right to Jury trial in a CINA proceeding
Cts. §3-808

Disposition and Placement

Possible dispositions:

Find that the child is in need of assistance

Find that the child has a developmental disability or mental illness and delay a CINA decision

Dismiss the case.

If the child is found to be in need of assistance and removed from the home, the court must set forth specific findings of fact as to the circumstances that caused the need for the removal. The court must 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.

If the court delays a CINA decision due to mental illness, it will order the local department to assess the family's eligibility for voluntary placement of the child. The local department must file its findings within 30 days. If the local department finds the child ineligible, it will hold a hearing on the matter. The court at this hearing may find the child in need of assistance, dismiss the case or place the child in accordance with a voluntary agreement.
Cts. § 3-819

If the court finds that a child is in need of assistance, it may change the custody of the child. The court may order that the child be put in the custody of a parent, a relative, other individual or a local department. The court may designate the type of facility where the child will be placed and the scope of the guardianship. Guardianship may be granted for specific purposes such as medical or educational.
Cts. §3-820

Placement of Children Adjudicated CINA

Prohibition of Placement with Delinquent Children

A child who is not delinquent may not be committed or transferred to a facility used for the confinement of delinquent children.
Cts. §3-823

Placement of Children in Psychiatric facilities

Appropriate steps must be taken to minimize inappropriate placements of juveniles who are civilly committed to mental institutions in order to insure that commitment is the most appropriate and least restrictive alternative available. A court may not commit a child for such inpatient care and treatment unless it finds that:

- (1) the child has a mental disorder;
- (2) the child needs inpatient care and treatment for the protection of himself or herself or others;

(3) the child is unable or unwilling to be voluntarily admitted to such a hospital; and
(4) there is no less restrictive form of intervention available which is consistent with the child's condition and welfare.

Cts. § 3-819

Md. Rules §11-105

Priority of relative placement

The court will give priority to the child's relatives over nonrelatives when committing the child to the custody of an individual other than a parent.

§3-815

42 USC §671(a)(19)

Review of Voluntary placement

Within 30 days after a voluntary placement petition is filed, the court shall hold a voluntary placement hearing and shall make findings as to whether continuation of the placement is in the child's best interests; and reasonable efforts have been made to reunify the child with the family or place the child in a timely manner in accordance with the child's permanency plan.

Cts. §3-819.1

Permanency Planning and Review

§3-823

Permanency hearing

The court shall hold a permanency planning hearing to determine the permanency plan for a child no later than 11 months after a child is committed or within 30 days after the court finds that reasonable efforts to reunify a child with the child's parent or guardian are not required. If all parties agree, a permanency planning hearing may be held on the same day as the reasonable efforts hearing.

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.

30 Day requirement comes from 45 CFR §1356.21(h), Title IV-E

b. Reasonable Efforts required

See discussion in Federal CINA grants.

Placement Priorities

At a permanency planning hearing, the court shall prioritize placement of the child as

1. Reunification with the parent or guardian;
2. Placement with a relative for:
 - A. Adoption; or
 - B. Custody and guardianship
3. Adoption by a nonrelative;
4. Custody and guardianship by a nonrelative

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

Continued Placement, required findings

The court may not order a child to be continued in a placement unless the court finds a compelling reason 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.

Change of permanency plan to adoption

In the case of a child for whom the court determines that the plan should be changed to adoption under the court shall:

- (1) Order the local department to file a petition for guardianship 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.

See “requirements to file a TPR petition” under Title IV-E

Review Hearings, Procedure

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.

Exceptions:

The court shall review a placement every 12 months if the court finds that a child should remain in an out of home placement with a caregiver who agrees to care for the child on a permanent basis.

The court, unless good cause is shown, will terminate a case if an individual or relative of the child is granted custody and guardianship

If the court finds good cause, review hearings will be held every 12 months. The court cannot terminate a case after cause is found without first meeting with the child.

Review Hearings, Purposes

The purpose of the hearing is to

Determine the continuing necessity for and appropriateness of the commitment

Determine whether reasonable efforts have been made to finalize the permanency plan

Determine the progress that has been made towards resolving the causes of commitment;

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

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

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

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

Required Findings

The court may not order a child to be continued in a planned permanent living arrangement unless the court finds that the person or agency with custody has documented a compelling reason for determining that it would not be in the best interest of the child to return home, be referred for termination of parental rights; or be placed for adoption or guardianship with a relative or legal guardian.

In the case of a child for whom the court determines that the plan should be changed to adoption, the court shall order the local department to file a petition for guardianship within 30 days or, if the local department does not support the plan, within 60 days; schedule a TPR hearing instead of the next 6-month review hearing.

Foster Parents, Rights of Notice and to be heard at permanency hearing

The foster parent, preadoptive parent, relative, or an attorney for the foster parent, preadoptive parent, or relative shall be given the right of written notice 10 days before the hearing and to be heard at the hearing but is not considered to be a party based on these rights.
See also 45 CFR §1356.21(o)

Report from review board

At a permanency review hearing 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](#).

Consultation with child at review hearing

At least every 12 months at a permanency hearing, the court shall consult on the record with the child in an age-appropriate manner.

TPR

Reasonable efforts

Family Law §5-525

Unless not required, reasonable efforts must be made to preserve and reunify families:

- 1) 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
- 2) to make it possible for a child to safely return to the child's home.

The child's safety and health shall be the primary concern in determining reasonable efforts

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

Definitions

Federal

No federal definition provided. Only guidance given in 63 F.R. 50057, 50073 (1998).

Was the service plan customized to the individual needs of the family or was it a standard package of services?

Did the agency provide services to ameliorate factors present in the child or parent, i.e., physical, emotional, or psychological, that would inhibit a parent's ability to maintain the child safely at home?

Do limitations exist with respect to service availability, including transportation issues? If so, what efforts did the agency undertake to overcome these obstacles?

Maryland

Ct.s and Judicial proceedings, 3-801

“Efforts which are reasonably likely to achieve the objectives of 3-816.1”

Consisting of preventing placement of the child into the local department's custody

Did not intend for this to be regulatory text, only guidance

No private right of action for non-compliance with reasonable efforts, because it is not well defined. Definition up to each state

Suter v. Artist M, 503 US 347 (1992)

Examples from case law for reasonable efforts

In re Karl H., 394 Md. 402 (2006).

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

In re Yve S., 373 Md. 551 (2003)

Examples of Services provided by local department

COMAR 07.02.11.15

- (1) Transportation costs for family visits or other reasons;
- (2) Rent deposits;
- (3) Household items;
- (4) Vocational counseling or training;
- (5) Mental health services;
- (6) In-home aide service;
- (7) Day care, including temporary day care or respite;
- (8) Individual, group, and family counseling;
- (9) Assistance to locate housing;
- (10) Crisis intervention services;
- (11) Parenting classes;
- (12) Special education services; and
- (13) Inpatient, residential, or outpatient substance abuse treatment services.

Court requirement to document reasonable efforts

Judicial determinations documenting reasonable efforts to prevent removal from home or to reunify family must be documented in court order or court transcript. Affidavits or orders nunc pro tunc do not qualify as documented judicial determination. Court orders must not reference state law requirements for reasonable efforts to substantiate judicial determinations under federal grants.

45 CFR §1356.21(d)(3)

Concurrent Permanency Planning

The term “concurrent permanency planning” means “the process of taking concrete steps to implement both primary and secondary permanency plans, for example, by providing time-limited family reunification services while also exploring relatives as resources.” COMAR 07.02.11.03(B)(11). See FL §5-525, 45 CFR §1356.21(b)(3)(iii)

Federal Timing requirements for TPR petitions

45 CFR §1356.21(i)

The state must file a TPR petition when:

- 1) The child has been in foster care for 15 of the last 22 months
 - Start from date the child entered foster care
 - Cumulative addition of time spent in foster care during 22 month span
 - Does not include trial home visits or runaways
- 2) The child has been adjudicated an abandoned infant.
 - TPR petition must be made within 60 days of abandonment finding
- 3) The parent has been convicted of felony in exception to reasonable efforts

Exceptions, at State discretion

- 1) If the child is being cared for by relative
- 2) State agency has compelling reason that it would not be in best interests of child
- 3) The state agency has not provided reasonable reunification services

TPR Right to Counsel

Parents have a Due process right to counsel if indigent
Lassiter v. Dep't of Soc. Servs. of Durham Co., 452 U.S. 18, (1981)

Parents have a due process right to counsel if disabled or if they themselves are a minor
In re Adoption/Guardianship of Chaden M. 189 Md. App. 411 (2009)

Factors to consider in termination of parental rights

Best interest standard applies to decision to terminate parental rights. The parent must desire to have a continued relationship with the child or exceptional circumstances must exist to make continued relationship with parent detrimental to the best interest of the child.

In re Adoption/Guardianship of Rashawn H. 402 Md. 477, (2007)

The factors that have been noted are:

- Special needs of child
- Emotional bond between parent and child
- Fitness of parent
- Disability of parent
- Incarceration
- Past neglect

Other children of parent with TPR
Prior abuse
Abuse attributed to psychiatric disorder
Safety and health of child

Minority of parent is not a disability factoring into best interests of child.
In re Adoption No. 2428, 81 Md. App. 133 (1989)

Reunification services offered

Required findings at CINA Hearings

Adjudicatory (Cts. §3-817), Shelter Care (Cts. §3-815), Disposition (Cts. §3-819), Permanency Review (Cts. §3-823, FL §5-326)

(§3-816.1)

“Finding whether the local department made reasonable efforts to prevent placement of the child into local department's custody “

Permanency Review (Cts. §3-823, FL §5-326)

§3-816.1 (b)(2)

“Finding whether a local department made reasonable efforts to (i) Finalize the permanency plan in effect for the child and (ii) Meet the needs of the child including the child's health, education, safety, and preparation for independence”

Factors to Consider for Findings

1) The extent to which a local department has complied with the law, regulations, state or federal court orders, or a stipulated agreement accepted by the court regarding the provision of services to a child in an out-of-home placement;

(2) Whether a local department has ensured that: (i) A caseworker is promptly assigned to and actively responsible for the case at all times; (ii) The identity of the caseworker has been promptly communicated to the court and the parties; and (iii) The caseworker is knowledgeable about the case and has received on a timely basis all pertinent files and other information after receiving the assignment from the local department;

(3) For a permanency hearing, whether a local department has provided appropriate services that facilitate the achievement of a permanency plan for the child.

(4) Whether the child's placement has been stable and in the least restrictive setting appropriate, available, and accessible for the child during the period since the most recent hearing held by the court;

(5) Whether a local department notified the court and all parties before any change of placement for the child, or, if emergency conditions made a change necessary, as soon as possible after the change of placement;

(6) On receipt of a report of maltreatment of a child occurring while the child is in the custody of a local department, whether the local department provided the appropriate parties, including the child's attorney, a report or notice of a report of the suspected maltreatment of the child and of the disposition of the investigation within the time required by regulation and court order; and

(7) Whether a local department has provided appropriate and timely services to help maintain the child in the child's existing placement, including all services and benefits available in accordance with State law, regulations, state and federal court orders, stipulated agreements, or professional standards regarding the provision of services to children in out-of-home placements.

When making a reasonable efforts determination, the court may not consider a potential loss of federal funding for placement of a child that may result from a determination that reasonable efforts were not made.

Written findings Requirements

The Court shall make the reasonable efforts to prevent placement out of the home in writing if it finds that reasonable efforts have been made or that at least one of the following conditions exist

- 1) The local department did not comply with applicable laws, court orders or agreements
- 2) The local department did not ensure continuity of casework
- 3) The local department did not provide the required services to achieve permanency plan
- 4) Since the last hearing, the child has not been placed in a stable or least restrictive setting appropriate, available and accessible to the child
- 5) The local department failed to provide reports or notices of reports in a timely manner
- 6) The local department did not provide the required services to maintain the child's existing placement.

After making one of the above findings in writing, the court shall send its written findings to

- 1) The director of the local department
- 2) The social Services Administration
- 3) The State Citizens Review Board for Children
- 4) The Local Citizens Review Panel
- 5) Any individual or agency identified by the local department or the court as responsible for monitoring the care and services provided to children in the care of the local department.
