

# Nuts and Bolts



# Termination of Parental Rights





## Beyond Course Materials

- Colleagues and Specialists
- Opinions Link at Judiciary Website  
<http://www.courts.state.md.us/>
- Maryland Trial Judge Bench Book – Title 5
  - Maryland Child Welfare Benchbook

# Important Preliminary Question



**Does the case  
concern  
an Indian Child?**

# Indian Child Welfare Act U.S.C., Title 25, Chapter 21

***Applies to all child custody proceedings***

"Indian child" means any unmarried person who is under age eighteen and is either (a) a member of an Indian tribe or (b) is eligible for membership in an Indian tribe and is the biological child of a member of an Indian tribe"  
25 U.S.C. 1903(4)

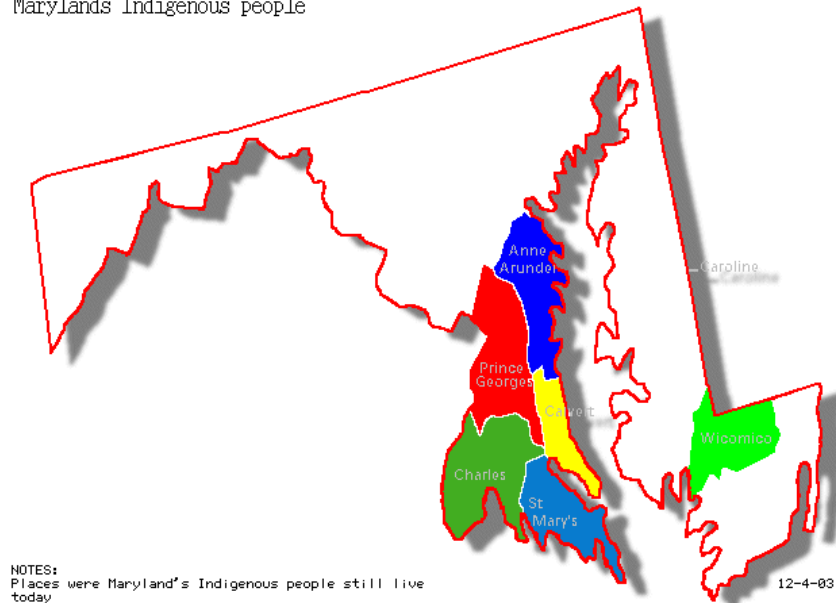
# Make Certain Inquiry Has Been Made

- When possibility raised
- Consult Federal Register
- Make Inquiry of Tribal Contact
- My Notice Requesting Included with Materials

# Maryland Recognized Tribes (January 9, 2012 Executive Order)

- Piscataway Indian Nation
- Piscataway Conoy Tribe

Maryland's Indigenous people







- Maryland Commission on Indian Affairs
- National Council of Juvenile and Family Court Judges
- National Indian Child Welfare Association:  
<http://www.nicwa.org>



# Permanency Plan Hierarchy

F. L. 5-525 and Cts. Jud. Proc. 3-823

1. Reunification with the parent or guardian

2. Placement with a relative for:

**A. Adoption; or**

B. Custody and guardianship

**3. Adoption by a non-relative**

4. Custody and guardianship by a non-relative

5. Another planned permanent living arrangement



**the decision**

**that the permanency plan  
is termination of parental  
rights and adoption**

# When decision most likely to be first considered

## **Cts. Jud. Proc. 3-823(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.

# 3-812

reasonable efforts to reunify waived

when parent has

(1) Subjected the child to:

(i) Chronic abuse;

(ii) Chronic and life-threatening neglect;

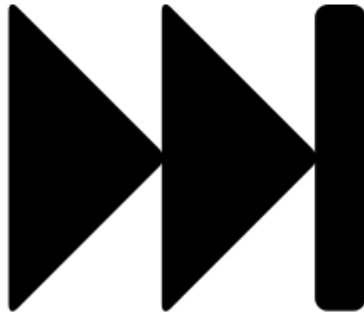
(iii) Sexual abuse; or

(iv) Torture; **or**

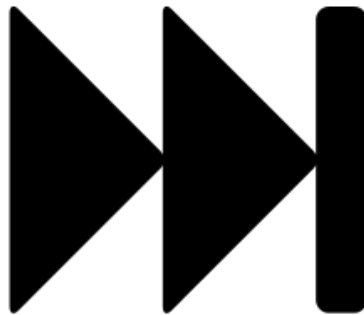
(2) Been convicted... of: (i) *A crime of violence* against: 1. A minor offspring of the parent or guardian; 2. The child; or 3. Another parent or guardian of the child; or (ii) Aiding or abetting, conspiring, or soliciting to commit a crime described in subitem (i) of this item; **or**  
(3) Involuntarily lost parental rights of a sibling of a child.

- *In re Cadence B.*, 417 Md. 146 (2010), highlights how similar is the consideration that must be made when considering the petition for guardianship as to reasonable efforts before changing the plan to adoption.

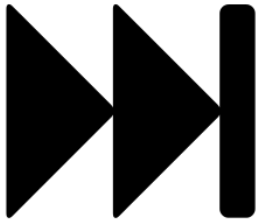




**Adoption can occur  
without prior TPR Proceeding**



# F. L. Title 5, Part III



Allows one to go directly  
from CINA to Adoption

but

**requires Adoption Petition**

# Section 5 - 331

- Consent of DSS required to file petition
- Though would seem to be most appropriate when parents are deceased or consent, allowable where no contact with DSS within 180 days of filing or DSS unable to locate after reasonable efforts to locate
- **Not** sooner than the later of 30 days after birth of child, the expiration of any period for revocation of consent or time to file an objection.

## **F.L. 5 – 336**



- If child is 10 or older, must consent, or, if younger, must not object

**F.L 5 – 538**

# Revocation of Consent



- DSS or child may revoke its consent or child may file an objection at any time prior to the grant of the petition for adoption. **F.L. 3 - 539**
- Court **must dismiss** petition under any of those circumstances. **F.L. 3 - 540**

# The Commencement of (Involuntary) Guardianship (TPR) Proceedings



# By Court Directive

## Cts. and Jud. Proc. 3-823(g)

When the court determines that the plan should be changed to adoption, the court **is required to:**

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

# Local Department Initiation

F.L. 5 – 525.1(b)

(1) Except as provided in paragraph (3) of this subsection, a local department to which a child is committed under § 5-525 of this subtitle **shall file** a petition for termination of parental rights or join a termination of parental rights action that has been filed **if:**



(i) the child has been in an out-of-home placement for **15 of the most recent 22 months;**

(ii) a court finds that the child is an abandoned infant; **or**

(iii) a court finds that the parent has been convicted, in any state or any court of the United States, of:

1. a crime of violence against:

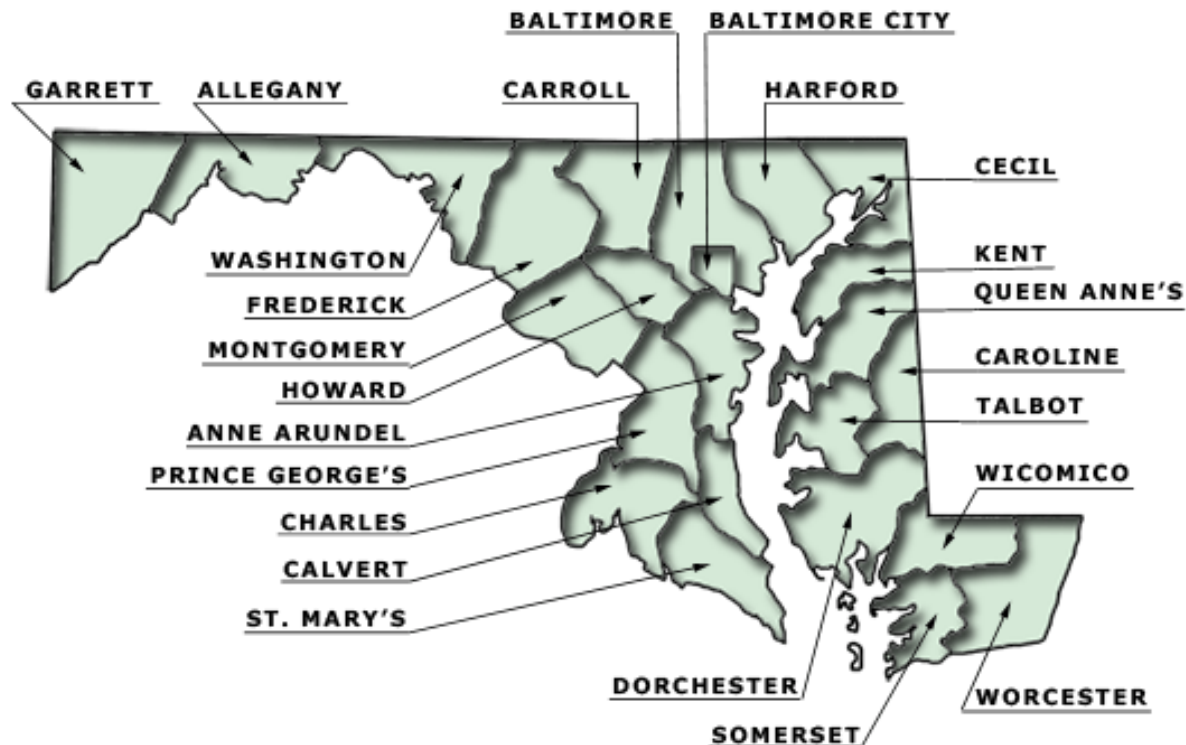
A. a minor offspring of the parent;

B. the child; or

C. another parent of the child; or

2. aiding or abetting, conspiring, or soliciting to commit a crime one of the crimes of violence

# once petition has been filed



**Notice by**  
show cause order to

- each parent; and
- last attorney of record for respondent
- last attorney of and for each parent

**F.L. 5 – 316**



- **TPR Status** to be held within 60 days  
Rule 9 – 104(b)
- **Ruling** to be made **within 180 days after petition filed and within 45 days after consents or trial**

**F.L. 5 – 319(a)**



# Service Issues



- Failure to give notice to last attorney of record in CINA proceeding is fatal, even if the attorney's appearance was stricken. *In re Adoption/ Guardianship No. 6Z000045*, 372 Md. 104 (2002).
- Service on the office of the prior attorney who no longer is at the office is ineffective. *In re: Adoption/ Guardianship of Genara A.*, 152 Md. App. 725 (2003)

# Service Issues



- If DSS unable to identify an address for parent and serve at address **after reasonable good faith efforts** to do so **F.L. 5- 316 (e)**



**F. L. 5- 316 (f)** specifies publication by newspaper **and** via website



# the web notice?

[http://www.dhr.state.md.us/blog/?page\\_id=5675](http://www.dhr.state.md.us/blog/?page_id=5675)









## **The Department decides to dismiss petition but child objects?**

*In re Adoption/Guardianship No T97036005*, 358 Md. 12 (2002) (“The primary issue we must decide in each case is whether the **trial court violated the constitutional and/or statutory rights of the children by granting the petition** of BCDSS to terminate parental rights when both parents either affirmatively consented or were statutorily deemed to have consented, **without first providing the children with a meaningful opportunity to be heard on the merits of the petition**. We shall hold these children had this right, and accordingly, we shall reverse.” )



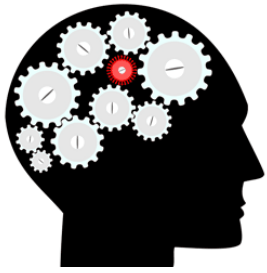
## Mom or Dad is in the military

- Under Service Members Civil Relief Act, 50 U.S.C. App. 501 *et seq.*, in order for adverse ruling, attorney must be appointed





- 90 day stay mandated upon submission that satisfies requirement of Act with an additional stay within judge's discretion
- The Act and A Judge's Guide to The Servicemembers Civil Relief Act by Mark E. Sullivan are provided as tools



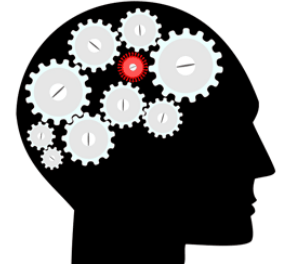
## Rule 9-103 (b)(1)(K)



- Petition for guardianship or adoption is to include  
“Facts known to ... petitioner that may indicate that a party has a **disability that makes the party incapable of consenting or participating effectively in the proceedings**, or, if no such facts are known to the petitioner, a statement to that effect”



# Disability of Parent



- Disability hearing required - **Rule 9-105(b)**
- If disability finding, parent is entitled to representation by Office of Public Defender  
**F.L. 5 – 307(a)**

# What Is A Disability



- For purposes of TPR proceedings, definition seems to be *functional*
- However, the “mental impairment or deficiency” and “intellectual functioning” elements of the definition in **F. L. 5-525** would seem to be more helpful

## 5- 307(a)(2)

To determine whether a disability makes a parent incapable of effectively participating in a case, a juvenile court, on its own motion or motion of a party, **may order examination of the parent.**



# Objection Triggers Right to Counsel

- Office of Public Defender by statute
- Attorney cannot object on behalf of client who has not authorized the filing. *In re Darjal*, 191 Md. App. 505 (2010)

# Public Defender Policy

If there is no dispute as to disability and parent is still represented by the Office of the Public Defender in the CINA proceeding (eligibility, continued desire to be so represented and no basis for disruption of the relationship) the Office will enter its appearance and file an objection on behalf of its client. A Consent Notice or similar filing by Local Department would be expected.

# Who's the Daddy?



Resolve paternity  
as early in dependency  
proceedings as possible



# Guardianship becomes consensual

- **F. L. 5-318, 320-322**
  - **actual** consent of all parties
- OR**
- **deemed** consent

# 5-320 (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.



## **A Party Seeks to Revoke Its Consent?**

*In re: Adoption/Guardianship No. 93321055/CAD 344  
Md. 458, 486 (1997)*

“As a matter of statutory construction ... we conclude that **there is no right to revoke a statutory consent** .... That is a consent, as we have said, arising by operation of law, not by volition, and it is not within the power of the parent to revoke it.”

*In re Adoption/Guardianship No. T00032005, 141 Md.App. 570, 602 (2001)*

*“We recognize that there may be extreme circumstances that justify providing the child in a TPR case with an opportunity to revoke a statutory consent.”*

**However,** there it was held that maturation of a child is not extreme circumstance that would cause it to be an abuse of discretion for a judge to refuse request of child to revoke consent.



# Perfunctory Grant With Consent?

“To the extent that the court below failed to permit John to withdraw his deemed consent, we conclude that the court neither erred nor abused its discretion. We hasten to add, however, that our conclusion does not alter the paramount principle in cases of this kind; **even if the child is deemed to have consented, and cannot withdraw that consent, the court may not grant a TPR petition unless it is satisfied, by clear and convincing evidence, that such a ruling is in the child's best interest.**”

*Id.* Md. App. at 603



**Consent was conditioned on particular placement and placement otherwise?**

- **F.L. 5-327** governs
- Hearing to be scheduled within 30 days after notice of failed conditional placement filed with court
- Can result in vacating of guardianship order and revival of CINA case pending guardianship merits trial



- Parent seeks to revoke consent because **post-adoption contact agreement breached?**
- “...not a ground for revoking consent to, or setting aside an order for, an adoption or guardianship.” **F.L. Article, 5-308 (d)**
- Court can order mediation; enforce or modify
- **No caselaw**

# With Consensual Grant

- **F.L. 5-322** – Order granting petition should be issued
- **F.L. 5-324** – Separate order addressing termination of CINA case, **reasonable efforts findings and notice**, among other things

# Nonconsensual Guardianships

**F.L. § 5-323**

Contested TPR Worksheet  
(Included as Tool)



# The Parties

- Make certain to identify the parties and their representatives
- As to any absent party, confirm proof of service of show cause order (parent and prior counsel) and notice of trial
- **Make certain that self-represented is not in that status by fault of “the Court”**

# Exercise care if parent decides to discharge counsel

- *In re Alijah*, 195 Md. App. 491 (2010) although CINA case, very instructive
- **Record should reflect:** Specific inquiry of parent before permitting discharge; clearly established desire to discharge; and weighing akin to Rule 2-132(b) (may deny withdrawal if “would cause undue delay, prejudice, or injustice”)

# Ruling on The Merits

- Must make a finding as to **each factor** in **F.L. 5-323** *In re Victor A.*, 386 Md. 288, 319 (2005)
- *In re Rashawn H.*, 402 Md. 477, 499 (2007): “To justify a TPR judgment,...[t]he facts must demonstrate an **unfitness** to have a continued parental relationship with the child, **or exceptional circumstances** that would make a continued parental relationship detrimental to the best interest of the child.”



# Chapter 350, Laws of 2009

## F. L. 5–323.

(b) If, after consideration of factors as required in this section, a juvenile court finds by clear and convincing evidence that **a parent is unfit to remain in a parental relationship with the child or that exceptional circumstances exist that would make a continuation of the parental relationship detrimental to the best interests of the child such that terminating the rights of the parent is in a child's best interests**, the juvenile court may grant guardianship of the child without consent otherwise required under this subtitle and over the child's objection.

# Ruling on the Merits, Cont.

- Clear and convincing evidence requirement applies to the weighing of all the 5-323 factors as a whole, not as to each factor individually. *In re Adoption/Guardianship No. 94339058/CAD, 120 Md.App. 88, 105 (1998)*





- Cannot terminate parental rights of only one of two living parents
- Lack of adoptive resource improper basis for denial. *In re Victor A.*
- That child has special developmental needs does not allow different treatment. *In re Victor A.*
- Long-term, as opposed to short-term, imprisonment, may be given significant weight. *In re No. J970013*, 128 Md.App. 242 (1999)

Must  
be  
**ar-tic-u-lat-ed**



*In re Adoption/Guardianship  
of Rashawn H.*

402 Md. 477 (2007)

# Model Rulings

- Dorchester County Circuit Court Judge Brett W. Wilson's May 20, 2009 Order, *In re De'Avion C.*
- Prince George's County Circuit Court Judge Melanie Shaw Geter *In re Rashawna E.*
- Prince George's County Circuit Court LMJr. *In re Irion W.* [not appeal tested]

# *In Re Ta'Niya* 417 Md. 90 (2010)

- The Best Interest of the Child prevails
- Before answering the exceptional circumstance or unfitness question, you **must** have considered all of the other statutory factors

*In Re: Amber R.*, 417 Md. 701  
(2011)

- Great on issue of finding of “unfitness” and the sufficiency of the statutory factors

- Time in foster care alone is not sufficient.  
*In re Alonza D., Jr.*, 412 Md. 442 (2010)
- But, where most meaningful relationship and only stability has been with foster family, time in foster care, exceptional circumstances may be found.  
*In re Cadence B.*, 417 Md. 146 (2010)



# *In re Ta'Niya*

- Decision must be **individual as to each child**.
- Fact that other children in parent's custody does not preclude finding of exceptional circumstances.
- You cannot fail to go through all the factors, even though you know where the plane is going to land.



## **The Change of Plan Has Been Appealed?**

- *In re Cross H.*, 200 Md. App. 142, Court of Special Appeals held that the pendency of CINA appeal regarding change of plan did not preclude termination of parental rights trial and grant of guardianship.
- *Cert granted*, 422 Md. 352 (October 24, 2011)



## Parent withdraws objection at trial?

- **F. L. 5-321**
- Consent must be entered on the record before you, the judge, in the language of the parent
- Must include **waiver of revocation** period
- Must be knowingly and voluntarily given
- Oral examination is recommended, especially if not represented by counsel



**You tried, but 180 days and no ruling?**

**Dismissal inappropriate**

*In re: Abigail C.* 138 Md. App. 570, 584 (2001)

“ We disagree that the 180-day ruling time ... is in the nature of a statute of limitations or a trial deadline, such as those addressed in *James S. and Hicks...*”

# Right to Effective Assistance of Counsel



*In re: Adoption of Chaden M.*

422 Md. 498, 501 (October 25, 2011)

“... once counsel for April C. had entered her appearance, at the request of DSS and after DSS had alleged that April C. may have been disabled, April C. thereafter had a right to effective assistance of counsel as an allegedly disabled parent in a guardianship proceeding. We hold ... that counsel rendered ineffective assistance because, after entering her appearance on behalf of April C., counsel failed to preserve April C.'s right to challenge the guardianship proceedings by failing to file a timely notice of objection.”

# If Petition Granted

Next



- A separate order accompanying the order granting or denying the petition must include **“a specific finding on whether reasonable efforts have been made to finalize the ... permanency plan”** [Caveat: If Native American, must make finding as to “active efforts”. *In re Nicole B.*, 410 Md 33 (2009). Court of Appeals declined to address issue whether “active” and “reasonable” efforts are the same.]



- Must schedule first guardianship review to occur not later than 180 days
- The separate order must direct termination CINA case



# If Petition Denied

Next



**Make certain that the reasonable efforts determination is made a part of the record in the CINA case, particularly if there is not a CINA review already scheduled to occur within the regular 6-month review cycle for the CINA case.**

# Review Hearings



- **F.L. § 5 – 326 and Cts & Jud Proc § 3 – 816**
- At least once each 12 months; however, first within 180 days of grant of guardianship
- Towards Adoption
- Specific factual reasonable efforts finding
- Transitioning Youth
- Specific Placement may be ordered



## Child Consultation

### **F.L. 5 – 326(c)**

“At least every 12 months at a hearing ..., the court shall consult on the record with the child in an age-appropriate manner to obtain the child’s views on permanency.”

- If lack of reasonable efforts, notice has to go to certain persons and reasonable efforts hearing should be scheduled if not already remedied
- If determined that appropriate plan is other than Adoption or Custody and Guardianship, then it is Another Planned Permanent Living Arrangement (APPLA) and compelling reason for plan must be articulated

# Let's hit the road!

