

HOUSE BILL 245

D4

3lr0088

By: **Chair, Judiciary Committee (By Request – Departmental – Human Resources)**

Introduced and read first time: January 23, 2013

Assigned to: Judiciary

Committee Report: Favorable with amendments

House action: Adopted

Read second time: March 14, 2013

CHAPTER _____

1 AN ACT concerning

2 **Family Law – Substance-Exposed Newborns**

3 FOR the purpose of ~~establishing a presumption that a child is not receiving proper~~
4 ~~care and attention from the mother for purposes of determining whether a child~~
5 ~~is a child in need of assistance under certain provisions of law; altering the~~
6 ~~factors that a juvenile court is required to consider when determining whether~~
7 ~~to terminate a parent's rights;~~ requiring a health care practitioner involved in
8 the delivery or care of a substance-exposed newborn to make a certain report to
9 a local department of social services except under certain circumstances;
10 specifying the contents of the report; requiring a local department of social
11 services to take certain actions; establishing that a report made under this Act
12 does not create a certain presumption; requiring the Secretary of Human
13 Resources to adopt certain regulations; requiring the Department of Human
14 Resources to submit reports to the General Assembly on or before certain dates;
15 defining certain terms; and generally relating to substance-exposed newborns.

16 ~~BY repealing and reenacting, with amendments,~~
17 ~~Article – Courts and Judicial Proceedings~~
18 ~~Section 3-818~~
19 ~~Annotated Code of Maryland~~
20 ~~(2006 Replacement Volume and 2012 Supplement)~~

21 ~~BY repealing and reenacting, with amendments,~~
22 ~~Article – Family Law~~

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.

Underlining indicates amendments to bill.

~~Strike out~~ indicates matter stricken from the bill by amendment or deleted from the law by amendment.



1 ~~Section 5-323~~
 2 ~~Annotated Code of Maryland~~
 3 ~~(2012 Replacement Volume)~~

4 BY adding to
 5 Article – Family Law
 6 Section 5-704.2
 7 Annotated Code of Maryland
 8 (2012 Replacement Volume)

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

11 ~~Article – Courts and Judicial Proceedings~~

12 ~~3-818.~~

13 ~~Within 1 year after a child's birth, there is a presumption that a child is not~~
 14 ~~receiving proper care and attention from the mother for purposes of § 3-801(f)(2) of~~
 15 ~~this subtitle if:~~

16 (1) ~~[(i) The child was born exposed to cocaine, heroin,~~
 17 ~~methamphetamine, or a derivative of cocaine, heroin, or methamphetamine as~~
 18 ~~evidenced by any appropriate tests of the mother or child; or~~

19 (ii) ~~Upon admission to a hospital for delivery of the child, the~~
 20 ~~mother tested positive for cocaine, heroin, methamphetamine, or a derivative of~~
 21 ~~cocaine, heroin, or methamphetamine as evidenced by any appropriate toxicology test]~~
 22 ~~THE CHILD WAS IDENTIFIED AS A SUBSTANCE EXPOSED NEWBORN AS~~
 23 ~~DESCRIBED IN § 5-704.2 OF THE FAMILY LAW ARTICLE; and~~

24 (2) ~~Drug treatment is made available to the mother and the mother~~
 25 ~~refuses the recommended level of drug treatment, or does not successfully complete~~
 26 ~~the recommended level of drug treatment.~~

27 Article – Family Law

28 ~~5-323.~~

29 (a) ~~[In this section, “drug” means cocaine, heroin, methamphetamine, or a~~
 30 ~~derivative of cocaine, heroin, or methamphetamine.~~

31 (b) ~~If, after consideration of factors as required in this section, a juvenile~~
 32 ~~court finds by clear and convincing evidence that a parent is unfit to remain in a~~
 33 ~~parental relationship with the child or that exceptional circumstances exist that would~~
 34 ~~make a continuation of the parental relationship detrimental to the best interests of~~

1 ~~the child such that terminating the rights of the parent is in a child's best interests,~~
2 ~~the juvenile court may grant guardianship of the child without consent otherwise~~
3 ~~required under this subtitle and over the child's objection.~~

4 ~~[(e)] (B) A juvenile court need not consider any factor listed in subsection~~
5 ~~[(d)] (C) of this section in determining a child's best interests if, after a thorough~~
6 ~~investigation by a local department, the juvenile court finds that:~~

7 ~~(1) the identities of the child's parents are unknown; and~~

8 ~~(2) during the 60 days immediately after the child's adjudication as a~~
9 ~~child in need of assistance, no one has claimed to be the child's parent.~~

10 ~~[(d)] (C) Except as provided in subsection [(e)] (B) of this section, in ruling~~
11 ~~on a petition for guardianship of a child, a juvenile court shall give primary~~
12 ~~consideration to the health and safety of the child and consideration to all other~~
13 ~~factors needed to determine whether terminating a parent's rights is in the child's best~~
14 ~~interests, including:~~

15 ~~(1) (i) all services offered to the parent before the child's~~
16 ~~placement, whether offered by a local department, another agency, or a professional;~~

17 ~~(ii) the extent, nature, and timeliness of services offered by a~~
18 ~~local department to facilitate reunion of the child and parent; and~~

19 ~~(iii) the extent to which a local department and parent have~~
20 ~~fulfilled their obligations under a social services agreement, if any;~~

21 ~~(2) the results of the parent's effort to adjust the parent's~~
22 ~~circumstances, condition, or conduct to make it in the child's best interests for the~~
23 ~~child to be returned to the parent's home, including:~~

24 ~~(i) the extent to which the parent has maintained regular~~
25 ~~contact with:~~

26 ~~1. the child;~~

27 ~~2. the local department to which the child is committed;~~

28 ~~and~~

29 ~~3. if feasible, the child's caregiver;~~

30 ~~(ii) the parent's contribution to a reasonable part of the child's~~
31 ~~care and support, if the parent is financially able to do so;~~

1 ~~(iii) the existence of a parental disability that makes the parent~~
 2 ~~consistently unable to care for the child's immediate and ongoing physical or~~
 3 ~~psychological needs for long periods of time; and~~

4 ~~(iv) whether additional services would be likely to bring about a~~
 5 ~~lasting parental adjustment so that the child could be returned to the parent within an~~
 6 ~~ascertainable time not to exceed 18 months from the date of placement unless the~~
 7 ~~juvenile court makes a specific finding that it is in the child's best interests to extend~~
 8 ~~the time for a specified period;~~

9 ~~(3) whether:~~

10 ~~(i) the parent has abused or neglected the child or a minor and~~
 11 ~~the seriousness of the abuse or neglect;~~

12 ~~(ii) 1. [A. on admission to a hospital for the child's~~
 13 ~~delivery, the mother tested positive for a drug as evidenced by a positive toxicology~~
 14 ~~test; or~~

15 ~~B. upon the birth of the child, the child tested positive~~
 16 ~~for a drug as evidenced by a positive toxicology test] THE CHILD WAS IDENTIFIED AS~~
 17 ~~A SUBSTANCE EXPOSED NEWBORN AS DESCRIBED IN § 5-704.2 OF THIS TITLE;~~
 18 ~~and~~

19 ~~2. the mother refused the level of drug treatment~~
 20 ~~recommended by a qualified addictions specialist, as defined in § 5-1201 of this title;~~
 21 ~~or by a physician or psychologist, as defined in the Health Occupations Article;~~

22 ~~(iii) the parent subjected the child to:~~

23 ~~1. chronic abuse;~~

24 ~~2. chronic and life-threatening neglect;~~

25 ~~3. sexual abuse; or~~

26 ~~4. torture;~~

27 ~~(iv) the parent has been convicted, in any state or any court of~~
 28 ~~the United States, of:~~

29 ~~1. a crime of violence against:~~

30 ~~A. a minor offspring of the parent;~~

31 ~~B. the child; or~~

- 1 ~~C.~~ ~~another parent of the child; or~~
- 2 ~~2.~~ ~~aiding or abetting, conspiring, or soliciting to commit~~
3 ~~a crime described in item 1 of this item; and~~
- 4 ~~(v)~~ ~~the parent has involuntarily lost parental rights to a sibling~~
5 ~~of the child; and~~
- 6 ~~(4)~~ ~~(i)~~ ~~the child's emotional ties with and feelings toward the~~
7 ~~child's parents, the child's siblings, and others who may affect the child's best interests~~
8 ~~significantly;~~
- 9 ~~(ii)~~ ~~the child's adjustment to:~~
- 10 ~~1.~~ ~~community;~~
- 11 ~~2.~~ ~~home;~~
- 12 ~~3.~~ ~~placement; and~~
- 13 ~~4.~~ ~~school;~~
- 14 ~~(iii)~~ ~~the child's feelings about severance of the parent child~~
15 ~~relationship; and~~
- 16 ~~(iv)~~ ~~the likely impact of terminating parental rights on the~~
17 ~~child's well-being.~~

18 ~~[(e)] (D)~~ ~~(1)~~ ~~A juvenile court shall consider the evidence under subsection~~
19 ~~[(d)(3)(i)] (C)(3)(I) and (ii) of this section as to a continuing or serious act or condition~~
20 ~~and may waive a local department's obligations for services described in subsection~~
21 ~~[(d)(1)] (C)(1) of this section if, after appropriate evaluation of efforts made and~~
22 ~~services offered, the juvenile court finds by clear and convincing evidence that a~~
23 ~~waiver is in the child's best interests.~~

24 ~~(2)~~ ~~A juvenile court may waive a local department's obligations for~~
25 ~~services described in subsection [(d)(1)] (C)(1) of this section if the juvenile court finds~~
26 ~~by clear and convincing evidence that one or more of the acts or circumstances listed in~~
27 ~~subsection [(d)(3)(iii)] (C)(3)(III), (iv), or (v) of this section exists.~~

28 ~~(3)~~ ~~If a juvenile court waives reunification efforts under § 3-812(d) of~~
29 ~~the Courts Article, the juvenile court may not consider any factor under subsection~~
30 ~~[(d)(1)] (C)(1) of this section.~~

31 ~~[(f)] (E)~~ ~~If a juvenile court finds that an act or circumstance listed in~~
32 ~~subsection [(d)(3)(iii)] (C)(3)(III), (iv), or (v) of this section exists, the juvenile court~~

1 ~~shall make a specific finding, based on facts in the record, whether return of the child~~
 2 ~~to a parent's custody poses an unacceptable risk to the child's future safety.~~

3 ~~[(g)] (F) If a parent has consented to guardianship in accordance with §~~
 4 ~~5-320(a)(1)(iii)1 of this subtitle, the loss of parental rights shall be considered~~
 5 ~~voluntary.~~

6 **5-704.2.**

7 (A) (1) IN THIS SECTION THE FOLLOWING WORDS HAVE THE
 8 MEANINGS INDICATED.

9 (2) "CONTROLLED DRUG" MEANS A CONTROLLED DANGEROUS
 10 SUBSTANCE INCLUDED IN SCHEDULE I, SCHEDULE II, SCHEDULE III,
 11 SCHEDULE IV, OR SCHEDULE V UNDER TITLE 5, SUBTITLE 4 OF THE CRIMINAL
 12 LAW ARTICLE.

13 (3) "HEALTH CARE PRACTITIONER" HAS THE MEANING STATED
 14 IN § 1-301 OF THE HEALTH OCCUPATIONS ARTICLE.

15 (4) "NEWBORN" MEANS A CHILD UNDER THE AGE OF 30 DAYS
 16 WHO IS BORN OR WHO RECEIVES CARE IN THE STATE.

17 (B) FOR PURPOSES OF THIS SECTION, A NEWBORN IS
 18 "SUBSTANCE-EXPOSED" IF:

19 (1) THE NEWBORN:

20 (I) DISPLAYS A POSITIVE TOXICOLOGY SCREEN FOR A
 21 CONTROLLED DRUG AS EVIDENCED BY ANY APPROPRIATE TEST AFTER BIRTH;

22 (II) DISPLAYS THE EFFECTS OF CONTROLLED DRUG USE OR
 23 SYMPTOMS OF WITHDRAWAL RESULTING FROM PRENATAL CONTROLLED DRUG
 24 EXPOSURE AS DETERMINED BY MEDICAL PERSONNEL; OR

25 (III) DISPLAYS THE EFFECTS OF A FETAL ALCOHOL
 26 SPECTRUM DISORDER; OR

27 (2) THE NEWBORN'S MOTHER HAD A POSITIVE TOXICOLOGY
 28 SCREEN FOR ~~ALCOHOL OR~~ A CONTROLLED DRUG ~~ON ADMISSION TO THE~~
 29 ~~HOSPITAL OR~~ AT THE TIME OF DELIVERY.

30 (C) EXCEPT AS PROVIDED IN ~~SUBSECTION (D)~~ SUBSECTIONS (D) AND (E)
 31 OF THIS SECTION, A HEALTH CARE PRACTITIONER INVOLVED IN THE DELIVERY
 32 OR CARE OF A SUBSTANCE-EXPOSED NEWBORN SHALL:

1 (1) MAKE AN ORAL REPORT TO THE LOCAL DEPARTMENT AS SOON
2 AS POSSIBLE; AND

3 (2) MAKE A WRITTEN REPORT TO THE LOCAL DEPARTMENT NOT
4 LATER THAN 48 HOURS AFTER THE CONTACT, EXAMINATION, ATTENTION,
5 TREATMENT, OR TESTING THAT PROMPTED THE REPORT.

6 (D) IN THE CASE OF A SUBSTANCE-EXPOSED NEWBORN IN A HOSPITAL
7 OR BIRTHING CENTER, A HEALTH CARE PRACTITIONER SHALL NOTIFY AND
8 PROVIDE THE INFORMATION REQUIRED UNDER THIS SECTION TO THE HEAD OF
9 THE INSTITUTION OR THE DESIGNEE OF THE HEAD.

10 (E) A HEALTH CARE PRACTITIONER IS NOT REQUIRED TO MAKE A
11 REPORT UNDER THIS SECTION IF THE HEALTH CARE PRACTITIONER:

12 (1) HAS KNOWLEDGE THAT THE HEAD OF AN INSTITUTION OR THE
13 DESIGNEE OF THE HEAD OR ANOTHER INDIVIDUAL AT THAT INSTITUTION HAS
14 MADE A REPORT REGARDING THE SUBSTANCE-EXPOSED NEWBORN;

15 (2) HAS VERIFIED THAT, AT THE TIME OF DELIVERY, THE MOTHER
16 WAS USING A CONTROLLED SUBSTANCE AS CURRENTLY PRESCRIBED FOR THE
17 MOTHER BY A LICENSED HEALTH CARE PRACTITIONER; OR

18 (3) HAS VERIFIED THAT, AT THE TIME OF DELIVERY, THE
19 PRESENCE OF THE CONTROLLED SUBSTANCE WAS ~~A RESULT OF A~~ CONSISTENT
20 WITH A PRESCRIBED MEDICAL OR DRUG TREATMENT ADMINISTERED TO THE
21 MOTHER OR THE NEWBORN.

22 (F) TO THE EXTENT KNOWN, AN INDIVIDUAL WHO MAKES A REPORT
23 UNDER THIS SECTION SHALL INCLUDE IN THE REPORT THE FOLLOWING
24 INFORMATION:

25 (1) THE NAME, DATE OF BIRTH, AND HOME ADDRESS OF THE
26 NEWBORN;

27 (2) THE NAMES AND HOME ADDRESSES OF THE NEWBORN'S
28 PARENTS;

29 (3) THE NATURE AND EXTENT OF THE EFFECTS OF THE
30 PRENATAL ALCOHOL OR DRUG EXPOSURE ON THE NEWBORN;

1 (4) THE NATURE AND EXTENT OF THE IMPACT OF THE PRENATAL
2 ALCOHOL OR DRUG EXPOSURE ON THE MOTHER'S ABILITY TO PROVIDE PROPER
3 CARE AND ATTENTION TO THE NEWBORN;

4 (5) THE NATURE AND EXTENT OF THE RISK OF HARM TO THE
5 NEWBORN; AND

6 (6) ANY OTHER INFORMATION THAT WOULD SUPPORT A
7 CONCLUSION THAT THE NEEDS OF THE NEWBORN REQUIRE A PROMPT
8 ASSESSMENT OF RISK AND SAFETY, THE DEVELOPMENT OF A PLAN OF SAFE
9 CARE FOR THE NEWBORN, AND REFERRAL OF THE FAMILY FOR APPROPRIATE
10 SERVICES; ~~AND~~

11 ~~(7) THE EXTENT TO WHICH THE NEWBORN'S FATHER OR OTHER~~
12 ~~INDIVIDUAL IS AVAILABLE AND ABLE TO PROVIDE PROPER CARE AND~~
13 ~~ATTENTION TO THE NEWBORN.~~

14 (G) WITHIN 48 HOURS AFTER RECEIVING THE NOTIFICATION
15 PURSUANT TO SUBSECTION (C) OF THIS SECTION, THE LOCAL DEPARTMENT
16 SHALL:

17 (1) SEE THE NEWBORN IN PERSON;

18 (2) CONSULT WITH A HEALTH CARE PRACTITIONER WITH
19 KNOWLEDGE OF THE NEWBORN'S CONDITION AND THE EFFECTS OF ANY
20 PRENATAL ALCOHOL OR DRUG EXPOSURE; AND

21 (3) ATTEMPT TO INTERVIEW THE NEWBORN'S MOTHER AND ANY
22 OTHER INDIVIDUAL RESPONSIBLE FOR CARE OF THE NEWBORN.

23 (H) (1) PROMPTLY AFTER RECEIVING A REPORT UNDER SUBSECTION
24 (C) OF THIS SECTION, THE LOCAL DEPARTMENT SHALL:

25 ~~(1)~~ ASSESS THE RISK OF HARM TO AND THE SAFETY OF THE
26 NEWBORN; TO DETERMINE WHETHER ANY FURTHER INTERVENTION IS
27 NECESSARY.

28 (2) IF THE LOCAL DEPARTMENT DETERMINES THAT FURTHER
29 INTERVENTION IS NECESSARY, THE LOCAL DEPARTMENT SHALL:

30 (1) DEVELOP A PLAN OF SAFE CARE FOR THE NEWBORN;

31 ~~(3)~~ (II) ASSESS AND REFER THE FAMILY FOR APPROPRIATE
32 SERVICES, INCLUDING ALCOHOL OR DRUG TREATMENT; AND

1 ~~(4)~~ **(III)** AS NECESSARY, DEVELOP A PLAN TO MONITOR THE
2 SAFETY OF THE NEWBORN AND THE FAMILY'S PARTICIPATION IN APPROPRIATE
3 SERVICES.

4 **(I)** A REPORT MADE UNDER THIS SECTION DOES NOT CREATE A
5 PRESUMPTION THAT A CHILD HAS BEEN OR WILL BE ABUSED OR NEGLECTED.

6 **(J)** THE SECRETARY OF HUMAN RESOURCES SHALL ADOPT
7 REGULATIONS TO IMPLEMENT THE PROVISIONS OF THIS SECTION.

8 SECTION 2. AND BE IT FURTHER ENACTED, That:

9 **(a)** On or before October 1, 2014, the Department of Human Resources shall
10 submit a preliminary report to the General Assembly, in accordance with § 2-1246 of
11 the State Government Article.

12 **(b)** On or before October 1, 2015, the Department of Human Resources shall
13 submit a final report to the General Assembly in accordance with § 2-1246 of the State
14 Government Article.

15 **(c)** The reports required under subsections (a) and (b) of this section shall
16 include:

17 **(1)** the number of assessments conducted by the Department of
18 Human Resources in response to reports submitted under Section 1 of this Act;

19 **(2)** the outcomes of any assessments conducted;

20 **(3)** the number of mothers referred to substance abuse treatments as a
21 result of reports made under Section 1 of this Act; and

22 **(4)** the number of cases arising under Section 1 of this Act that
23 resulted in a termination of parental rights.

24 SECTION ~~2~~ 3. AND BE IT FURTHER ENACTED, That this Act shall take
25 effect October 1, 2013.