

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

A BILL ENTITLED

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 practitioner involved in the
8 delivery or care of a substance–exposed newborn to make a certain report to a
9 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; requiring the Secretary of Human Resources to
12 adopt certain regulations; defining certain terms; and generally relating to
13 substance–exposed newborns.

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

19 BY repealing and reenacting, with amendments,
20 Article – Family Law
21 Section 5–323
22 Annotated Code of Maryland
23 (2012 Replacement Volume)

24 BY adding to
25 Article – Family Law
26 Section 5–704.2
27 Annotated Code of Maryland

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 (2012 Replacement Volume)

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

4 **Article – Courts and Judicial Proceedings**

5 3–818.

6 Within 1 year after a child’s birth, there is a presumption that a child is not
7 receiving proper care and attention from the mother for purposes of § 3–801(f)(2) of
8 this subtitle if:

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

12 (ii) Upon admission to a hospital for delivery of the child, the
13 mother tested positive for cocaine, heroin, methamphetamine, or a derivative of
14 cocaine, heroin, or methamphetamine as evidenced by any appropriate toxicology test]
15 **THE CHILD WAS IDENTIFIED AS A SUBSTANCE-EXPOSED NEWBORN AS**
16 **DESCRIBED IN § 5–704.2 OF THE FAMILY LAW ARTICLE;** and

17 (2) Drug treatment is made available to the mother and the mother
18 refuses the recommended level of drug treatment, or does not successfully complete
19 the recommended level of drug treatment.

20 **Article – Family Law**

21 5–323.

22 (a) [In this section, “drug” means cocaine, heroin, methamphetamine, or a
23 derivative of cocaine, heroin, or methamphetamine.

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

31 [(c)] **(B)** A juvenile court need not consider any factor listed in subsection [(d)]
32 **(C)** of this section in determining a child’s best interests if, after a thorough
33 investigation by a local department, the juvenile court finds that:

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

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

4 [(d)] (C) Except as provided in subsection [(c)] (B) of this section, in ruling on a
5 petition for guardianship of a child, a juvenile court shall give primary consideration
6 to the health and safety of the child and consideration to all other factors needed to
7 determine whether terminating a parent's rights is in the child's best interests,
8 including:

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

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

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

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

18 (i) the extent to which the parent has maintained regular
19 contact with:

20 1. the child;

21 2. the local department to which the child is committed;
22 and

23 3. if feasible, the child's caregiver;

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

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

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

1 (3) whether:

2 (i) the parent has abused or neglected the child or a minor and
3 the seriousness of the abuse or neglect;

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

7 B. upon the birth of the child, the child tested positive
8 for a drug as evidenced by a positive toxicology test] **THE CHILD WAS IDENTIFIED AS**
9 **A SUBSTANCE-EXPOSED NEWBORN AS DESCRIBED IN § 5-704.2 OF THIS TITLE;**
10 and

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

14 (iii) the parent subjected the child to:

15 1. chronic abuse;

16 2. chronic and life-threatening neglect;

17 3. sexual abuse; or

18 4. torture;

19 (iv) the parent has been convicted, in any state or any court of
20 the United States, of:

21 1. a crime of violence against:

22 A. a minor offspring of the parent;

23 B. the child; or

24 C. another parent of the child; or

25 2. aiding or abetting, conspiring, or soliciting to commit
26 a crime described in item 1 of this item; and

27 (v) the parent has involuntarily lost parental rights to a sibling
28 of the child; and

1 (4) (i) the child's emotional ties with and feelings toward the
2 child's parents, the child's siblings, and others who may affect the child's best interests
3 significantly;

4 (ii) the child's adjustment to:

5 1. community;

6 2. home;

7 3. placement; and

8 4. school;

9 (iii) the child's feelings about severance of the parent-child
10 relationship; and

11 (iv) the likely impact of terminating parental rights on the
12 child's well-being.

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

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

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

26 **[(f)] (E)** If a juvenile court finds that an act or circumstance listed in
27 subsection **[(d)(3)(iii)] (C)(3)(III)**, (iv), or (v) of this section exists, the juvenile court
28 shall make a specific finding, based on facts in the record, whether return of the child
29 to a parent's custody poses an unacceptable risk to the child's future safety.

30 **[(g)] (F)** If a parent has consented to guardianship in accordance with §
31 5-320(a)(1)(iii)1 of this subtitle, the loss of parental rights shall be considered
32 voluntary.

33 **5-704.2.**

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

3 (2) “CONTROLLED DRUG” MEANS A CONTROLLED DANGEROUS
4 SUBSTANCE INCLUDED IN SCHEDULE I, SCHEDULE II, SCHEDULE III,
5 SCHEDULE IV, OR SCHEDULE V UNDER TITLE 5, SUBTITLE 4 OF THE CRIMINAL
6 LAW ARTICLE.

7 (3) “NEWBORN” MEANS A CHILD UNDER THE AGE OF 30 DAYS
8 WHO IS BORN OR WHO RECEIVES CARE IN THE STATE.

9 (B) FOR PURPOSES OF THIS SECTION, A NEWBORN IS
10 “SUBSTANCE-EXPOSED” IF:

11 (1) THE NEWBORN:

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

14 (II) DISPLAYS THE EFFECTS OF CONTROLLED DRUG USE OR
15 SYMPTOMS OF WITHDRAWAL RESULTING FROM PRENATAL CONTROLLED DRUG
16 EXPOSURE AS DETERMINED BY MEDICAL PERSONNEL; OR

17 (III) DISPLAYS THE EFFECTS OF A FETAL ALCOHOL
18 SPECTRUM DISORDER; OR

19 (2) THE NEWBORN’S MOTHER HAD A POSITIVE TOXICOLOGY
20 SCREEN FOR ALCOHOL OR A CONTROLLED DRUG ON ADMISSION TO THE
21 HOSPITAL OR AT THE TIME OF DELIVERY.

22 (C) EXCEPT AS PROVIDED IN SUBSECTION (D) OF THIS SECTION, A
23 HEALTH PRACTITIONER INVOLVED IN THE DELIVERY OR CARE OF A
24 SUBSTANCE-EXPOSED NEWBORN SHALL:

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

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

1 **(D) IN THE CASE OF A SUBSTANCE-EXPOSED NEWBORN IN A HOSPITAL**
2 **OR BIRTHING CENTER, A HEALTH PRACTITIONER SHALL NOTIFY AND PROVIDE**
3 **THE INFORMATION REQUIRED UNDER THIS SECTION TO THE HEAD OF THE**
4 **INSTITUTION OR THE DESIGNEE OF THE HEAD.**

5 **(E) A HEALTH PRACTITIONER IS NOT REQUIRED TO MAKE A REPORT**
6 **UNDER THIS SECTION IF THE HEALTH PRACTITIONER:**

7 **(1) HAS KNOWLEDGE THAT THE HEAD OF AN INSTITUTION OR THE**
8 **DESIGNEE OF THE HEAD OR ANOTHER INDIVIDUAL AT THAT INSTITUTION HAS**
9 **MADE A REPORT REGARDING THE SUBSTANCE-EXPOSED NEWBORN;**

10 **(2) HAS VERIFIED THAT, AT THE TIME OF DELIVERY, THE MOTHER**
11 **WAS USING A CONTROLLED SUBSTANCE CURRENTLY PRESCRIBED FOR THE**
12 **MOTHER BY A LICENSED HEALTH PRACTITIONER; OR**

13 **(3) HAS VERIFIED THAT, AT THE TIME OF DELIVERY, THE**
14 **PRESENCE OF THE CONTROLLED SUBSTANCE WAS A RESULT OF A MEDICAL**
15 **TREATMENT ADMINISTERED TO THE MOTHER OR THE NEWBORN.**

16 **(F) TO THE EXTENT KNOWN, AN INDIVIDUAL WHO MAKES A REPORT**
17 **UNDER THIS SECTION SHALL INCLUDE IN THE REPORT THE FOLLOWING**
18 **INFORMATION:**

19 **(1) THE NAME, DATE OF BIRTH, AND HOME ADDRESS OF THE**
20 **NEWBORN;**

21 **(2) THE NAMES AND HOME ADDRESSES OF THE NEWBORN'S**
22 **PARENTS;**

23 **(3) THE NATURE AND EXTENT OF THE EFFECTS OF THE**
24 **PRENATAL ALCOHOL OR DRUG EXPOSURE ON THE NEWBORN;**

25 **(4) THE NATURE AND EXTENT OF THE IMPACT OF THE PRENATAL**
26 **ALCOHOL OR DRUG EXPOSURE ON THE MOTHER'S ABILITY TO PROVIDE PROPER**
27 **CARE AND ATTENTION TO THE NEWBORN;**

28 **(5) THE NATURE AND EXTENT OF THE RISK OF HARM TO THE**
29 **NEWBORN;**

30 **(6) ANY OTHER INFORMATION THAT WOULD SUPPORT A**
31 **CONCLUSION THAT THE NEEDS OF THE NEWBORN REQUIRE A PROMPT**
32 **ASSESSMENT OF RISK AND SAFETY, THE DEVELOPMENT OF A PLAN OF SAFE**

1 CARE FOR THE NEWBORN, AND REFERRAL OF THE FAMILY FOR APPROPRIATE
2 SERVICES; AND

3 (7) THE EXTENT TO WHICH THE NEWBORN'S FATHER OR OTHER
4 INDIVIDUAL IS AVAILABLE AND ABLE TO PROVIDE PROPER CARE AND
5 ATTENTION TO THE NEWBORN.

6 (G) WITHIN 48 HOURS AFTER RECEIVING THE NOTIFICATION
7 PURSUANT TO SUBSECTION (C) OF THIS SECTION, THE LOCAL DEPARTMENT
8 SHALL:

9 (1) SEE THE NEWBORN IN PERSON;

10 (2) CONSULT WITH A HEALTH PRACTITIONER WITH KNOWLEDGE
11 OF THE NEWBORN'S CONDITION AND THE EFFECTS OF ANY PRENATAL ALCOHOL
12 OR DRUG EXPOSURE; AND

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

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

17 (1) ASSESS THE RISK AND SAFETY OF THE NEWBORN;

18 (2) DEVELOP A PLAN OF SAFE CARE FOR THE NEWBORN;

19 (3) ASSESS AND REFER THE FAMILY FOR APPROPRIATE
20 SERVICES, INCLUDING ALCOHOL OR DRUG TREATMENT; AND

21 (4) AS NECESSARY, DEVELOP A PLAN TO MONITOR THE SAFETY OF
22 THE NEWBORN AND THE FAMILY'S PARTICIPATION IN APPROPRIATE SERVICES.

23 (I) THE SECRETARY OF HUMAN RESOURCES SHALL ADOPT
24 REGULATIONS TO IMPLEMENT THE PROVISIONS OF THIS SECTION.

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