

Chapter 90

(House Bill 245)

AN ACT concerning

Family Law – Substance–Exposed Newborns

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

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

~~BY repealing and reenacting, with amendments,
Article – Family Law
Section 5–323
Annotated Code of Maryland
(2012 Replacement Volume)~~

BY adding to
Article – Family Law
Section 5–704.2
Annotated Code of Maryland
(2012 Replacement Volume)

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

~~Article – Courts and Judicial Proceedings~~

~~3-818.~~

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

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

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

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

Article – Family Law

~~5-323.~~

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

~~(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.~~

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

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

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

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

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

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

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

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

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

~~1. the child;~~

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

~~and~~

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

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

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

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

~~(3) whether:~~

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

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

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

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

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

~~1. chronic abuse;~~

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

~~3. sexual abuse; or~~

~~4. torture;~~

(iv) ~~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 described in item 1 of this item; and~~

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

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

(ii) ~~the child's adjustment to:~~

- ~~1. community;~~
- ~~2. home;~~
- ~~3. placement; and~~
- ~~4. school;~~

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

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

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

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

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

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

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

5-704.2.

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

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

(3) “HEALTH CARE PRACTITIONER” HAS THE MEANING STATED IN § 1-301 OF THE HEALTH OCCUPATIONS ARTICLE.

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

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

(1) THE NEWBORN:

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

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

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

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

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

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

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

(D) IN THE CASE OF A SUBSTANCE-EXPOSED NEWBORN IN A HOSPITAL OR BIRTHING CENTER, A HEALTH CARE PRACTITIONER SHALL NOTIFY AND

PROVIDE THE INFORMATION REQUIRED UNDER THIS SECTION TO THE HEAD OF THE INSTITUTION OR THE DESIGNEE OF THE HEAD.

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

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

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

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

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

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

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

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

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

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

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

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

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

(1) SEE THE NEWBORN IN PERSON;

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

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

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

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

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

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

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

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

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

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

SECTION 2. AND BE IT FURTHER ENACTED, That:

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

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

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

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

(2) the outcomes of any assessments conducted;

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

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

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

Approved by the Governor, April 9, 2013.