

Department of Legislative Services
Maryland General Assembly
2014 Session

FISCAL AND POLICY NOTE

Senate Bill 944 (Senator Shank)
Judicial Proceedings

**Family Law - Controlled Dangerous Substance Use During Pregnancy and
Substance-Exposed Newborns - Reporting**

This bill prohibits the discharge of a substance-exposed newborn from a hospital or birthing center until a local department of social services has complied with statutory requirements relating to the evaluation of substance-exposed newborns.

Fiscal Summary

State Effect: The Department of Human Resources can handle the bill's requirements using existing resources. Any potential increase in the number of criminal child abuse cases is not expected to materially impact State finances.

Local Effect: Health care practitioners within local health departments involved in the care of pregnant women can make the required reports using existing resources. Any potential increase in the number of criminal child abuse cases is not expected to materially impact local finances.

Small Business Effect: None.

Analysis

Bill Summary: If a local department of social services is conducting a required evaluation after receiving a report regarding a substance-exposed newborn and determines that a newborn was exposed to a specified controlled dangerous substance, the local department must conduct an investigation and take any other action necessary to determine whether to make a report of child abuse pursuant to the Criminal Law Article.

A health care practitioner who discovers that a person has used a specified controlled dangerous substance while pregnant must make an oral report to the local department as soon as possible and make a written report to the local department within 48 hours after making the discovery. A health care practitioner is not required to make a report if the health care practitioner (1) has knowledge that another individual has made a report regarding the person or (2) has verified that the person was using a controlled dangerous substance as prescribed by a licensed health care practitioner. A report made under these provisions may be used as evidence in a Child in Need of Assistance (CINA) Proceeding.

Current Law: A newborn is “substance-exposed” if the newborn displays (1) a positive toxicology screen for a controlled drug as evidenced by any appropriate test after birth; (2) the effects of controlled drug use or symptoms of withdrawal resulting from prenatal controlled drug exposure as determined by medical personnel; or (3) the effects of a fetal alcohol spectrum disorder. A newborn is also substance-exposed if the newborn’s mother had a positive toxicology screen for a controlled drug at the time of delivery. A newborn is a child younger than the age of 30 days who is born or receives care in the State. A “controlled drug” means a controlled dangerous substance included in Schedule I through Schedule V as established under Title 5, Subtitle 4 of the Criminal Law Article.

A health care practitioner involved in the delivery or care of a substance-exposed newborn must make an oral report to the local department as soon as possible and 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. If the substance-exposed newborn is in the hospital or birthing center, a health care practitioner must instead notify and provide the information to the head of the institution or that person’s designee.

A health care practitioner is not required to make a report 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 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 consistent with a prescribed medical or drug treatment administered to the mother or the newborn.

To the extent known, an individual must include the following information in the report: (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 on 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.

Within 48 hours after receiving the notification, the local department must (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.

Promptly after receiving a report, a local department must assess the risk of harm to and the safety of the newborn to determine whether any further intervention is necessary. If the local department determines that further intervention is necessary, the local department must (1) develop a plan of safe care; (2) assess and refer the family for appropriate services, including alcohol or drug treatment; and (3) as necessary, develop a plan to monitor the safety of the newborn and the family's participation in appropriate services. A report made under these provisions does not create a presumption that a child has been or will be abused or neglected.

Child Abuse

Pursuant to § 3-601 of the Criminal Law Article, "abuse" means physical injury sustained by a minor as a result of cruel or inhumane treatment or as a result of a malicious act under circumstances that indicate that the minor's health or welfare is harmed or threatened by the treatment or act.

Child in Need of Assistance

A CINA is a child who requires court intervention because (1) the child has been abused or neglected or has a developmental disability or a mental disorder and (2) the child's parents, guardian, or custodian are unable or unwilling to provide proper care and attention to the child. Once a petition alleging that a child is a CINA is filed, the juvenile court must hold an adjudicatory hearing to determine whether the allegations in the petition, other than the allegation that the child requires the court's intervention, are true. If the court determines that a child is a CINA, it must either not change the child's custody status or commit the child on terms the court deems appropriate to the custody of a parent, a relative or other individual, or a local department of social services or the Department of Health and Mental Hygiene, or both. A court may also grant limited guardianship to the local department or an individual or both for specific purposes, including medical and educational purposes or for other appropriate services if a parent is unavailable, unwilling, or unable to consent to services that are in the best interest of the child.

Background: Chapter 90 of 2013 established the current reporting requirements relating to substance-exposed newborns. The provisions of Chapter 90 were intended to bring Maryland into compliance with the requirements of the Child Abuse Prevention and Treatment (CAPTA) Reauthorization Act of 2010. CAPTA is partially intended to promote a more consistent approach to states' responses to infants exposed to alcohol and drugs. Under CAPTA, a governor must certify that the state has in effect and is enforcing a state law or has in effect and is operating a statewide program relating to referrals made to child protective services systems to address the needs of alcohol and substance-exposed newborns.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Department of Human Resources, Department of Health and Mental Hygiene, Judiciary (Administrative Office of the Courts), Department of Legislative Services

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mc/kdm

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