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HB 933/96 - JUD

1997 Regular Session
7lr1507

By: Delegates O'Donnell, Rosenberg, Flanagan, and Genn

Introduced and read first time: February 12, 1997

Assigned to: Judiciary

Committee Report: Favorable with amendments

House action: Adopted

Read second time: March 27, 1997

CHAPTER _____

1 AN ACT concerning

2 ~~Child Neglect—Definition and Investigation~~

3 ~~Children in Need of Assistance - Drug-Addicted Babies~~

4 ~~FOR the purpose of including within the definition of "neglect" the use of a controlled~~
5 ~~dangerous substance by a woman resulting in an infant's addiction to or dependence~~
6 ~~on a controlled dangerous substance or the presence of a controlled dangerous~~
7 ~~substance in the infant's blood as evidenced by certain tests; establishing a certain~~
8 ~~exception; including within part of the investigation of a suspected case of neglect~~
9 ~~by the use of a controlled dangerous substance by the mother of an infant certain~~
10 ~~tests and a certain report to the local division of social services; and generally~~
11 ~~relating to the neglect of a child by the use of a controlled dangerous substance.~~

12 ~~BY repealing and reenacting, with amendments,~~

13 ~~Article—Family Law~~

14 ~~Section 5-701(p) and 5-706(e)~~

15 ~~Annotated Code of Maryland~~

16 ~~(1991 Replacement Volume and 1996 Supplement)~~

17 FOR the purpose of establishing that there is a presumption that a child is not receiving
18 ordinary and proper care and attention within the definition of "child in need of
19 assistance" if the child is born addicted to or dependent on certain controlled
20 dangerous substances or born with a significant presence of certain controlled
21 dangerous substances in the blood; altering certain conditions regarding the
22 termination of certain parental rights for certain children to include children born
23 addicted to, dependent on, or with a significant presence in the child's blood of
24 certain controlled dangerous substances and the parent refuses admission or fails to
25 fully participate in certain drug treatment programs; requiring the Department of
26 Human Resources, in cooperation with the Department of Health and Mental

1 Hygiene, to develop certain intervention systems in at least a certain number of
2 counties designated by the Secretary of Human Resources that include certain drug
3 treatment for certain mothers; requiring the initiation of certain intervention under
4 certain circumstances; requiring a CINA petition to be filed on behalf of certain
5 children under certain circumstances; authorizing a local department of social
6 services to take certain actions under certain circumstances; making this Act subject
7 to a certain contingency; and generally relating to children born addicted to,
8 dependent on, or with a significant presence in the child's blood of certain
9 controlled dangerous substances.

10 BY repealing and reenacting, without amendments,
11 Article - Courts and Judicial Proceedings
12 Section 3-801(a)
13 Annotated Code of Maryland
14 (1995 Replacement Volume and 1996 Supplement)

15 BY repealing and reenacting, with amendments,
16 Article - Courts and Judicial Proceedings
17 Section 3-801(e)
18 Annotated Code of Maryland
19 (1995 Replacement Volume and 1996 Supplement)

20 BY adding to
21 Article - Courts and Judicial Proceedings
22 Section 3-801.1
23 Annotated Code of Maryland
24 (1995 Replacement Volume and 1996 Supplement)

25 BY repealing and reenacting, without amendments,
26 Article - Family Law
27 Section 5-313(a) and (c) and 5-704(a)
28 Annotated Code of Maryland
29 (1991 Replacement Volume and 1996 Supplement)

30 BY repealing and reenacting, with amendments,
31 Article - Family Law
32 Section 5-313(d) and 5-710
33 Annotated Code of Maryland
34 (1991 Replacement Volume and 1996 Supplement)

35 BY adding to
36 Article - Family Law
37 Section 5-706.3
38 Annotated Code of Maryland
39 (1991 Replacement Volume and 1996 Supplement)

3

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

3 ~~Article—Family Law~~

4 ~~5-701.~~

5 ~~(p) (1) "Neglect" means the leaving of a child unattended or other failure to~~
6 ~~give proper care and attention to a child by any parent or other person who has~~
7 ~~permanent or temporary care or custody or responsibility for supervision of the child~~
8 ~~under circumstances that indicate:~~

9 ~~{(1)} (I) that the child's health or welfare is harmed or placed at substantial~~
10 ~~risk of harm; or~~

11 ~~{(2)} (II) mental injury to the child or a substantial risk of mental injury.~~

12 ~~{(2) (I) EXCEPT AS PROVIDED UNDER SUBPARAGRAPH (II) OF THIS~~
13 ~~PARAGRAPH, "NEGLECT" INCLUDES THE USE OF A CONTROLLED DANGEROUS~~
14 ~~SUBSTANCE, AS DEFINED IN ARTICLE 27, § 277 OF THE CODE, BY A WOMAN~~
15 ~~RESULTING IN:~~

16 ~~1. AN INFANT'S ADDICTION TO OR DEPENDENCE ON A~~
17 ~~CONTROLLED DANGEROUS SUBSTANCE; OR~~

18 ~~2. THE PRESENCE OF A CONTROLLED DANGEROUS~~
19 ~~SUBSTANCE IN THE INFANT'S BLOOD AS EVIDENCED BY A TOXICOLOGY OR OTHER~~
20 ~~APPROPRIATE CHEMICAL TEST OF THE INFANT.~~

21 ~~(II) THE USE OF A CONTROLLED DANGEROUS SUBSTANCE DOES~~
22 ~~NOT CONSTITUTE NEGLIGENCE UNDER SUBPARAGRAPH (I) OF THIS PARAGRAPH IF THE~~
23 ~~MOTHER IS ABLE AND WILLING TO ACCEPT AND PARTICIPATE IN A PLAN OF~~
24 ~~SUPPORT SERVICES FOR THE INFANT.~~

25 ~~5-706.~~

26 ~~(e) The investigation shall include:~~

27 ~~(1) a determination of the nature, extent, and cause of the abuse or neglect,~~
28 ~~if any;~~

29 ~~(2) if mental injury is suspected, an assessment by two of the following:~~

30 ~~(i) a licensed physician, as defined in § 14-101 of the Health~~
31 ~~Occupations Article;~~

32 ~~(ii) a licensed psychologist, as defined in § 18-101 of the Health~~
33 ~~Occupations Article; or~~

34 ~~(iii) a licensed social worker, as defined in § 19-101 of the Health~~
35 ~~Occupations Article; [and]~~

36 ~~(3) IF THE SUSPECTED NEGLIGENCE INVOLVES THE POSSIBLE USE OF A~~
37 ~~CONTROLLED DANGEROUS SUBSTANCE BY THE MOTHER OF AN INFANT AS~~
38 ~~PROVIDED UNDER § 5-701(P)(2) OF THIS SUBTITLE, A TOXICOLOGY OR OTHER~~

4

1 ~~APPROPRIATE CHEMICAL TEST OF THE INFANT AND A REPORT TO THE~~
2 ~~APPROPRIATE DIVISION OF SOCIAL SERVICES ON THE MOTHER'S USE OF A~~
3 ~~CONTROLLED DANGEROUS SUBSTANCE; AND~~

4 ~~[(3)] (4) if the suspected abuse or neglect is verified:~~

5 ~~(i) a determination of the identity of the person or persons~~
6 ~~responsible for the abuse or neglect;~~

7 ~~(ii) a determination of the name, age, and condition of any other child~~
8 ~~in the household;~~

9 ~~(iii) an evaluation of the parents and the home environment;~~

10 ~~(iv) a determination of any other pertinent facts or matters; and~~

11 ~~(v) a determination of any needed services.~~

12 **Article - Courts and Judicial Proceedings**

13 3-801.

14 (a) In this subtitle, the following words have the meanings indicated, unless the
15 context of their use indicates otherwise.

16 (e) "Child in need of assistance" is a child who requires the assistance of the court
17 because:

18 (1) [He] THE CHILD is mentally handicapped or is not receiving ordinary
19 and proper care and attention, and

20 (2) [His] THE CHILD'S parents, guardian, or custodian are unable or
21 unwilling to give proper care and attention to the child and [his] THE CHILD'S problems
22 provided, however, a child shall not be deemed to be in need of assistance for the sole
23 reason [he] THAT THE CHILD is being furnished nonmedical remedial care and
24 treatment recognized by State law.

25 3-801.1.

26 THERE IS A PRESUMPTION THAT A CHILD IS NOT RECEIVING ORDINARY AND
27 PROPER CARE AND ATTENTION UNDER § 3-801(E)(1) OF THIS SUBTITLE IF THE CHILD:

28 (1) WAS BORN ADDICTED TO OR DEPENDENT ON COCAINE, HEROIN, OR
29 A DERIVATIVE THEREOF; OR

30 (2) WAS BORN WITH A SIGNIFICANT PRESENCE OF COCAINE, HEROIN,
31 OR A DERIVATIVE THEREOF IN THE CHILD'S BLOOD AS EVIDENCED BY
32 TOXICOLOGY OR OTHER APPROPRIATE TESTS.

33 **Article - Family Law**

34 5-313.

35 (a) A court may grant a decree of adoption or a decree of guardianship, without
36 the consent of a natural parent otherwise required by §§ 5-311 and 5-317 of this subtitle,

5

1 if the court finds by clear and convincing evidence that it is in the best interest of the child
2 to terminate the natural parent's rights as to the child and that:

3 (1) the child is abandoned as provided in subsection (b) of this section;

4 (2) in a prior juvenile proceeding, the child has been adjudicated to be a
5 child in need of assistance, a neglected child, an abused child, or a dependent child; or

6 (3) the following set of circumstances exists:

7 (i) the child has been continuously out of the custody of the natural
8 parent and in the custody of a child placement agency for at least 1 year;

9 (ii) the conditions that led to the separation from the natural parent
10 still exist or similar conditions of a potentially harmful nature still exist;

11 (iii) there is little likelihood that those conditions will be remedied at
12 an early date so that the child can be returned to the natural parent in the immediate
13 future; and

14 (iv) a continuation of the relationship between the natural parent and
15 the child would diminish greatly the child's prospects for early integration into a stable
16 and permanent family.

17 (c) In determining whether it is in the best interest of the child to terminate a
18 natural parent's rights as to the child in any case, except the case of an abandoned child,
19 the court shall consider:

20 (1) the timeliness, nature, and extent of the services offered by the child
21 placement agency to facilitate reunion of the child with the natural parent;

22 (2) any social service agreement between the natural parent and the child
23 placement agency, and the extent to which all parties have fulfilled their obligations
24 under the agreement;

25 (3) the child's feelings toward and emotional ties with the child's natural
26 parents, the child's siblings, and any other individuals who may significantly affect the
27 child's best interest;

28 (4) the child's adjustment to home, school, and community;

29 (5) the effort the natural parent has made to adjust the natural parent's
30 circumstances, conduct, or conditions to make it in the best interest of the child to be
31 returned to the natural parent's home, including:

32 (i) the extent to which the natural parent has maintained regular
33 contact with the child under a plan to reunite the child with the natural parent, but the
34 court may not give significant weight to any incidental visit, communication, or
35 contribution;

36 (ii) if the natural parent is financially able, the payment of a
37 reasonable part of the child's substitute physical care and maintenance;

6

1 (iii) the maintenance of regular communication by the natural parent
 2 with the custodian of the child; and

3 (iv) whether additional services would be likely to bring about a lasting
 4 parental adjustment so that the child could be returned to the natural parent within an
 5 ascertainable time, not exceeding 18 months from the time of placement, but the court
 6 may not consider whether the maintenance of the parent-child relationship may serve as
 7 an inducement for the natural parent's rehabilitation; and

8 (6) all services offered to the natural parent before the placement of the
 9 child, whether offered by the agency to which the child is committed or by other agencies
 10 or professionals.

11 (d) (1) In determining whether it is in the best interest of the child to terminate
 12 a natural parent's rights as to the child in a case involving a child who has been
 13 adjudicated to be a child in need of assistance, a neglected child, an abused child, or a
 14 dependent child, the court shall consider the factors in subsection (c) of this section and
 15 whether any of the following continuing or serious conditions or acts exist:

16 (i) the natural parent has a disability that renders the natural parent
 17 consistently unable to care for the immediate and ongoing physical or psychological needs
 18 of the child for long periods of time;

19 (ii) the natural parent has committed acts of abuse or neglect toward
 20 any child in the family; [or]

21 (iii) the natural parent has failed repeatedly to give the child adequate
 22 food, clothing, shelter, and education or any other care or control necessary for the child's
 23 physical, mental, or emotional health, even though the natural parent is physically and
 24 financially able.]; OR

25 (IV) 1. THE CHILD WAS BORN:

26 A. ADDICTED TO OR DEPENDENT ON COCAINE, HEROIN, OR
 27 A DERIVATIVE THEREOF; OR

28 B. WITH A SIGNIFICANT PRESENCE OF COCAINE, HEROIN,
 29 OR A DERIVATIVE THEREOF IN THE CHILD'S BLOOD AS EVIDENCED BY
 30 TOXICOLOGY OR OTHER APPROPRIATE TESTS; AND

31 2. THE NATURAL PARENT REFUSES ADMISSION INTO A
 32 DRUG TREATMENT PROGRAM OR FAILED TO FULLY PARTICIPATE IN A DRUG
 33 TREATMENT PROGRAM.

34 (2) If a natural parent does not provide specified medical treatment for a
 35 child because the natural parent is legitimately practicing religious beliefs, that reason
 36 alone does not make the natural parent a negligent parent.

37 (3) The court shall consider the evidence under paragraph (1) of this
 38 subsection regarding continuing or serious conditions or acts and may waive the child
 39 placement agency's obligations under subsection (c) of this section if the court, after
 40 appropriate evaluation of efforts made and services rendered, finds by clear and
 41 convincing evidence that the waiver of those obligations is in the best interest of the child.

7

1 5-704.

2 (a) Notwithstanding any other provision of law, including any law on privileged
3 communications, each health practitioner, police officer, or educator or human service
4 worker, acting in a professional capacity, who has reason to believe that a child has been
5 subjected to:

6 (1) (i) abuse, shall notify the local department or the appropriate law
7 enforcement agency; or

8 (ii) neglect, shall notify the local department; and

9 (2) if acting as a staff member of a hospital, public health agency, child care
10 institution, juvenile detention center, school, or similar institution, immediately notify
11 and give all information required by this section to the head of the institution or the
12 designee of the head.

13 5-706.3.

14 (A) THE DEPARTMENT OF HUMAN RESOURCES, IN COOPERATION WITH THE
15 DEPARTMENT OF HEALTH AND MENTAL HYGIENE, SHALL DEVELOP INTERVENTION
16 SYSTEMS IN AT LEAST FOUR COUNTIES DESIGNATED BY THE SECRETARY OF
17 HUMAN RESOURCES THAT:

18 (1) INCLUDE DRUG TREATMENT FOR A MOTHER OF A CHILD WHO IS
19 BORN DRUG EXPOSED AND SUPPORTIVE SERVICES FOR THE FAMILY OF THE CHILD;
20 AND

21 (2) SERVE 300 FAMILIES.

22 (B) AN INTERVENTION SHALL BE INITIATED WHEN:

23 (1) A CHILD IS BORN DRUG EXPOSED; AND

24 (2) MEDICAL PERSONNEL HAVE DETERMINED THAT THE CHILD IS AT A
25 HIGH RISK OF ABUSE OR NEGLECT.

26 (C) SUBJECT TO THE PROVISIONS OF SUBSECTIONS (A) AND (B) OF THIS
27 SECTION, THE LOCAL DEPARTMENT OF SOCIAL SERVICES AND THE DEPARTMENT
28 OF HEALTH AND MENTAL HYGIENE SHALL ASSIST THE MOTHER OF A CHILD WHO IS
29 BORN DRUG EXPOSED IN:

30 (1) OBTAINING DRUG TREATMENT; AND

31 (2) PROVIDING SUPPORTIVE SERVICES TO MAINTAIN FAMILY UNITY.

32 (D) A CINA PETITION SHALL BE FILED ON BEHALF OF A CHILD WHO IS BORN
33 DRUG EXPOSED, IF:

34 (1) THE MOTHER REFUSES DRUG TREATMENT OR DOES NOT
35 SUCCESSFULLY COMPLETE DRUG TREATMENT;

36 (2) THE MOTHER IS UNABLE TO PROVIDE ADEQUATE CARE FOR THE
37 CHILD; AND

1 (3) THE FATHER IS UNABLE TO PROVIDE ADEQUATE CARE FOR THE
2 CHILD.

3 5-710.

4 (a) Based on its findings and treatment plan, the local department shall render
5 the appropriate services in the best interests of the child, including, when indicated,
6 petitioning the juvenile court on behalf of the child for appropriate relief, including the
7 added protection to the child that either commitment or custody would provide.

8 (B) (1) PROMPTLY AFTER RECEIVING A REPORT FROM A HOSPITAL OR
9 HEALTH PRACTITIONER OF SUSPECTED NEGLECT RELATED TO DRUG ABUSE AND
10 CONDUCTING AN APPROPRIATE INVESTIGATION, THE LOCAL DEPARTMENT MAY:

11 (I) FILE A PETITION ALLEGING THAT THE CHILD IS IN NEED OF
12 ASSISTANCE UNDER TITLE 3, SUBTITLE 8 OF THE COURTS ARTICLE; AND

13 (II) OFFER THE MOTHER ADMISSION INTO A DRUG TREATMENT
14 PROGRAM.

15 (2) THE LOCAL DEPARTMENT MAY INITIATE A JUDICIAL PROCEEDING
16 TO TERMINATE A MOTHER'S PARENTAL RIGHTS, IF THE LOCAL DEPARTMENT
17 OFFERS THE MOTHER ADMISSION INTO A DRUG TREATMENT PROGRAM UNDER
18 THIS SUBSECTION WITHIN 90 DAYS AFTER THE BIRTH OF THE CHILD AND THE
19 MOTHER:

20 (I) DOES NOT ACCEPT ADMISSION TO THE PROGRAM OR ITS
21 EQUIVALENT WITHIN 45 DAYS AFTER THE OFFER IS MADE; OR

22 (II) FAILS TO FULLY PARTICIPATE IN THE PROGRAM OR ITS
23 EQUIVALENT.

24 [(b)] (C) If a report has been made to the State's Attorney's office under §
25 5-706(i) of this subtitle and the State's Attorney's office is not satisfied with the
26 recommendation of the local department, the State's Attorney's office may petition the
27 court, at the time of the report by the representative, to remove the child, if the State's
28 Attorney concludes that the child is in serious physical danger and that an emergency
29 exists.

30 SECTION 2. AND BE IT FURTHER ENACTED, That this Act is contingent on
31 the inclusion in the operating budget of \$1,700,000 for drug abuse treatment for mothers
32 of children born drug exposed.

33 SECTION 2- 3. AND BE IT FURTHER ENACTED, That, subject to the
34 provisions of Section 2 of this Act, this Act shall take effect October 1, 1997.

