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HB 1385/96 - JUD

1997 Regular Session  
7r2001

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**By: Senator Hoffman**

Introduced and read first time: January 31, 1997

Assigned to: Judicial Proceedings

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A BILL ENTITLED

1 AN ACT concerning

2 **Children in Need of Assistance - Drug-Addicted Babies**

3 FOR the purpose of altering the definition of "child in need of assistance" (CINA) to  
4 include under certain circumstances certain children born addicted to or dependent  
5 on certain controlled dangerous substances or born with a significant presence of  
6 certain controlled dangerous substances in the blood; requiring the juvenile court to  
7 hear and rule on certain CINA petitions within a certain time period; establishing a  
8 rebuttable presumption that it is in the best interest of a child to terminate the  
9 natural mother's parental rights under certain circumstances; requiring a court to  
10 hear and rule on certain petitions for guardianship within a certain time period;  
11 authorizing a local department of social services to take certain actions under  
12 certain circumstances; and generally relating to children in need of assistance.

13 BY repealing and reenacting, without amendments,  
14 Article - Courts and Judicial Proceedings  
15 Section 3-801(a)  
16 Annotated Code of Maryland  
17 (1995 Replacement Volume and 1996 Supplement)

18 BY repealing and reenacting, with amendments,  
19 Article - Courts and Judicial Proceedings  
20 Section 3-801(e)  
21 Annotated Code of Maryland  
22 (1995 Replacement Volume and 1996 Supplement)

23 BY adding to  
24 Article - Courts and Judicial Proceedings  
25 Section 3-812(i)  
26 Annotated Code of Maryland  
27 (1995 Replacement Volume and 1996 Supplement)

28 BY repealing and reenacting, with amendments,  
29 Article - Family Law  
30 Section 5-313(d), 5-317, and 5-710  
31 Annotated Code of Maryland

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1 (1991 Replacement Volume and 1996 Supplement)

2 BY repealing and reenacting, without amendments,

3 Article - Family Law

4 Section 5-313(a) and (c) and 5-704(a)

5 Annotated Code of Maryland

6 (1991 Replacement Volume and 1996 Supplement)

7 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF

8 MARYLAND, That the Laws of Maryland read as follows:

9 **Article - Courts and Judicial Proceedings**

10 3-801.

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

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

15 (1) [He] (I) THE CHILD is mentally handicapped or is not receiving  
16 ordinary and proper care and attention[.]; and

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

22 (2) (I) 1. THE CHILD WAS BORN ADDICTED TO OR DEPENDENT ON  
23 COCAINE, THE FORM OF COCAINE KNOWN AS "CRACK", OR HEROIN; OR

24 2. THE CHILD WAS BORN WITH A SIGNIFICANT PRESENCE  
25 OF COCAINE, THE FORM OF COCAINE KNOWN AS "CRACK", OR HEROIN IN THE  
26 CHILD'S BLOOD AS EVIDENCED BY TOXICOLOGY OR OTHER APPROPRIATE TESTS;  
27 AND

28 (II) THE LOCAL DEPARTMENT OF SOCIAL SERVICES, AFTER AN  
29 APPROPRIATE INVESTIGATION, OFFERED THE MOTHER ADMISSION INTO A DRUG  
30 TREATMENT PROGRAM UNDER § 5-710 OF THE FAMILY LAW ARTICLE WITHIN 90  
31 DAYS AFTER THE CHILD'S BIRTH AND THE CHILD'S MOTHER DECLINED ADMISSION  
32 OR FAILED TO FULLY PARTICIPATE IN THE PROGRAM OR ITS EQUIVALENT.

33 3-812.

34 (I) (1) THE COURT SHALL HEAR AND RULE ON A PETITION ALLEGING  
35 THAT A CHILD IS IN NEED OF ASSISTANCE AS DEFINED UNDER § 3-801(E)(2) OF THIS  
36 SUBTITLE WITHIN 30 DAYS AFTER THE FILING OF THE PETITION.

37 (2) THE COURT MAY EXTEND THE TIME PERIOD IMPOSED UNDER THIS  
38 SUBSECTION TO PROTECT THE DUE PROCESS RIGHTS OF AN INDIVIDUAL.

3

1                   **Article - Family Law**

2 5-313.

3                   (a) A court may grant a decree of adoption or a decree of guardianship, without  
4 the consent of a natural parent otherwise required by §§ 5-311 and 5-317 of this subtitle,  
5 if the court finds by clear and convincing evidence that it is in the best interest of the child  
6 to terminate the natural parent's rights as to the child and that:

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

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

10                  (3) the following set of circumstances exists:

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

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

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

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

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

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

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

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

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

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

36                   (i) the extent to which the natural parent has maintained regular  
37 contact with the child under a plan to reunite the child with the natural parent, but the

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1 court may not give significant weight to any incidental visit, communication, or  
2 contribution;

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

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

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

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

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

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

23 (ii) the natural parent has committed acts of abuse or neglect toward  
24 any child in the family; or

25 (iii) the natural parent has failed repeatedly to give the child adequate  
26 food, clothing, shelter, and education or any other care or control necessary for the child's  
27 physical, mental, or emotional health, even though the natural parent is physically and  
28 financially able.

29 (2) THERE IS A REBUTTABLE PRESUMPTION THAT IT IS IN THE BEST  
30 INTEREST OF A CHILD TO TERMINATE THE PARENTAL RIGHTS OF A NATURAL  
31 MOTHER IF:

32 (I) THE CHILD HAS BEEN ADJUDICATED AS A CHILD IN NEED OF  
33 ASSISTANCE AS DEFINED UNDER § 3-801 OF THE COURTS ARTICLE; AND

34 (II) THE MOTHER HAS BEEN OFFERED ADMISSION INTO A DRUG  
35 TREATMENT PROGRAM UNDER § 5-710 OF THIS TITLE AND THE MOTHER:

36 1. DID NOT ACCEPT ADMISSION TO THE PROGRAM OR ITS  
37 EQUIVALENT WITHIN 45 DAYS AFTER THE OFFER WAS MADE; OR

38 2. FAILED TO FULLY PARTICIPATE IN THE PROGRAM OR ITS  
39 EQUIVALENT.

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1                    [(2)] (3) If a natural parent does not provide specified medical treatment  
2 for a child because the natural parent is legitimately practicing religious beliefs, that  
3 reason alone does not make the natural parent a negligent parent.

4                    [(3)] (4) The court shall consider the evidence under paragraph (1) of this  
5 subsection regarding continuing or serious conditions or acts and may waive the child  
6 placement agency's obligations under subsection (c) of this section if the court, after  
7 appropriate evaluation of efforts made and services rendered, finds by clear and  
8 convincing evidence that the waiver of those obligations is in the best interest of the child.

9 5-317.

10                    (a) A petition for a decree of adoption may be preceded by a petition for  
11 guardianship of the child.

12                    (b) Only the executive head of a child placement agency or the attorney for the  
13 child on behalf of the child may file a petition for the agency to be granted guardianship.

14                    (c) Except as provided in §§ 5-313 and 5-313.1 of this subtitle, the court may  
15 grant a decree awarding guardianship only:

16                    (1) after any investigation and hearing the court considers necessary; and

17                    (2) with the consent of each living natural parent of the child.

18                    (d) (1) [Within] EXCEPT AS PROVIDED IN PARAGRAPH (2) OF THIS  
19 SUBSECTION, WITHIN 180 days after a petition for guardianship or petition for adoption  
20 is filed under § 5-313 of this subtitle, the court shall rule on the petition.

21                    (2) (I) IF A CHILD HAS BEEN ADJUDICATED TO BE A CHILD IN NEED  
22 OF ASSISTANCE AS DEFINED UNDER § 3-801(E)(2) OF THE COURTS ARTICLE, THE  
23 COURT SHALL HEAR AND RULE ON A PETITION FOR GUARDIANSHIP OF THE CHILD  
24 WITHIN 30 DAYS AFTER THE FILING OF THE PETITION.

25                    (II) THE COURT MAY EXTEND THE TIME PERIOD IMPOSED UNDER  
26 THIS PARAGRAPH TO PROTECT THE DUE PROCESS RIGHTS OF AN INDIVIDUAL.

27                    (e) In a proceeding for guardianship, consent may be revoked at any time within  
28 30 days after the consent is signed.

29                    (f) A decree of guardianship:

30                    (1) terminates the natural parents' rights, duties, and obligations toward the  
31 child;

32                    (2) subject to § 5-319 of this subtitle, eliminates the need to give notice to  
33 the natural parents of the filing of a petition for adoption of the child;

34                    (3) eliminates the need for a further consent by the natural parents to an  
35 adoption of the child; and

36                    (4) subject to § 5-319 of this subtitle, authorizes the child placement agency  
37 to consent to joint guardianship, custody, or other long-term placement that the agency  
38 determines to be in the child's best interest.

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1 (g) (1) After any investigation and hearing the court considers necessary, the  
2 court may grant a decree awarding joint guardianship, custody, or other long-term  
3 placement that the court determines to be in the child's best interest.

4 (2) If joint guardianship is awarded to a caregiver, the child placement  
5 agency shall retain guardianship with the right to consent to adoption or long-term care  
6 short of adoption.

7 5-704.

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

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

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

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

19 5-710.

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

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

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

29 (II) OFFER THE MOTHER ADMISSION INTO A DRUG TREATMENT  
30 PROGRAM.

31 (2) THE LOCAL DEPARTMENT MAY INITIATE A JUDICIAL PROCEEDING  
32 TO TERMINATE A MOTHER'S PARENTAL RIGHTS, IF THE LOCAL DEPARTMENT  
33 OFFERS THE MOTHER ADMISSION INTO A DRUG TREATMENT PROGRAM UNDER  
34 THIS SUBSECTION WITHIN 90 DAYS AFTER THE BIRTH OF THE CHILD AND THE  
35 MOTHER:

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

38 (II) FAILS TO FULLY PARTICIPATE IN THE PROGRAM OR ITS  
39 EQUIVALENT.

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1            [(b)] (C) If a report has been made to the State's Attorney's office under §  
2 5-706(i) of this subtitle and the State's Attorney's office is not satisfied with the  
3 recommendation of the local department, the State's Attorney's office may petition the  
4 court, at the time of the report by the representative, to remove the child, if the State's  
5 Attorney concludes that the child is in serious physical danger and that an emergency  
6 exists.

7            SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect  
8 October 1, 1997.