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HB 1385/96 - JUD

1997 Regular Session
7lr2001

By: Senator Hoffman

Introduced and read first time: January 31, 1997

Assigned to: Judicial Proceedings

Committee Report: Favorable with amendments

Senate action: Adopted

Read second time: March 20, 1997

CHAPTER ____

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 altering certain conditions regarding the termination of certain parental rights for
12 certain children to include children born addicted to, dependent on, or with a
13 significant presence in the child's blood of certain controlled dangerous substances
14 and the parent refused admission or failed to fully participate in certain drug
15 treatment programs; requiring the Department of Human Resources, in
16 cooperation with the Department of Health and Mental Hygiene, to develop certain
17 intervention systems in at least a certain number of counties designated by the
18 Secretary of Human Resources that include certain drug treatment for certain
19 mothers; requiring the initiation of certain intervention under certain
20 circumstances; requiring a CINA petition to be filed on behalf of certain children
21 under certain circumstances; authorizing a local department of social services to
22 take certain actions under certain circumstances; and generally relating to children
23 in need of assistance.

24 BY repealing and reenacting, without amendments,

25 Article - Courts and Judicial Proceedings

26 Section 3-801(a)

27 Annotated Code of Maryland

2

1 (1995 Replacement Volume and 1996 Supplement)

2 BY repealing and reenacting, with amendments,

3 Article - Courts and Judicial Proceedings

4 Section 3-801(e)

5 Annotated Code of Maryland

6 (1995 Replacement Volume and 1996 Supplement)

7 ~~BY adding to~~

8 ~~Article - Courts and Judicial Proceedings~~

9 ~~Section 3-812(i)~~

10 ~~Annotated Code of Maryland~~

11 ~~(1995 Replacement Volume and 1996 Supplement)~~

12 BY repealing and reenacting, with amendments,

13 Article - Family Law

14 Section 5-313(d), ~~5-347~~, and 5-710

15 Annotated Code of Maryland

16 (1991 Replacement Volume and 1996 Supplement)

17 BY repealing and reenacting, without amendments,

18 Article - Family Law

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

20 Annotated Code of Maryland

21 (1991 Replacement Volume and 1996 Supplement)

22 BY adding to

23 Article - Family Law

24 Section 5-706.3

25 Annotated Code of Maryland

26 (1991 Replacement Volume and 1996 Supplement)

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

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

29 **Article - Courts and Judicial Proceedings**

30 3-801.

31 (a) In this subtitle, the following words have the meanings indicated, unless the

32 context of their use indicates otherwise.

33 (e) "Child in need of assistance" is a child who requires the assistance of the court

34 because:

35 (1) [He] ~~(H) THE CHILD is mentally handicapped or is not receiving~~

36 ~~ordinary and proper care and attention[.]; and;~~

37 (I) IS MENTALLY HANDICAPPED;

3

1 (II) WAS BORN ADDICTED TO OR DEPENDENT ON COCAINE, THE
 2 FORM OF COCAINE KNOWN AS "CRACK", OR HEROIN;

3 (III) WAS BORN WITH A SIGNIFICANT PRESENCE OF COCAINE, THE
 4 FORM OF COCAINE KNOWN AS "CRACK", OR HEROIN IN THE CHILD'S BLOOD AS
 5 EVIDENCED BY TOXICOLOGY OR OTHER APPROPRIATE TESTS; OR

6 (IV) IS NOT RECEIVING ORDINARY AND PROPER CARE AND
 7 ATTENTION; AND

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

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

15 ~~2. THE CHILD WAS BORN WITH A SIGNIFICANT PRESENCE~~
 16 ~~OF COCAINE, THE FORM OF COCAINE KNOWN AS "CRACK", OR HEROIN IN THE~~
 17 ~~CHILD'S BLOOD AS EVIDENCED BY TOXICOLOGY OR OTHER APPROPRIATE TESTS;~~
 18 ~~AND~~

19 ~~(H) THE LOCAL DEPARTMENT OF SOCIAL SERVICES, AFTER AN~~
 20 ~~APPROPRIATE INVESTIGATION, OFFERED THE MOTHER ADMISSION INTO A DRUG~~
 21 ~~TREATMENT PROGRAM UNDER § 5-710 OF THE FAMILY LAW ARTICLE WITHIN 90~~
 22 ~~DAYS AFTER THE CHILD'S BIRTH AND THE CHILD'S MOTHER DECLINED ADMISSION~~
 23 ~~OR FAILED TO FULLY PARTICIPATE IN THE PROGRAM OR ITS EQUIVALENT.~~

24 ~~3-812.~~

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

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

30 **Article - Family Law**

31 5-313.

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

36 (1) The child is abandoned as provided in subsection (b) of this section;

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

39 (3) The following set of circumstances exists:

4

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

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

5 (iii) There is little likelihood that those conditions will be remedied at
6 an early date so that the child can be returned to the natural parent in the immediate
7 future; and

8 (iv) A continuation of the relationship between the natural parent and
9 the child would diminish greatly the child's prospects for early integration into a stable
10 and permanent family.

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

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

16 (2) Any social service agreement between the natural parent and the child
17 placement agency, and the extent to which all parties have fulfilled their obligations
18 under the agreement;

19 (3) The child's feelings toward and emotional ties with the child's natural
20 parents, the child's siblings, and any other individuals who may significantly affect the
21 child's best interest;

22 (4) The child's adjustment to home, school, and community;

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

26 (i) The extent to which the natural parent has maintained regular
27 contact with the child under a plan to reunite the child with the natural parent, but the
28 court may not give significant weight to any incidental visit, communication, or
29 contribution;

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

32 (iii) The maintenance of regular communication by the natural parent
33 with the custodian of the child; and

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

5

1 (6) All services offered to the natural parent before the placement of the
 2 child, whether offered by the agency to which the child is committed or by other agencies
 3 or professionals.

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

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

12 (ii) The natural parent has committed acts of abuse or neglect toward
 13 any child in the family; ~~or~~

14 (iii) The natural parent has failed repeatedly to give the child adequate
 15 food, clothing, shelter, and education or any other care or control necessary for the child's
 16 physical, mental, or emotional health, even though the natural parent is physically and
 17 financially able; OR

18 ~~(2) THERE IS A REBUTTABLE PRESUMPTION THAT IT IS IN THE BEST~~
 19 ~~INTEREST OF A CHILD TO TERMINATE THE PARENTAL RIGHTS OF A NATURAL~~
 20 ~~MOTHER IF:~~

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

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

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

27 ~~2. FAILED TO FULLY PARTICIPATE IN THE PROGRAM OR ITS~~
 28 ~~EQUIVALENT.~~

29 (IV) 1. THE CHILD WAS BORN:

30 A. ADDICTED TO OR DEPENDENT ON COCAINE, THE FORM
 31 OF COCAINE KNOWN AS "CRACK", OR HEROIN; OR

32 B. WITH A SIGNIFICANT PRESENCE OF COCAINE, THE FORM
 33 OF COCAINE KNOWN AS "CRACK", OR HEROIN IN THE CHILD'S BLOOD AS
 34 EVIDENCED BY TOXICOLOGY OR OTHER APPROPRIATE TESTS; AND

35 2. THE NATURAL PARENT REFUSED ADMISSION INTO A
 36 DRUG TREATMENT PROGRAM OR FAILED TO FULLY PARTICIPATE IN A DRUG
 37 TREATMENT PROGRAM.

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~~
 31 ~~the 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.~~

7

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 5-706.3.

20 (A) THE DEPARTMENT OF HUMAN RESOURCES, IN COOPERATION WITH THE
 21 DEPARTMENT OF HEALTH AND MENTAL HYGIENE, SHALL DEVELOP INTERVENTION
 22 SYSTEMS IN AT LEAST FOUR COUNTIES DESIGNATED BY THE SECRETARY OF
 23 HUMAN RESOURCES THAT:

24 (1) INCLUDE DRUG TREATMENT FOR A MOTHER OF A CHILD WHO IS
 25 BORN DRUG EXPOSED AND SUPPORTIVE SERVICES FOR THE FAMILY OF THE CHILD;
 26 AND

27 (2) SERVE 300 FAMILIES.

28 (B) AN INTERVENTION SHALL BE INITIATED WHEN:

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

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

32 (C) THE LOCAL DEPARTMENT OF SOCIAL SERVICES AND THE DEPARTMENT
 33 OF HEALTH AND MENTAL HYGIENE SHALL ASSIST THE MOTHER OF A CHILD WHO IS
 34 BORN DRUG EXPOSED IN:

35 (1) OBTAINING DRUG TREATMENT; AND

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

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

8

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

3 (2) THE MOTHER IS UNABLE TO PROVIDE ADEQUATE CARE FOR THE
4 CHILD; AND

5 (3) THE FATHER IS UNABLE TO PROVIDE ADEQUATE CARE.

6 5-710.

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

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

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

16 (II) OFFER THE MOTHER ADMISSION INTO A DRUG TREATMENT
17 PROGRAM.

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

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

25 (II) FAILS TO FULLY PARTICIPATE IN THE PROGRAM OR ITS
26 EQUIVALENT.

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

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

