

Department of Legislative Services

Maryland General Assembly

2001 Session

FISCAL NOTE**Revised**Senate Bill 82 (Senator Green, *et al.*)

Judicial Proceedings

Judiciary

Maryland Safe Haven Act of 2001

This bill provides that under certain circumstances the relinquishment of a “newborn” by a parent is not a criminal act and is an affirmative defense to any prosecution for such action. The bill grants immunity to certain individuals and entities from any cause of action for good faith acts related to the relinquishment or the medical treatment of the newborn, outlines procedures for a parent to revoke the relinquishment, and requires the Department of Human Resources (DHR) to adopt regulations to implement the provisions of the bill.

Fiscal Summary

State Effect: The bill’s requirements could be handled with existing budgeted resources. Revenues would not be affected.

Local Effect: Compliance could be handled with existing resources.

Small Business Effect: None.

Analysis

Bill Summary: The bill provides that the relinquishment of a newborn by its parent at a hospital in accordance with the provisions of this bill is not a criminal act and is an affirmative defense to any prosecution for such. The relinquishment, however, may be grounds for termination of parental rights. Except where there is actual or suspected child abuse, a parent who leaves a newborn at a designated emergency care facility and

expresses an intent to leave the newborn and not return has the absolute right to remain anonymous and to leave at any time and may not be pursued or followed.

Newborn is defined as a child that a hospital or physician believes to be approximately three days old or younger.

The hospital is required to provide the newborn with any necessary care and notify the local department of social services within 24 hours. The local department must then take custody and control of the newborn within 24 hours, and commence a thorough search to ensure that the newborn has not been reported missing. After determining that the newborn has not been reported missing and as soon as practicable following an initial 30-day placement period, the local department is required to file a petition to terminate the parental rights of the biological parents.

The hospital and anyone associated with the hospital are immune from any cause of action for good faith actions taken related to the relinquishment of or medical treatment and care of a newborn unless damage or injury to the newborn was caused by willful or wanton misconduct or gross negligence.

A natural parent may revoke the intent to relinquish the newborn by filing a petition to establish parental rights before parental rights have been terminated. If such petition is filed, the court may stay the termination action for up to 60 days. In determining whether it is in the best interest of the child to return the child to the petitioning parent during the stay, the court is required to order genetic testing to establish maternity or paternity, and the local department of social services must conduct an investigation and home evaluation to develop recommendations for the court.

DHR is required to adopt regulations to implement the provisions of the bill, including regulations to protect the health and welfare of relinquished newborns.

Current Law: Maryland has multiple laws related to desertion of a minor child. First, a parent may not desert his or her minor child. An individual who does so is guilty of a misdemeanor and on conviction is subject to a fine not exceeding \$100 or imprisonment not exceeding three years or both. Second, an individual who has care, custody, or control of a minor child may not desert the child with the intent that the child become a public charge or without providing for the child's support for at least three years by a responsible individual or a licensed child care facility. A person who violates this law is guilty of a misdemeanor and on conviction is subject to a fine not exceeding \$100 or imprisonment not exceeding one year. Third, an adult who willfully renders a child in need of supervision or assistance may be convicted and subject to a fine of not more than \$2,500 or imprisonment for not more than three years or both. Additionally, child abandonment may, depending on the circumstances of the case, be considered child abuse. Child abuse includes "[t]he sustaining of physical injury by a child as a result of

cruel or inhumane treatment or as a result of a malicious act ... under circumstance that indicate that the child's health or welfare is harmed or threatened thereby."

Background: According to the U.S. Department of Health and Human Services, there were media reports of 105 infants abandoned in public places in 1998, including 33 found dead. In addition, about 9,000 infants were abandoned in hospitals that year after their mothers left without them. More recent reports from a nonprofit organization indicate that in the past 2 years at least 161 babies have been abandoned nationwide, 103 of them found dead.

In an effort to prevent newborn deaths, 32 states, including Maryland and Virginia, have recently introduced and/or passed legislation that allows mothers to safely relinquish custody of their unwanted newborns to staff at hospitals or other specified locations. States that have successfully enacted safe haven laws include Alabama, Florida, Louisiana, New Jersey, South Carolina, Texas, and West Virginia.

State Expenditures: The bill's requirements could be absorbed within existing budgeted resources. This bill may lead to a marginal increase in the number of abandoned newborns in Maryland, thus increasing the number of Termination of Parental Rights Petitions that are filed, and possibly placing other miscellaneous demands on the current system. Any such increases are expected to be minimal, and offset by savings incurred as a result of not having to search for, prosecute, and incarcerate those who would have otherwise illegally abandoned a newborn, and by costs associated with the increased degree of medical treatment often required by illegally abandoned newborns.

Additional Information

Prior Introductions: None.

Cross File: HB 74 (withdrawn) (Delegate Pitkin) – Judiciary.

Information Source(s): *Southern States' Safe Child Abandonment Laws and Proposed Legislation*, Regional Resource, Council of State Governments South, November 2000; *Safe-haven Legislation Sought to Avert Tragedy*, Washington Times, January 15, 2001; Department of Human Resources (Social Services Administration); Department of State Police; Department of Health and Mental Hygiene (Community Public Health Administration, Office of Health Care Quality, Boards and Commissions); Judiciary (Administrative Office of the Courts); Harford County; Montgomery County; Garrett County; Carroll County; Baltimore City; Prince George's County; Department of Legislative Services

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