

SENATE BILL 495

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2002 Regular Session
2lr1437
CF 2lr2754

By: **Senators Hoffman, Blount, Colburn, Forehand, Green, Kittleman,
Lawlah, Mooney, Munson, Pinsky, Roesser, Ruben, Teitelbaum, and Van
Hollen**

Introduced and read first time: February 1, 2002

Assigned to: Judicial Proceedings

A BILL ENTITLED

1 AN ACT concerning

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

3 FOR the purpose of modifying a certain presumption that a child is not receiving
4 ordinary and proper care and attention within the definition of "child in need of
5 assistance" (CINA) to apply to a child that is born exposed to certain dangerous
6 substances as evidenced by certain blood or other tests of the mother or the child
7 and to include a mother that refuses the recommended level of drug treatment;
8 altering certain conditions regarding the termination of parental rights for
9 certain children to apply to a child that is born exposed to certain dangerous
10 substances as evidenced by certain blood or other tests of the mother or the child
11 and to apply to a natural parent that refuses the recommended level of drug
12 treatment; expanding the conditions which require a CINA petition to be filed in
13 certain intervention systems developed in certain counties to include a mother
14 that refuses the recommended level of drug treatment; expanding the
15 circumstances under which a local department of social services is authorized to
16 take certain action to include a mother that refuses the recommended level of
17 drug treatment within a certain time period; and generally relating to children
18 exposed to certain dangerous substances and a certain presumption, the
19 termination of parental rights, and certain intervention systems in certain
20 counties.

21 BY repealing and reenacting, with amendments,
22 Article - Courts and Judicial Proceedings
23 Section 3-818
24 Annotated Code of Maryland
25 (1998 Replacement Volume and 2001 Supplement)

26 BY repealing and reenacting, with amendments,
27 Article - Family Law
28 Section 5-313(d), 5-706.3, and 5-710
29 Annotated Code of Maryland
30 (1999 Replacement Volume and 2001 Supplement)

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

3 **Article - Courts and Judicial Proceedings**

4 3-818.

5 Within 1 year after a child's birth, there is a presumption that a child is not
6 receiving proper care and attention from the mother for purposes of § 3-801(f)(2) of
7 this subtitle if:

8 (1) [(i)] The child was born [addicted to or dependent on] EXPOSED TO
9 cocaine, heroin, or a derivative of cocaine or heroin[]; or

10 (ii) The child was born with a significant presence of cocaine,
11 heroin, or a derivative of cocaine or heroin in the child's blood] as evidenced by A
12 toxicology SCREEN OF THE BLOOD OF THE MOTHER OR CHILD or other appropriate
13 tests OF THE MOTHER OR CHILD; and

14 (2) Drug treatment is made available to the mother and the mother
15 refuses THE RECOMMENDED LEVEL OF DRUG TREATMENT, or does not successfully
16 complete the RECOMMENDED LEVEL OF drug treatment.

17 **Article - Family Law**

18 5-313.

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

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

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

29 (iii) the natural parent has failed repeatedly to give the child
30 adequate food, clothing, shelter, and education or any other care or control necessary
31 for the child's physical, mental, or emotional health, even though the natural parent
32 is physically and financially able;

33 (iv) 1. the child was born[:
34

35 A. addicted to or dependent on] EXPOSED TO cocaine, heroin,
or a derivative thereof []; or

1 B. with a significant presence of cocaine, heroin, or a
2 derivative thereof in the child's blood] as evidenced by A toxicology SCREEN OF THE
3 BLOOD OF THE MOTHER OR CHILD or other appropriate tests OF THE MOTHER OR
4 CHILD; and

5 2. the natural parent refuses [admission into a drug
6 treatment program,] THE RECOMMENDED LEVEL OF DRUG TREATMENT, or [failed]
7 FAILS to fully participate in [a] THE RECOMMENDED LEVEL OF drug treatment
8 [program]; or

9 (v) the natural parent has:

10 1. subjected the child to:

11 A. torture, chronic abuse, or sexual abuse; or

12 B. chronic and life-threatening neglect;

13 2. been convicted:

14 A. in this State of a crime of violence, as defined in Article 27,
15 § 643B of the Code, against the child, the other natural parent of the child, another
16 child of the natural parent, or any person who resides in the household of the natural
17 parent;

18 B. in any state or in any court of the United States of a crime
19 that would be a crime of violence, as defined in Article 27, § 643B of the Code, if
20 committed in this State against the child, the other natural parent of the child,
21 another child of the natural parent, or any person who resides in the household of the
22 natural parent; or

23 C. of aiding or abetting, conspiring, or soliciting to commit a
24 crime described in item A or item B of this item; or

25 3. involuntarily lost parental rights of a sibling of the child.

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

29 (3) The court shall consider the evidence under paragraph (1)(i) through
30 (iv) of this subsection regarding continuing or serious conditions or acts and may
31 waive the child placement agency's obligations under subsection (c) of this section if
32 the court, after appropriate evaluation of efforts made and services rendered, finds by
33 clear and convincing evidence that the waiver of those obligations is in the best
34 interest of the child.

35 (4) The court shall waive the child placement agency's obligations under
36 subsection (c) of this section if the court finds that one of the circumstances or acts
37 enumerated in paragraph (1)(v) of this subsection exists.

1 (5) If the court finds that any of the circumstances or acts enumerated in
2 paragraph (1)(v) of this subsection exists, the court shall make a specific finding,
3 based on facts in the record, as to whether or not the return of the child to the custody
4 of the natural parent poses an unacceptable risk to the future safety of the child.

5 5-706.3.

6 (a) The Department of Human Resources, in cooperation with the Department
7 of Health and Mental Hygiene, shall develop intervention systems in at least four
8 counties designated by the Secretary of Human Resources that:

9 (1) include drug treatment for a mother of a child who is born drug
10 exposed and supportive services for the family of the child; and

11 (2) serve 300 families.

12 (b) An intervention shall be initiated when:

13 (1) a child is born drug exposed; and

14 (2) medical personnel have determined that the child is at a high risk of
15 abuse or neglect.

16 (c) Subject to the provisions of subsections (a) and (b) of this section, the local
17 department of social services and the Department of Health and Mental Hygiene
18 shall assist the mother of a child who is born drug exposed in:

19 (1) obtaining drug treatment; and

20 (2) providing supportive services to maintain family unity.

21 (d) A CINA petition shall be filed on behalf of a child who is born drug
22 exposed, if:

23 (1) the mother refuses THE RECOMMENDED LEVEL OF drug treatment,
24 or does not successfully complete THE RECOMMENDED LEVEL OF drug treatment;

25 (2) the mother is unable to provide adequate care for the child; and

26 (3) the father is unable to provide adequate care for the child.

27 5-710.

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

1 (b) (1) Promptly after receiving a report from a hospital or health
2 practitioner of suspected neglect related to drug abuse and conducting an appropriate
3 investigation, the local department may:

4 (i) file a petition alleging that the child is in need of assistance
5 under Title 3, Subtitle 8 of the Courts Article; and

6 (ii) offer the mother admission into a drug treatment program.

7 (2) The local department may initiate a judicial proceeding to terminate
8 a mother's parental rights, if the local department offers the mother admission into a
9 drug treatment program under this subsection within 90 days after the birth of the
10 child and the mother:

11 (i) does not accept admission to the program or its equivalent
12 within 45 days after the offer is made; [or]

13 (ii) DOES NOT ACCEPT THE RECOMMENDED LEVEL OF DRUG
14 TREATMENT WITHIN 45 DAYS AFTER THE OFFER IS MADE; OR

15 (III) fails to fully participate in the program or its equivalent.

16 (c) If a report has been made to the State's Attorney's office under § 5-706(i) of
17 this subtitle and the State's Attorney's office is not satisfied with the recommendation
18 of the local department, the State's Attorney's office may petition the court, at the
19 time of the report by the representative, to remove the child, if the State's Attorney
20 concludes that the child is in serious physical danger and that an emergency exists.

21 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
22 October 1, 2002.