

Department of Legislative Services
Maryland General Assembly
2002 Session

FISCAL NOTE

Senate Bill 688 (Senator Forehand)
Judicial Proceedings

Maryland Safe Haven Act of 2002

This bill exempts a mother or other person authorized by the mother who relinquishes an unharmed newborn in accordance with the provisions of the bill from certain criminal penalties and grants immunity to certain entities and individuals from any civil liability and criminal penalty for good faith acts taken related to the relinquishment or medical treatment of the newborn.

Fiscal Summary

State Effect: One-time general fund expenditure increase of \$120,000 for a public awareness campaign. Otherwise, the bill's changes could be handled with existing budgeted resources. Revenues would not be affected.

Local Effect: None -- see above.

Small Business Effect: None.

Analysis

Bill Summary: The bill provides that it is not unlawful for the mother of a newborn, or person authorized by the mother, to leave an unharmed newborn, without expressing an intent to return, with a hospital, law enforcement, social services, or fire and rescue employee within three days of the birth of the newborn, as determined within a reasonable degree of medical certainty. A hospital, law enforcement agency, local department of social services, or fire or rescue company, or an employee of such who accepts or treats a newborn under these circumstances in good faith will have immunity

from criminal penalty unless injury to the newborn was caused by willful or wanton misconduct or gross negligence. A hospital or an employee of a hospital acting in good faith shall be immune from civil liability for any action taken related to the abandonment of the newborn, including care and medical treatment, unless injury to the child was caused by willful or wanton misconduct or gross negligence. A fire or rescue company or an employee of a fire and rescue company shall be immune from civil liability for any action taken related to the abandonment of a newborn, including care and medical treatment. Any claim asserted for an action taken related to the abandonment of a newborn shall be governed by the Maryland Tort Claims Act or the Local Government Tort Claims Act. This bill, however, does not create a new cause of action or substantive legal right against the State, a local government, or any person or entity specified in this bill, and does not affect any immunities from civil liability or criminal prosecution or defenses established under other provisions of the law.

This bill requires the Maryland Institute for Emergency Medical Services to develop and establish appropriate protocol procedures for fire and rescue employees who accept or treat a newborn.

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 assistance may be convicted of a misdemeanor 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 circumstances 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.

In an effort to prevent newborn deaths, 35 states have enacted legislation that allows mothers to safely relinquish custody of their unwanted newborns to staff at hospitals or

other specified locations, according to a National Conference of State Legislatures (NCSL) report. States that have enacted safe haven laws include Alabama, Connecticut, Florida, Louisiana, New Jersey, North Carolina, Rhode Island, South Carolina, Texas and West Virginia.

NCSL further reported that 33 babies were relinquished in ten states after the passage of similar safe haven legislation: six in New Jersey; five each in Texas, Michigan, and Alabama; four in California; two each in Connecticut, Minnesota, and Ohio; and one each in Kansas and South Carolina. Safe haven laws in New York, West Virginia, and Florida do not include requirements for reporting and tracking abandoned infants.

State Expenditures: The bill's requirements could be absorbed within the 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 experienced as a result of not having to search for, prosecute, and incarcerate those who would have otherwise illegally abandoned a newborn. In addition, babies that are abandoned legally pursuant to the bill may have fewer medical treatment needs than if they had been abandoned under illegal circumstances.

Although the bill does not require a public awareness campaign to make people aware that there are places that they could lawfully relinquish their newborns, several states reported to NCSL that such campaigns are key to the effective implementation of similar laws. DHR reports that it would cost \$120,000 (\$60,000 for 100,000 pamphlets and \$60,000 for 50,000 posters) to launch a public awareness campaign.

Additional Information

Prior Introductions: A similar bill, HB 252, passed the House of Delegates in the 2001 session but was not reported out of the Senate Judicial Proceedings Committee. Its cross file, SB 32, was withdrawn from the Senate Judicial Proceedings Committee. Other similar bills that were introduced in the 2001 session but did not become law include: SB 82, for which a conference committee was appointed but failed to reach agreement before Sine Die. Its cross file, HB 74 was withdrawn from the House Judiciary Committee; HB 515, which received an unfavorable report in the House Judiciary Committee; SB 704, which was withdrawn from the Senate Judicial Proceedings Committee. Its cross file, HB 363, received an unfavorable report in the House Judiciary Committee; and HB 312, received an unfavorable report in the House Judiciary Committee.

Cross File: HB 602 (Delegate Grosfeld, *et al.*) – Judiciary.

Information Source(s): Montgomery County, Prince George’s County, Garrett County, Department of Human Resources, Department of State Police, Department of Health and Mental Hygiene, Maryland Institute for Emergency Medical Services Systems, Department of Legislative Services

Fiscal Note History: First Reader - February 18, 2002
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