

Department of Legislative Services
Maryland General Assembly
2019 Session

FISCAL AND POLICY NOTE
First Reader

House Bill 167

(Chair, Judiciary Committee)(By Request - Departmental
- Human Services)

Judiciary

Juvenile Causes - Safe Haven Newborns

This departmental bill sets forth procedures for local departments of social services to follow regarding safe haven newborns. It also expands the definition of a “child in need of assistance” (CINA) to include a child who has been relinquished as a safe haven newborn.

Fiscal Summary

State Effect: The bill does not materially affect the operations or finances of the Department of Human Services (DHS) or the Judiciary.

Local Effect: The bill does not materially affect the operations or finances of the circuit courts.

Small Business Effect: DHS has determined that this bill has minimal or no impact on small business (attached). The Department of Legislative Services concurs with this assessment.

Analysis

Bill Summary:

General Duties of Hospitals and Local Departments of Social Services: A hospital or other designated facility must make available to the mother of a safe haven newborn or responsible adult acting on her behalf written information provided by DHS, in accordance with regulations. The hospital or other designated facility must also make a reasonable attempt to obtain information regarding family and medical history, the identity of the

mother and the father, and any Native American heritage; it must provide the information to the local department of social services. The local department must keep the identity of the mother confidential unless the mother affirmatively waives her rights to anonymity or revokes her voluntary relinquishment. A mother admitted to a hospital or birth center for purposes of delivery does not relinquish the legal protections or confidentiality provided by statutory provisions regarding a safe haven newborn if she subsequently affirms that she is voluntarily relinquishing custody of her unharmed newborn after giving birth.

Temporary Custody of Safe Haven Infant: Once a local department receives a newborn that has been relinquished, it must assume temporary custody of the newborn and petition the juvenile court for continued shelter care. The bill authorizes a local department to place the child in emergency shelter care before a hearing under specified circumstances. Unless a mother has revoked her voluntary relinquishment, a local department may not provide notice of a shelter care hearing to the mother. After the local department assumes temporary custody, if the mother or a person claiming to be the child's father or another relative contacts the hospital regarding the newborn, the hospital or other designated facility must give the individual specified information and provide the local department of social services with any identifying information provided by that individual.

CINA Petition and Required Notice: If a local department files a petition alleging that a safe haven newborn is a CINA, in addition to personal service on any known father, the local department must, within 10 days, publish and post a notice, as specified. The notice must include specified information, including identifying information regarding the newborn, the place, date, and time of relinquishment, and information about the filing of the CINA petition. The notice may not include the name of the mother or the newborn. The notice must also inform the mother that a failure to file written notice revoking her voluntary relinquishment within 90 days, as specified, constitutes an irrevocable consent to the termination of her parental rights and a waiver of the right to notification of any subsequent proceedings concerning the child. It must also include notice to anyone seeking to claim paternity of similar consequences. The court must exclude the general public from a hearing where the proceedings involve discussion of any information pertaining to the confidential identity of a mother of a safe haven newborn. In making a disposition on a CINA petition regarding a safe haven newborn, the court may grant limited guardianship to DHS for medical or other appropriate services.

Permanency Planning Hearing Required: The court must hold a permanency planning hearing within 120 days after a petition is filed alleging that a child is a safe haven newborn. If the court finds that no individual has responded to the required notice specified above, the child's permanency plan must be adoption and the local department must, within 30 days after the court's finding, file a petition for guardianship.

Court Actions on Revocation of Relinquishment or Paternity Claim: If, within 90 days after relinquishment, a mother seeks to revoke her relinquishment or a father files a claim of paternity, the court must (1) schedule a hearing within 10 days after the date of the revocation or claim; and (2) determine whether the person seeking to revoke the relinquishment or claiming paternity is the child's biological parent, including ordering any necessary testing. The court must also (1) determine whether the local department has demonstrated that the child remains a CINA, as specified; (2) determine whether reasonable efforts have been made to reunify the child with a parent who has come forward to claim the child; (3) if the court finds that the child is no longer a CINA, order the immediate return of the child to the parent; and (4) if the court finds that the child remains a CINA, make any further dispositions, as specified. The bill also specifies procedures for circumstances in which the local department does not recommend the immediate return of the child to the parent.

Other Notice Requirements: The bill sets forth requirements regarding notice that must be provided in guardianship cases involving a safe haven newborn. A juvenile court may grant guardianship of a safe haven newborn only if each of the child's living parents has failed to file a timely written revocation of voluntary relinquishment or claim of paternity.

Current Law: A person who leaves an unharmed newborn with a responsible adult within 10 days after the birth of the newborn, as determined within a reasonable degree of medical certainty, and does not express an intent to return for the newborn is immune from civil liability or criminal prosecution. If the person leaving the newborn is not the newborn's mother, the person must have the approval of the mother to do so. The person with whom the newborn is left must take the newborn to a hospital or other facility designated by the Secretary of Human Services as soon as reasonably possible. A hospital or other designated facility that accepts a newborn must notify the local department of social services within 24 hours. A responsible adult and a hospital or other designated facility that accepts a newborn are immune from civil liability or criminal prosecution for good faith actions unless injury to the newborn is caused by gross negligence or willful or wanton misconduct.

Background: Almost 20 years ago, states began to enact safe haven laws after countless incidents across the nation of mothers leaving unwanted newborns in unsafe locations; Maryland's statute was enacted in 2002. However, DHS advises that local departments of social services have expressed a need for clarification in the definition of a safe haven newborn and the responsibilities of the local department to seek relative resources for the newborn. DHS notes that practices have varied throughout the State due to the vagueness of the current statute and the lack of a specific procedure. According to DHS, the bill is designed not to change the substance or intent of the law regarding safe haven newborns, but to clarify the responsibilities of local departments to inform fathers and potential relatives.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Montgomery County; Judiciary (Administrative Office of the Courts); Maryland Department of Health; Department of Human Services; Department of Legislative Services

Fiscal Note History: First Reader - February 6, 2019
an/kdm

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ANALYSIS OF ECONOMIC IMPACT ON SMALL BUSINESSES

TITLE OF BILL: Juvenile Causes – Safe Haven Newborns

BILL NUMBER: HB167

PREPARED BY: Department of Human Services
(Dept./Agency)

PART A. ECONOMIC IMPACT RATING

This agency estimates that the proposed bill:

WILL HAVE MINIMAL OR NO ECONOMIC IMPACT ON MARYLAND
SMALL BUSINESS

OR

WILL HAVE MEANINGFUL ECONOMIC IMPACT ON MARYLAND
SMALL BUSINESSES

PART B. ECONOMIC IMPACT ANALYSIS