

HOUSE No. 4392

The Commonwealth of Massachusetts

HOUSE OF REPRESENTATIVES, February 15, 2024.

The committee on Children, Families and Persons with Disabilities, to whom were referred the petition (accompanied by bill, Senate, No. 64) of Joanne M. Comerford and Jason M. Lewis for legislation to support families, the petition (accompanied by bill, Senate, No. 129) of John C. Velis for legislation relative to medication-assisted treatment, the petition (accompanied by bill, House, No. 166) of Carole A. Fiola and others relative to substance exposed newborns and the petition (accompanied by bill, House, No. 173) of Sean Garballey and others for legislation to protect infants affected by in-utero substance exposure or fetal alcohol spectrum disorder, reports recommending that the accompanying bill (House, No. 4392) ought to pass [Representatives Berthiaume of Spencer and Sullivan-Almeida of Abington dissent].

For the committee,

JAY D. LIVINGSTONE.

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**In the One Hundred and Ninety-Third General Court
(2023-2024)**

An Act relative to substance exposed newborns.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 SECTION 1. Section 51A of chapter 119 of the general laws is hereby amended in
2 subsection (a) in the first paragraph by striking out the words:-

3 (iii) physical dependence upon an addictive drug at birth,

4 SECTION 2. Said section 51A is hereby further amended by inserting after subsection (a)
5 the following new subsection:-

6 (a ½) An indication of prenatal substance exposure does not, in of itself, meet the
7 requirements of subsection (a). The Department of Public Health shall promulgate regulations
8 and guidance in consultation with the Department of Children and Families under Section 51L of
9 Chapter 111 of the general laws as to how substance exposure shall be weighed in determining
10 whether to file a report, including any instances in which prenatal substance exposure from a
11 medication prescribed by a licensed healthcare provider may be considered in filing a report.

12 SECTION 3. Chapter 111 of the general laws is hereby amended by inserting in Section 1
13 the following:

14 “Plan of Safe Care”, a family care plan designed to ensure the safety and well-being of an
15 infant with prenatal substance exposure following his or her release from the care of a healthcare
16 provider by addressing the health and substance use treatment needs of the infant and affected
17 family or caregiver.

18 SECTION 4: Chapter 111 of the general laws is hereby amended by inserting after
19 section 51K the following section:-

20 Section 51L. (a) The Department of Public Health in consultation with the Department of
21 Children and Families shall promulgate regulations and corresponding guidance for all
22 healthcare providers who care for perinatal patients and/or newborns detailing the roles and
23 responsibilities of staff related to the requirement that healthcare providers must:

24 (1) Screen for prenatal substance exposure using a validated questionnaire and provide
25 brief intervention, treatment initiation, and referral as clinically indicated;

26 (2) Notify the Department of Public Health of all births of infants who were prenatally
27 exposed to substances pursuant to the requirements of the federal Child Abuse Prevention and
28 Treatment Act and the protocols described in this section;

29 (3) Prior to postnatal discharge, determine whether to file a report of suspected child
30 abuse or neglect as required by section 51A of chapter 119 and identify if a plan of safe care, as
31 defined in section 1 of chapter 111, has been developed;

32 (4) Assess family needs, develop a plan of safe care if indicated, and refer families to
33 appropriate services, as directed by the Department of Public Health and pursuant to the federal
34 Child Abuse Prevention and Treatment Act.

35 (b) The Department of Public Health shall develop a plan to receive notifications of
36 substance exposed births, as defined in regulation under subsection (a) of this section, directly
37 from healthcare providers and shall collect data for reporting in a manner that is in compliance
38 with the federal Child Abuse Prevention and Treatment Act.

39 (c) The Department of Public Health shall establish a program to ensure perinatal
40 individuals, families, and providers have access to services designed to support the development
41 and implementation of an effective plan of safe care, including services addressing the health and
42 substance use disorder treatment needs of the infants and affected family or caregivers, as
43 required by the federal Child Abuse Prevention and Treatment Act. Said program shall include a
44 central system perinatal individuals, families and providers can contact to receive information
45 and referrals, as well as a system of community-based services to meet the behavioral health,
46 parenting, and child development needs of families affected by substance use and substance use
47 disorders, subject to appropriation.

48 (d) The Department of Children and Families shall provide, and the Department of Public
49 Health shall receive, submissions of data from the Department of Children and Families to the
50 Public Health Data Warehouse in order to facilitate ongoing quality assurance and evaluation
51 projects related to this statute and other family-service initiatives.

52 (e) The Department of Public Health shall provide data to the Department of Children
53 and Families on all births of infants who were prenatally exposed to substances in a form and

54 manner that is compliant with the requirements of the federal Child Abuse Prevention and
55 Treatment Act, provided that said data shall not include personally identifiable information.

56 (f) There may be a multidisciplinary standing committee established for the purpose of
57 advising the Department of Public Health in matters related to prenatal substance exposure,
58 maternal and child health, treatment of substance use disorder, and racial equity in access to
59 healthcare, and includes at least one child focused professional. This advisory committee shall
60 consist of seven persons appointed by the governor with one representative from each of the
61 following organizations: the Massachusetts Medical Society, the Massachusetts Health and
62 Hospital Association, Massachusetts Organization for Addiction Recovery, the Massachusetts
63 branches of the National Association for the Advancement of Colored People New England Area
64 Conference, the Massachusetts chapter of the National Association of Social Workers, the
65 Committee for Public Counsel Services, and the Massachusetts chapter of the American
66 Congress of Obstetricians and Gynecologists. The committee shall make recommendations to the
67 Department of Public Health, based on research and analysis, to ensure that all regulations: (i)
68 reflect current accepted standards of healthcare and substance use treatment practices; (ii)
69 conform to the reporting requirements under the federal Child Abuse Prevention and Treatment
70 Act; and (iii) do not create racial disparities in maternal and child healthcare, reports of suspected
71 child abuse or neglect under section 51A of chapter 119, or number of patients identified for
72 plans of safe care as defined in section 1 of chapter 111.

73 SECTION 5. (a) The department of the children and families, in consultation with the
74 department of public health and the office of the child advocate, shall develop a report to study
75 the impact of this legislation on child and family safety and well-being. The departments shall
76 consider:

77 (1) Any impact, positive or negative, the changes may have had on racial and ethnic
78 disparities;

79 (2) Any impact the statutory changes may have had on child safety;

80 (3) Any impact the statutory changes may have had on child well-being;

81 (4) Gaps in infant and parent services; and

82 (5) Any additional statutory or regulatory changes that may be needed.

83 (b) The report shall include, but not be limited to:

84 (1) An examination of child abuse and neglect reports related to an infant's exposure at
85 birth to substances, including those that were ultimately screened out by the department of
86 children and families;

87 (2) An examination of longitudinal custodial, developmental, and service provision
88 outcomes of infants who were reported to be exposed to substances at birth that did not result in
89 a child abuse and neglect report;

90 (3) An examination of child abuse and neglect reports made under Section 51A of chapter
91 119 related to an infant's exposure at birth to substances;

92 (4) The demographics, including race and ethnicity, of both the child and the parents that
93 are the subject of reports described in clauses (1) through (3).

94 (c) If feasible, said report shall include relevant aggregate quantitative data on all cases
95 that meet the criteria specified in subsection (b)(1) and (b)(2) above, as well as a qualitative

96 analysis that includes a review of case notes in the database maintained by the department of
97 children and families for a sample of cases.

98 (d) No later than 18 months after the effective date of this legislation the department of
99 children and families, shall file an interim report of its findings with the clerks of the senate and
100 house of representatives, the senate committee on ways and means, the house committee on ways
101 and means, the joint committee on children, families, and person with disabilities, and the joint
102 committee on mental health, substance use and recovery.

103 (e) No later than three years after the effective date of this legislation, the department of
104 children and families shall file a final report of its findings with the clerks of the senate and
105 house of representatives, the senate committee on ways and means, the house committee on ways
106 and means, the joint committee on children, families, and person with disabilities, and the joint
107 committee on mental health, substance use and recovery.

108 SECTION 6. Sections 1 and 2 shall be effective eighteen months after the passage of this
109 legislation.

110 SECTION 7. Sections 3 and 4 shall be implemented and effective twelve months after the
111 passage of this legislation.

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