

CHAPTER 140

CHILDREN AND DOMESTIC MATTERS

SENATE BILL 04-117

BY SENATOR(S) Sandoval, and Andrews;
also REPRESENTATIVE(S) Cloer, Frangas, and Williams S.

AN ACT**CONCERNING REMOVAL OF A NEWBORN CHILD FROM THE CUSTODY OF THE CHILD'S PARENTS.**

Be it enacted by the General Assembly of the State of Colorado:

SECTION 1. Legislative declaration. (1) The general assembly recognizes the numerous studies establishing that children undergo a critical bonding and attachment process prior to the time they reach six years of age. The general assembly further recognizes that recent studies indicate that a significant part of this bonding and attachment process occurs immediately after the birth of the child, in the first minutes, hours, and days of life. This attachment and bonding of a parent to an infant has been found to begin during pregnancy and to increase shortly after birth. This process is crucial for the baby's healthy development. Studies disclose that a child who has not bonded with a primary adult during this critical stage may suffer significant emotional harm which frequently leads to chronic psychological problems and antisocial behavior when the child reaches adolescence and adulthood.

(2) The general assembly further recognizes that one of the purposes of the Colorado Children's Code is to protect children and families by removing a child from the custody of his or her parents only when the child's welfare and safety would otherwise be endangered and for the courts to proceed with all possible speed to a legal determination that will serve the best interests of the child. In an effort to fully protect children, the law provides that a law enforcement officer may remove a child from the custody of his or her parents when the law enforcement officer alone, without court intervention, determines that an emergency situation exists.

(3) Due to the critical stage of bonding and attachment of a newborn child to his or her parents described in subsection (1) of this section, however, the general assembly hereby finds and declares that prior to the removal of any newborn child from the custody of his or her parents, except in limited situations, there shall be a

Capital letters indicate new material added to existing statutes; dashes through words indicate deletions from existing statutes and such material not part of act.

court finding and determination that an emergency situation exists and that the newborn child is so seriously endangered that there is no other reasonable way to protect the newborn child without removing the child from his or her parents.

(4) This act, set forth in Senate Bill 04-117, as enacted at the second regular session of the sixty-fourth general assembly, may be referred to as the "Sunshine Gates Act".

SECTION 2. 19-3-401, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SUBSECTION to read:

19-3-401. Taking children into custody. (3) (a) NOTWITHSTANDING THE PROVISIONS OF SUBSECTIONS (1) AND (1.5) OF THIS SECTION AND EXCEPT AS OTHERWISE PROVIDED IN PARAGRAPHS (b) AND (c) OF THIS SUBSECTION (3), A NEWBORN CHILD, AS DEFINED IN SECTION 19-1-103 (78.5), WHO IS NOT IN A HOSPITAL SETTING SHALL NOT BE TAKEN INTO TEMPORARY PROTECTIVE CUSTODY FOR A PERIOD OF LONGER THAN TWENTY-FOUR HOURS WITHOUT AN ORDER OF THE COURT MADE PURSUANT TO SECTION 19-3-405 (1), WHICH ORDER INCLUDES FINDINGS THAT AN EMERGENCY SITUATION EXISTS AND THAT THE NEWBORN CHILD IS SERIOUSLY ENDANGERED AS DESCRIBED IN PARAGRAPH (a) OF SUBSECTION (1) OF THIS SECTION.

(b) A NEWBORN CHILD, AS DEFINED IN SECTION 19-1-103 (78.5), WHO IS IN A HOSPITAL SETTING SHALL NOT BE TAKEN INTO TEMPORARY PROTECTIVE CUSTODY WITHOUT AN ORDER OF THE COURT MADE PURSUANT TO SECTION 19-3-405 (1), WHICH ORDER INCLUDES FINDINGS THAT AN EMERGENCY SITUATION EXISTS AND THAT THE NEWBORN CHILD IS SERIOUSLY ENDANGERED AS DESCRIBED IN PARAGRAPH (a) OF SUBSECTION (1) OF THIS SECTION. A NEWBORN CHILD MAY BE DETAINED IN A HOSPITAL BY A LAW ENFORCEMENT OFFICER UPON THE RECOMMENDATION OF A COUNTY DEPARTMENT OF SOCIAL SERVICES, A PHYSICIAN, A REGISTERED NURSE, A LICENSED PRACTICAL NURSE, OR A PHYSICIAN'S ASSISTANT, WHILE AN ORDER OF THE COURT PURSUANT TO SECTION 19-3-405 (1) IS BEING PURSUED, BUT THE NEWBORN CHILD MUST BE RELEASED IF A COURT ORDER PURSUANT TO SECTION 19-3-405 (1) IS DENIED.

(c) THE COURT ORDERS REQUIRED BY PARAGRAPHS (a) AND (b) OF THIS SUBSECTION (3) SHALL NOT BE REQUIRED IN THE FOLLOWING CIRCUMSTANCES:

(I) WHEN A NEWBORN CHILD IS IDENTIFIED BY A PHYSICIAN, REGISTERED NURSE, LICENSED PRACTICAL NURSE, OR PHYSICIAN'S ASSISTANT ENGAGED IN THE ADMISSION, CARE, OR TREATMENT OF PATIENTS AS BEING AFFECTED BY SUBSTANCE ABUSE OR DEMONSTRATING WITHDRAWAL SYMPTOMS RESULTING FROM PRENATAL DRUG EXPOSURE;

(II) WHEN THE NEWBORN CHILD'S ONLY IDENTIFIABLE BIRTH PARENT HAS BEEN DETERMINED BY A PHYSICIAN, REGISTERED NURSE, OR QUALIFIED MENTAL HEALTH PROFESSIONAL TO MEET THE CRITERIA SPECIFIED IN SECTION 27-10-105, C.R.S., FOR CUSTODY, TREATMENT, AND EVALUATION OF MENTAL ILLNESS OR GRAVE DISABILITY;

(III) WHEN BOTH OF THE NEWBORN CHILD'S BIRTH PARENTS HAVE BEEN DETERMINED BY A PHYSICIAN, REGISTERED NURSE, OR QUALIFIED MENTAL HEALTH PROFESSIONAL TO MEET THE CRITERIA SPECIFIED IN SECTION 27-10-105, C.R.S., FOR

CUSTODY, TREATMENT, AND EVALUATION OF MENTAL ILLNESS OR GRAVE DISABILITY;
OR

(IV) WHEN THE NEWBORN CHILD IS SUBJECT TO AN ENVIRONMENT EXPOSING THE NEWBORN CHILD TO A LABORATORY FOR MANUFACTURING CONTROLLED SUBSTANCES AS DEFINED IN SECTION 18-18-102 (5), C.R.S.

(d) AT THE TIME A LAW ENFORCEMENT OFFICER TAKES A NEWBORN CHILD INTO TEMPORARY PROTECTIVE CUSTODY, THE LAW ENFORCEMENT OFFICER SHALL PROVIDE THE NOTICES REQUIRED BY SECTIONS 19-3-402 AND 19-3-212 DIRECTLY TO THE NEWBORN CHILD'S IDENTIFIABLE BIRTH PARENT OR PARENTS IN BOTH VERBAL AND WRITTEN FORM. SUCH NOTICES MAY BE PROVIDED TO THE CHILD'S IDENTIFIABLE BIRTH PARENT OR PARENTS IN A LANGUAGE THAT THE BIRTH PARENT OR PARENTS UNDERSTAND, AND THE LAW ENFORCEMENT OFFICER MAY DESIGNATE ANOTHER PERSON TO ASSIST HIM OR HER IN PROVIDING SUCH WRITTEN AND VERBAL NOTICES TO FULFILL THIS REQUIREMENT, IF NECESSARY.

(e) IF A NEWBORN CHILD IS TAKEN INTO TEMPORARY PROTECTIVE CUSTODY PURSUANT TO THIS SUBSECTION (3), THE COUNTY DEPARTMENT MAY CONTACT THE CHILD'S IDENTIFIABLE BIRTH PARENT OR PARENTS TO OBTAIN THE NAMES OF ANY RELATIVES OR OTHER PERSONS IN THE PARENT'S OR PARENTS' COMMUNITY WHO MAY BE APPROPRIATE, CAPABLE, AND WILLING TO CARE FOR THE NEWBORN CHILD PRIOR TO THE HEARING REQUIRED BY SECTION 19-3-403. IN ADDITION, IF THE IDENTIFIABLE PARENT OR PARENTS ARE NOT CITIZENS OF THE UNITED STATES, THE COUNTY DEPARTMENT MAY REQUEST THE PARENT'S OR PARENTS' CONSENT TO NOTIFY THE PARENT'S OR PARENTS' GOVERNMENT OF ORIGIN OF THE SITUATION, AND IF CONSENT IS GIVEN, MAY CONTACT THE PARENT'S OR PARENTS' GOVERNMENT OF ORIGIN.

SECTION 3. 19-1-103, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SUBSECTION to read:

19-1-103. Definitions. As used in this title or in the specified portion of this title, unless the context otherwise requires:

(78.5) "NEWBORN CHILD" MEANS A CHILD WHO IS LESS THAN SEVENTY-TWO HOURS OLD.

SECTION 4. Effective date - applicability. This act shall take effect July 1, 2004, and shall apply to actions taken for temporary protective custody of newborn children on or after said date.

SECTION 5. Safety clause. The general assembly hereby finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health, and safety.

Approved: April 13, 2004