



Brief 98-9

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UNBORN CHILDREN IN NEED OF PROTECTION

1997 Wisconsin Act 292, passed by the legislature and signed by Governor Tommy Thompson, to take effect July 1, 1998, expands the state children's code to cover unborn children whose mothers severely abuse alcohol and other drugs and refuse to accept treatment. The new law applies only to those instances where an expectant mother has inflicted or risks inflicting serious physical harm to her unborn child due to an habitual lack of self-control in the use of alcohol beverages and controlled substances.

Under Act 292 (introduced as 1997 Assembly Bill 463), unborn children are protected by the state's child abuse and neglect reporting law and included in the juvenile court's jurisdiction over children in need of protection and services (CHIPS). In addition, the authority and responsibilities delegated to the Department of Health and Family Services and county social service departments for the protection of minors are extended to cases involving unborn children.

UNBORN CHILD ABUSE REPORTING

Under Wisconsin law, certain individuals, such as physicians, day care providers or teachers, who, in the performance of their professional duties, have reasonable cause to believe a child is being abused or neglected must report the matter to local law enforcement officials or county social services. The law also provides for voluntary reporting. Act 292 permits, but does not require, an individual who believes an expectant mother has or may harm her unborn child through habitual alcohol or other drug abuse to file a report.

Local law enforcement officials and child protection workers must immediately investigate a report of abuse of an unborn child. They may take the expectant mother into custody, and the county social service department may offer services to the mother. If the services are refused, the department may request the district attorney to file a CHIPS petition with the juvenile court.

JUVENILE COURT PROCEEDINGS

Act 292 provides that the juvenile court has exclusive original jurisdiction over both the expectant mother and her unborn child when she endangers her unborn child through the habitual abuse of alcohol or other drugs. The court may order the expectant mother into custody, if she refuses to accept prompt and adequate treatment when it is offered.

If the juvenile court finds that the unborn child needs protection or services, it has several options. It may order counseling, supervision by a social service agency, out-of-home placement, or participation in outpatient or inpatient AODA treatment. After the child is born, the court may also order services for the child if there is a need. The court may not place an expect-

tant mother outside her home unless she refuses to accept AODA services when they are offered to her. It also may not order inpatient treatment unless the treatment is appropriate for her needs and provided in the least restrictive environment consistent with those needs.

FOR MORE INFORMATION

For copies of 1997 Wisconsin Act 292, contact the Legislative Reference Bureau at (608) 266-0342. Acts can be downloaded from the legislature's website at **<http://www.legis.state.wi.us/billtrack.html>**.