



Ohio Legislative Service Commission

Bill Analysis

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H.B. 325*

131st General Assembly

(As Reported by S. Government Oversight & Reform)

Reps. Green and S. O'Brien, Grossman, Sheehy, Bishoff, Hill, Rogers, K. Smith, Phillips, Sprague, Young, Brenner, R. Smith, Antani, Blessing, Burkley, Antonio, Boose, Hambley, Ginter, Sears, DeVitis, Rezabek, Thompson, T. Johnson, Ashford, Hackett, Buchy, Lepore-Hagan, Scherer, Fedor, Slesnick, Ramos, Brown, Terhar, McClain, Stinziano, Curtin, Huffman, Maag, Derickson, Conditt, Romanchuk, Amstutz, Anielski, Arndt, Baker, Boccieri, Boyd, Celebrezze, Cera, Craig, Dever, Driehaus, Duffey, Gonzales, Hagan, Howse, Manning, M. O'Brien, Patmon, Patterson, Reineke, Ruhl, Slaby, Strahorn, Sweeney

BILL SUMMARY

Drug treatment for pregnant women

- Requires certain health care professionals to encourage drug treatment for pregnant patients under certain circumstances.
- With respect to that requirement, grants those health care professionals limited immunity from civil or criminal liability.
- Requires the Department of Mental Health and Addiction Services, as part of an existing program, to give priority to treating addicted pregnant women.
- Prohibits a community addiction services provider that receives public funds from refusing to treat a pregnant woman solely because she is pregnant if the provider offers appropriate treatment.

Child welfare proceedings

- Requires that, if a public children services agency files a complaint alleging that a newborn is abused, neglected, or dependent solely because the mother used a

* This analysis was prepared before the report of the Senate Government Oversight & Reform Committee appeared in the Senate Journal. Note that the list of co-sponsors and the legislative history may be incomplete.

controlled substance while pregnant, the court must determine if the mother (1) enrolled in drug treatment before the end of her 20th week of pregnancy, (2) completed treatment or is in the process of completing treatment, (3) maintained her regularly scheduled appointments and prenatal care, and (4) at the request of a public children services agency, provided the agency with an affirmative representation those conditions were met.

- Requires a court, when the above-mentioned conditions are met, to hold in abeyance or dismiss such a complaint if the mother provides written evidence regarding continued treatment or completion of treatment.
- Permits a court to hold a complaint in abeyance if the mother (1) enrolled in drug treatment *after* her 20th week of pregnancy, (2) is in the process of completing a treatment program, and (3) maintained her regularly scheduled appointments and prenatal care.
- Permits a court to dismiss a complaint if the mother (1) enrolled in drug treatment *after* the end of her 20th week of pregnancy, (2) completed a treatment program, and (3) maintained her regularly scheduled appointments and prenatal care.

Children's crisis care facilities

- Authorizes certain children's crisis care facilities that provide residential care to drug-exposed newborns to permit security personnel to maintain and bear firearms while on the grounds of the facility.

Admissibility of prenatal screening and tests in criminal proceedings

- Provides that evidence obtained through a screening or test to determine pregnancy or provide prenatal care is not admissible in a criminal proceeding against the woman who was screened or tested.

CONTENT AND OPERATION

Encouraging pregnant women to enroll in drug treatment

The bill requires certain health care professionals who care for pregnant women to encourage enrollment in drug treatment programs. The health care professionals to whom the bill applies are physicians, registered nurses (including clinical nurse specialists, certified nurse-midwives, and certified nurse practitioners),¹ licensed practical nurses, and physician assistants. Such a health care professional who attends

¹ R.C. 4723.01, not in the bill.

to a pregnant woman for conditions relating to pregnancy before the end of the 20th week of pregnancy and who has reason to believe that the woman is using or has used a controlled substance in a manner harmful to the fetus must encourage the woman to enroll in a drug treatment program offered by a community addiction services provider.²

The bill defines "community addiction services provider" as an agency, association, corporation, individual, or program that provides alcohol, drug addiction, or gambling addiction services that are certified by the Department of Mental Health and Addiction Services under Ohio law.³

The health care professionals subject to the bill are immune from civil liability and are not subject to criminal prosecution for (1) failing to recognize a pregnant woman's use of a controlled substance in a manner that is harmful to her fetus, or (2) any action taken in good faith compliance with the bill's requirements.⁴

Treatment priority

The bill requires the Department of Mental Health and Addiction Services to give priority to treating pregnant women addicted to drugs of abuse. Under current law, the Department is required to give priority to developing, and to promptly develop, a program to identify addicted pregnant women and provide intervention and continued monitoring. The program also must provide tracking and treatment, as well as rehabilitation for children born to women who are addicted.

The bill adds a requirement that the program give priority to treating pregnant women who are addicted to drugs of abuse. It also requires a community addiction services provider that receives public funds to give priority to pregnant women referred to treatment. The bill prohibits such a community addiction services provider from refusing to treat a pregnant woman solely because she is pregnant, so long as appropriate treatment is offered by the provider.⁵

² R.C. 3701.70(B).

³ R.C. 3701.70(A); R.C. 5119.01(A)(6), not in the bill.

⁴ R.C. 3701.70(C).

⁵ R.C. 5119.17.

Child welfare proceedings

Public children services agencies (PCSAs)⁶ are required to assess and investigate reports of abuse, neglect, or dependency to determine whether a child is safe or at risk. This assessment and investigation is conducted pursuant to Ohio and federal law in accordance with the Child Protective Services Worker Manual developed by the Department of Job and Family Services. In appropriate circumstances, a PCSA may file a complaint with the juvenile court alleging that a child is an abused, neglected, or dependent child.⁷ When a complaint has been filed, the court must first determine whether the child is an abused, neglected, or dependent child (referred to as adjudication) and, if so, whether the child should be removed from the parent's custody (referred to as disposition).

The bill provides that if a PCSA files such a complaint regarding a newborn⁸ solely because the newborn's mother used a controlled substance while pregnant, the court must determine based on written evidence submitted by the mother, whether the mother did all of the following:

(1) Before the end of the 20th week of pregnancy, enrolled in a drug treatment program provided by a community addiction services provider;

(2) Successfully completed the program or is in the process of completing the program and is in compliance with the program's terms and conditions as determined by the program;

(3) Maintained her regularly scheduled appointments and prenatal care recommended by her health care provider for the remaining duration of the pregnancy;

(4) At the request of a PCSA, provided the agency with an affirmative representation that she complied with the above requirements.⁹

If the court determines the mother complied with those requirements, the court must do one of the following instead of considering the complaint:

⁶ According to the Public Children Services Association of Ohio, there are 61 PCSAs located within county departments of job and family services, 21 are separate children services boards, and two fall under the purview of a county administrator or executive.

⁷ R.C. 2151.27, not in the bill.

⁸ The bill defines a newborn as a child less than 30 days old.

⁹ R.C. 2151.26(B).



(1) Hold it in abeyance if the mother provides the court with written evidence from a community addiction services provider demonstrating that she is in the process of completing the program;

(2) Dismiss the complaint if the mother provides the court with written evidence from a community addiction services provider demonstrating that she successfully completed the program or provides evidence satisfactory to the court of a commitment to treatment and recovery.

Complaints held in abeyance while a mother is in the process of being treated are to be held so long as the mother continues to provide the court with written evidence from a community addiction services provider demonstrating that she is continuing treatment. If the mother ceases to provide such evidence, the court must consider the complaint. If the mother provides written evidence of completion of the program, the court must dismiss the complaint.

If a pregnant woman enrolled in a drug treatment program after the end of her 20th week of pregnancy, a court may do either of the following instead of considering the complaint:

(1) Hold it in abeyance if the court finds the woman is in the process of completing the program and has maintained her regularly scheduled appointments and prenatal care;

(2) Dismiss it if the court finds that the woman successfully completed the program and maintained her regularly scheduled appointments and prenatal care.¹⁰

The bill specifies that it does not prevent a PCSA from filing a complaint regarding a newborn if the PCSA determines that the mother, or any other adult caring for the newborn, is unable to provide adequate parental care.¹¹

Children's crisis care facilities

The bill authorizes a children's crisis care facility that has as its primary purpose the provision of residential and other care to infants who are born drug exposed, and that regularly maintains on its premises schedule II controlled substances, to permit security personnel to maintain and bear firearms while on the grounds of the facility.¹² The bill defines firearm as any deadly weapon capable of expelling or propelling one or

¹⁰ R.C. 2151.26(C).

¹¹ R.C. 2151.26(D).

¹² R.C. 5103.132.



more projectiles by the action of an explosive or combustible propellant. This includes an unloaded firearm, and any firearm that is inoperable but that can readily be rendered operable.¹³

Admissibility of prenatal screening and tests in criminal proceedings

The bill provides that evidence of the use of a controlled substance obtained through a screening or test to determine pregnancy or provide prenatal care is not admissible in a criminal proceeding against the woman who was screened or tested. However, the bill also specifies that it does not prohibit criminal prosecution based on evidence obtained through methods other than prenatal screening or testing or prenatal care.¹⁴

Technical correction

The bill corrects a cross-reference in section 5139.01 of the Revised Code. That section refers to section 2151.26, but that section was amended and renumbered by Sub. S.B. 179 of the 123rd General Assembly.

HISTORY

ACTION	DATE
Introduced	09-08-15
Reported, H. Community & Family Advancement	11-05-15
Passed House (96-1)	02-23-16
Reported, S. Gov't Oversight & Reform	---

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¹³ R.C. 2923.11(B)(1), not in the bill.

¹⁴ R.C. 2945.65.

