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S.B. 216
134th General Assembly

Bill Analysis

Version: As Introduced

Primary Sponsor: Sen. Johnson

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UPDATED VERSION*

SUMMARY

Alcohol or drug testing of parent or infant

- Names the act “Dylan’s Law,” to address parental custody of substance-exposed infants.
- Requires a public children services agency (PCSA), unless the pregnant woman is enrolled in a drug treatment program in accordance with continuing law, to conduct an alcohol or drug test on an infant or the infant’s mother if the PCSA receives a report of child abuse regarding an alleged substance-exposed infant.

Child abuse complaint for substance-exposed infant

- Requires a PCSA, if the alcohol or drug test returns a positive result, to file a complaint regarding the child in juvenile court for the abuse.

Adjudication, custody, and disposition

- Prohibits a child from being adjudicated an abused child as a result of being a substance-exposed infant if the court determines the mother’s or infant’s positive result from a drug test was due to medication-assisted treatment.
- Requires the court to award legal custody of the child adjudicated to be an abused child as a result of being a substance-exposed infant to the child’s father if the PCSA, upon its investigation of the father, deems the father fit to care for the child.
- Prohibits the court (except if the father is given custody as described above) from making an order of disposition that (1) commits the child to the temporary custody of

* The “As Referred by the Senate Rules and Reference Committee” version of S.B. 216 of the 134th General Assembly is identical to the “As Introduced” version, except that Senator Yuko was removed as a cosponsor to the bill in the Senate Rules and Reference Committee.

either of the child's parents or any person who resides in the parents' household or (2) places the child in protective supervision.

Court-ordered process toward parent-child reunification

- Requires the court to issue both of the following orders regarding a child adjudicated an abused child as a result of being a substance-exposed infant:
 - Prohibiting any contact between the child's parent and the child, to remain in effect until the court determines that the parent has met the court's orders to the child's parents;
 - Prohibiting the child's parent and the child from residing together, until the court determines the parent has met the reunification requirements.
- Requires the court, unless it awarded legal custody to the child's father, to issue an order requiring both of the child's parents to do all of the following:
 - Complete a course specific to caring for a newborn experiencing alcohol or drug withdrawal;
 - Complete an inpatient rehabilitation program provided by a community addiction services provider;
 - Undergo, and be approved through, a home study.
- Requires the court, on the parents' completion of the court-ordered requirements, to order the parents to submit to alcohol or drug testing and send the order issued to the PCSA for referral of a parent to a community addiction services provider when a child is at imminent risk of being abused or neglected due to addiction, per continuing law.
- Requires any alcohol or drug testing order to require the testing to be conducted as follows:
 - Each month for a minimum of three consecutive months, at random intervals, until reunification occurs;
 - Each month during a period of six consecutive months, at random intervals, after reunification occurs.

Reunification of parent and child

- Requires the court, after the parents' compliance with court-ordered parent requirements, and on continued receipt of negative alcohol or drug tests, to permit the parents to transition to full-time care of the child, through visits supervised by the PCSA and then through unsupervised weekend visits.
- Requires the court to order the parent-child reunification if all of the following apply:
 - The parent has complied with all of the court-ordered parent requirements;
 - The parent has tested negative to three consecutive court-ordered alcohol or drug tests;

- Unless the child’s father has been awarded legal custody of the child, the child has been in temporary custody for a minimum of six months;
- The parent is not the subject of a pending criminal proceeding.
- Requires the court, on reunification, to order the parent to do all of the following:
 - Receive a PCSA caseworker for a home visit once a month for a period of three months;
 - Take the child to be examined by a health care professional not less than once a month for a period of six months, pursuant to which the health care professional must submit evidence of each medical visit to the PCSA;
 - Continue to submit to alcohol or drug tests each month for a period of six consecutive months, at random intervals;
 - If the other parent has not met the reunification requirements, comply with the court’s orders regarding contact and visitation with the other parent;
 - Notify, if a home visit or medical appointment needs to be rescheduled, the caseworker not later than 24 hours prior to the originally scheduled visit or appointment and schedule a follow-up visit or appointment.

PCSA complaint for violation/failure to comply

- Requires the PCSA to file a complaint in juvenile court regarding the child if a parent either:
 - Violates or fails to comply with the post-reunification requirements;
 - The parent’s alcohol or drug test returns a positive result.

Abused, neglected, or dependent child due to parent’s addiction

- Excludes the bill’s provisions on a child adjudicated an abused child as a result of being a substance-exposed infant from the continuing law requirements for parents of a child adjudicated to be an abused, neglected, or dependent child due to the alcohol or other drug addiction of the child’s parent or other caregiver.
- Repeals the definitions of “chemical dependency” and “drug of abuse,” as applied to the law governing requirements for parents or other caregivers of a child adjudicated an abused, neglected, or dependent child due to the parents’ or other caregivers’ alcohol or other drug addiction, because the terms are not used in current law or the bill.

DETAILED ANALYSIS

Alcohol or drug testing of parent or infant

The bill states that it is to be known as “Dylan’s Law,” enacted to address parental custody of substance-exposed infants.¹ The bill requires a public children services agency (PCSA), unless the pregnant woman is enrolled in a drug treatment program in accordance with continuing law (see below, “**Filing prohibited or discretionary**”), to conduct an alcohol or drug test on an infant or the infant’s mother if the PCSA receives a report of child abuse regarding an alleged substance-exposed infant.²

Under the bill, the definition of “abused child” is amended to include a substance-exposed infant, but not as a result of the mother’s medication-assisted treatment. A “substance-exposed infant” is a child under the age of 12 months who has been subjected to alcohol or other drug abuse while in utero.³

Child abuse complaint for substance-exposed infant

Required filing of PCSA complaint

Under the bill, if the alcohol or drug test returns a positive result, the PCSA must file a complaint regarding the child in the juvenile court of the county where the child has residence or where the abuse allegedly occurred.⁴

Filing prohibited or discretionary

Under continuing law, a PCSA is prohibited from filing a complaint regarding a newborn solely because the newborn’s mother used a controlled substance while pregnant if the mother did all of the following:

- Before the end of the 20th week of pregnancy, enrolled in a drug treatment program provided by a provider of addiction services or alcohol and drug addiction services;
- 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;
- Maintained her regularly scheduled appointments and prenatal care recommended by her health care provider for the remaining duration of her pregnancy.

¹ Section 3.

² R.C. 2151.261(A).

³ R.C. 2151.011(A)(5) and 2151.031(F).

⁴ R.C. 2151.261(B).

If the pregnant woman enrolled in a drug treatment program after the end of the 20th week of pregnancy, continuing law permits the court, in its discretion, to do either of the following:

- Hold the complaint in abeyance if the court finds that the woman is in the process of completing the program and maintained her regularly scheduled appointments and prenatal care recommended by her health care provider for the remaining duration of her pregnancy;
- Dismiss the complaint if the court finds that the woman successfully completed the program and maintained her regularly scheduled appointments and prenatal care recommended by her health care provider for the remaining duration of her pregnancy.⁵

Adjudication, custody, and disposition

Abused child adjudication prohibited

The bill prohibits a child from being adjudicated an abused child as a result of being a substance-exposed infant if the court hearing the complaint determines the mother's or infant's positive result from a drug test was due to medication-assisted treatment.⁶

Custody awarded to father

The bill requires the court to award legal custody of the child adjudicated to be an abused child as a result of being a substance-exposed infant to the child's father if the PCSA, upon its investigation of the father, deems the father fit to care for the child.⁷

Prohibited disposition of substance-exposed infant

Under the bill, except in cases when the child's father is awarded legal custody as described above, the court cannot make either of the following orders of disposition for a child adjudicated an abused child as a result of being a substance-exposed infant:

- Commit the child to the temporary custody of either of the child's parents or any person who resides in the household of either of the child's parents;
- Place the child in protective supervision.⁸

Continuing law permits the court to make an order of disposition to commit the child to the temporary custody of any of the following:

- A PCSA;

⁵ R.C. 2151.26, not in the bill.

⁶ R.C. 2151.261(C).

⁷ R.C. 2151.4611.

⁸ R.C. 2151.462.

- A private child placing agency;
- A relative residing within or outside the state;
- A probation officer for placement in a certified foster home;
- Any other person approved by the court.⁹

Court-ordered process toward parent-child reunification

Prohibited contact with child

The bill requires the court to issue both of the following orders regarding a child adjudicated an abused child as a result of being a substance-exposed infant:

- Prohibiting any contact between the child's parent and the child, to remain in effect until the court determines that the parent has met the court's orders to the child's parents (see below, "**Parent requirements**");
- Prohibiting the child's parent and the child from residing together, until the court determines the parent has met the reunification requirements (see below, "**Court-ordered reunification**").¹⁰

Parent requirements

Under the bill, except in cases when the child's father is awarded legal custody, the juvenile court is required, if it issues an order of temporary custody with respect to a child adjudicated an abused child as a result of being a substance-exposed infant, to issue an order requiring both of the child's parents to do all of the following:

- Complete a course specific to caring for a newborn experiencing alcohol or drug withdrawal;
- Complete an inpatient rehabilitation program provided by a community addiction services provider;
- Undergo, and be approved through, a home study conducted by an assessor in accordance with continuing law governing home study assessment of prospective adoptive and foster caregivers.¹¹

Testing and community addiction services providers

The bill requires the court, on the parents' completion of the court-ordered requirements (see above, "**Parent requirements**"), to order the child's parent or parents, as applicable, to submit to alcohol or drug testing. The court must send any such order issued

⁹ R.C. 2151.353(A).

¹⁰ R.C. 2151.463.

¹¹ R.C. 2151.461.

to the PCSA that serves the county in which the court is located for use in accordance with continuing law governing the PCSA referral to a community addiction services provider of a child's parent or other caregiver when the child is at imminent risk of being abused or neglected due to the parent's or caregiver's alcohol or drug addiction. Under that continuing law, the PCSA that is sent the court order must refer the addicted parent or other caregiver to a community addiction services provider. Further, on receipt of the referral and to the extent funding is available, the provider must provide the following services to the addicted parent or other caregiver and child in need of addiction services:

- If it is determined pursuant to an initial screening to be needed, assessment and appropriate treatment;
- Documentation of progress in accordance with a treatment plan developed for the addicted parent, other caregiver, or child;
- If the referral is based on a court order issued and the order requires the specified parent or other caregiver of the child to submit to alcohol or other drug testing during, after, or both during and after, treatment, testing in accordance with the court order.

Under the bill, any order requiring alcohol or drug testing must require the testing to be conducted as follows:

- Each month for a minimum of three consecutive months, beginning the month immediately following the month in which the order for alcohol or other drug testing is issued, at random intervals, until reunification occurs;
- Each month during a period of six consecutive months, at random intervals, after reunification occurs.

Arrangements for administering the alcohol or other drug tests, as well as funding the costs of the test, must be determined in accordance with continuing law governing drug or other drug testing by community addiction services providers. If a parent required to submit to alcohol or drug testing by the court is not a recipient of Medicaid, the PCSA that refers the parent for the tests may require the parent to reimburse the PCSA for the cost of conducting the tests.

The community addiction services provider that conducts any alcohol or other drug tests ordered by the court must send the results of the tests, along with the provider's recommendations as to the benefits of continued treatment, to the court and to the PCSA providing services to the involved family. The court must consider the results and recommendations in any proceeding on disposition, for permanent custody, or determining whether a PCSA made reasonable efforts to prevent removal or to return a child safely home.¹²

¹² R.C. 340.15 and 2151.465.

Reunification of parent and child

Transition to full-time care

The bill requires the court, after the parents' compliance with court-ordered parent requirements (see above, "**Parent requirements**"), and on continued receipt of negative court-ordered alcohol or drug tests (see above, "**Testing and community addiction services providers**"), to permit the parent or parents, as applicable, to incrementally transition to full-time care of the child adjudicated to be an abused child as a result of being a substance-exposed infant. The transition is to be through visits supervised by the PCSA and then through unsupervised weekend visits.¹³

Court-ordered reunification

Under the bill, the court must order the reunification of the parent and child if all of the following apply:

- The parent has complied with all of the court-ordered parent requirements for parents (see above, "**Parent requirements**").
- The parent has tested negative to three consecutive court-ordered alcohol or drug tests (see above, "**Testing and community addiction services providers**").
- Except in cases when the child's father has been awarded legal custody of the child, the child has been in temporary custody for a minimum of six months.
- The parent is not the subject of a pending criminal proceeding.¹⁴

Post-reunification requirements

The bill requires the court, on reunification of the parent and child, to order the parent to do all of the following:

- Receive a PCSA caseworker for a home visit once a month for a period of three months;
- Take the child to be examined by a health care professional not less than once a month for a period of six months, pursuant to which the health care professional must submit evidence of each medical visit to the agency;
- Continue to submit to alcohol or drug tests each month for a period of six consecutive months, at random intervals (see above, "**Testing and community addiction services providers**");
- If the other parent has not met the reunification requirements, comply with the court's orders regarding contact and visitation with the other parent (see above, "**Prohibited contact with child**").

¹³ R.C. 2151.466.

¹⁴ R.C. 2151.468.

Further, under the bill, if a home visit or medical appointment needs to be rescheduled, the caseworker must be notified not later than 24 hours prior to the originally scheduled visit or appointment and the parent must schedule a follow-up visit or appointment.¹⁵

PCSA complaint for violation/failure to comply

The bill requires the PCSA to file a complaint in the juvenile court regarding the child adjudicated to be an abused child as a result of being a substance-exposed infant if a parent either:

- Violates or fails to comply with the post-reunification requirements described above.
- The parent’s alcohol or drug test returns a positive result.¹⁶

Abused, neglected, or dependent child due to parent’s addiction

The bill excludes the provisions enacted regarding a child adjudicated an abused child as a result of being a substance-exposed infant to the requirements from continuing law requirements governing a child adjudicated to be an abused, neglected, or dependent child when the alcohol or other drug addiction of the child’s parent or other caregiver is the basis for that adjudication.

Additionally, the bill repeals the definitions of “chemical dependency” and “drug of abuse,” as applied to the law governing requirements for parents or other caregivers of a child adjudicated an abused, neglected, or dependent child due to the parent’s alcohol or other drug addiction, because the terms are not used in current law or the bill.¹⁷

HISTORY

| Action | Date |
|------------|----------|
| Introduced | 08-10-21 |

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¹⁵ R.C. 2151.469.

¹⁶ R.C. 2151.4613. An LSC technical amendment is needed to fix a cross-reference error to R.C. 2151.4611.

¹⁷ R.C. 2151.3514 (2151.46).