



Ohio Legislative Service Commission

Bill Analysis

Audra Tidball

H.B. 325

131st General Assembly
(As Passed by the House)

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

- Prohibits a public children services agency from filing a complaint alleging that a newborn is abused, neglected, or dependent solely because the mother used a controlled substance while pregnant 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, and (3) maintained her regularly scheduled appointments and prenatal care.

- Permits a court to hold such 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 such 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.

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 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 provider of addiction services or alcohol and drug addiction services.²

The bill defines "addiction services" as services (including intervention) for the treatment of persons with alcohol, drug, or gambling addictions, and for the prevention of such addictions. It defines "alcohol and drug addiction services" as services (including intervention) for the treatment of alcoholics or persons who abuse drugs of abuse and for the prevention of alcoholism and drug addiction.³

¹ R.C. 4723.01, not in the bill.

² R.C. 3701.70(B).

³ R.C. 3701.70(A); R.C. 5119.01(A)(2) and (3), not in the bill.



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

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).

⁴ R.C. 3701.70(C).

⁵ R.C. 5119.17.

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.



The bill prohibits a PCSA from filing such a complaint regarding a newborn⁸ solely because the newborn's mother used a controlled substance while pregnant, so long as 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 provider of addiction services or alcohol and drug addiction services;

(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.⁹

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

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

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

⁹ R.C. 2151.26(B).

¹⁰ R.C. 2151.26(C).

¹¹ R.C. 2151.26(D).



evidence obtained through methods other than prenatal screening or testing or prenatal care.¹²

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

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¹² R.C. 2945.65.

