

As Reported by the Senate Government Oversight and Reform Committee

131st General Assembly

Regular Session

2015-2016

Sub. H. B. No. 325

Representatives Green, O'Brien, S.

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

Senator Coley

A BILL

To amend sections 5119.17 and 5139.01 and to enact 1
sections 2151.26, 2945.65, 3701.70, and 5103.132 2
of the Revised Code to encourage pregnant women 3
addicted to controlled substances to seek 4
treatment and to authorize certain children's 5
crisis care facilities to maintain firearms. 6

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF OHIO:

Section 1. That sections 5119.17 and 5139.01 be amended 7
and sections 2151.26, 2945.65, 3701.70, and 5103.132 of the 8
Revised Code be enacted to read as follows: 9

Sec. 2151.26. (A) As used in this section: 10

(1) "Community addiction services provider" has the same 11
meaning as in section 5119.01 of the Revised Code. 12

(2) "Controlled substance" has the same meaning as in section 3719.01 of the Revised Code. 13
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(3) "Newborn" means a child who is less than thirty days old. 15
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(B) (1) If a public children services agency files a complaint pursuant to section 2151.27 of the Revised Code regarding a newborn solely because the newborn's mother used a controlled substance while pregnant, the court shall determine, based on written evidence submitted by the mother, whether the mother did all of the following: 17
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(a) Before the end of the twentieth week of pregnancy, enrolled in a drug treatment program provided by a community addiction services provider; 23
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(b) 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; 26
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(c) Maintained her regularly scheduled appointments and prenatal care recommended by her health care provider for the remaining duration of her pregnancy; 29
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(d) At the request of a public children services agency, provided the agency with an affirmative representation that she complied with divisions (B) (1) (a) to (c) of this section. 32
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(2) (a) If the court determines that the mother complied with division (B) (1) of this section, the court shall do one of the following in lieu of considering the complaint: 35
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(i) Subject to division (B) (2) (b) of this section, hold the complaint in abeyance if the mother provides the court with written evidence from the community addiction services provider 38
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demonstrating that she is in the process of completing the 41
program; 42

(ii) Dismiss the complaint if the mother provides the 43
court with written evidence from the community addiction 44
services provider demonstrating that she successfully completed 45
the program or provides evidence satisfactory to the court of a 46
commitment to treatment and recovery. 47

(b) The court shall hold a complaint in abeyance under 48
division (B) (2) (a) (i) of this section so long as the mother 49
continues to provide the court with written evidence from the 50
community addiction services provider demonstrating that she is 51
in the process of completing the program. If the mother ceases 52
to provide such evidence to the satisfaction of the court, the 53
court shall consider the complaint. If the mother provides the 54
court with written evidence from the community addiction 55
services provider demonstrating that she has successfully 56
completed the program, the court shall dismiss the complaint. 57

(C) If a pregnant woman enrolled in a drug treatment 58
program after the end of the twentieth week of pregnancy, the 59
court, in its discretion, may do either of the following in lieu 60
of considering a complaint filed pursuant to section 2151.27 of 61
the Revised Code based solely on the newborn's mother's use of a 62
controlled substance while pregnant: 63

(1) Hold the complaint in abeyance if the court finds that 64
the woman is in the process of completing the program and 65
maintained her regularly scheduled appointments and prenatal 66
care recommended by her health care provider for the remaining 67
duration of her pregnancy; 68

(2) Dismiss the complaint if the court finds that the 69

woman successfully completed the program and maintained her 70
regularly scheduled appointments and prenatal care recommended 71
by her health care provider for the remaining duration of her 72
pregnancy. 73

(D) This section does not prevent a public children 74
services agency from filing a complaint pursuant to section 75
2151.27 of the Revised Code if the public children services 76
agency determines that the newborn's mother, or any other adult 77
caring for the newborn, is unable to provide adequate parental 78
care. 79

Sec. 2945.65. Evidence of the use of a controlled 80
substance obtained as part of a screening or test performed to 81
determine pregnancy or provide prenatal care is not admissible 82
in a criminal proceeding against the woman who was screened or 83
tested. This section does not prohibit criminal prosecution 84
based on evidence obtained through methods other than the 85
screening or testing described in this section. 86

Sec. 3701.70. (A) As used in this section: 87

(1) "Community addiction services provider" has the same 88
meaning as in section 5119.01 of the Revised Code. 89

(2) "Controlled substance" has the same meaning as in 90
section 3719.01 of the Revised Code. 91

(B) Any of the following health care professionals who 92
attends a pregnant woman for conditions relating to pregnancy 93
before the end of the twentieth week of pregnancy and who has 94
reason to believe that the woman is using or has used a 95
controlled substance in a manner that may place the woman's 96
fetus in jeopardy shall encourage the woman to enroll in a drug 97
treatment program offered by a community addiction services 98

<u>provider:</u>	99
<u>(1) Physicians authorized under Chapter 4731. of the Revised Code to practice medicine and surgery or osteopathic medicine and surgery;</u>	100 101 102
<u>(2) Registered nurses and licensed practical nurses licensed under Chapter 4723. of the Revised Code;</u>	103 104
<u>(3) Physician assistants licensed under Chapter 4730. of the Revised Code.</u>	105 106
<u>(C) A health care professional is immune from civil liability and is not subject to criminal prosecution with regard to both of the following:</u>	107 108 109
<u>(1) Failure to recognize that a pregnant woman has used or is using a controlled substance in a manner that may place the woman's fetus in jeopardy;</u>	110 111 112
<u>(2) Any action taken in good faith compliance with this section.</u>	113 114
<u>Sec. 5103.132. (A) As used in this section, "firearm" has the same meaning as in section 2923.11 of the Revised Code.</u>	115 116
<u>(B) 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, as defined in section 3719.01 of the Revised Code, may permit security personnel to maintain and bear firearms while on the grounds of the facility.</u>	117 118 119 120 121 122 123
<u>Sec. 5119.17. (A) The department of mental health and addiction services, in accordance with division (B) of this section, shall give priority to developing, and promptly shall</u>	124 125 126

develop, with available public and private resources a program	127
that does all of the following:	128
(1) Provides a manner of identifying the aggregate number	129
of pregnant women in this state who are addicted to a drug of	130
abuse;	131
(2) Provides for an effective means of intervention to	132
eliminate the addiction of pregnant women to drugs of abuse	133
prior to the birth of their children;	134
<u>(3) Gives priority to the treatment of pregnant women</u>	135
<u>addicted to drugs of abuse, including by requiring community</u>	136
<u>addiction services providers that receive public funds to give</u>	137
<u>priority to pregnant women referred for treatment;</u>	138
(3) (4) Provides for the continued monitoring of women who	139
were addicted to a drug of abuse during their pregnancies, after	140
the birth of their children, and for the availability of	141
treatment and rehabilitation for those women;	142
(4) (5) Provides a manner of determining the aggregate	143
number of children who are born in this state to women who are	144
addicted, at the time of birth, to a drug of abuse, and of	145
children who are born in this state with an addiction to or a	146
dependency on a drug of abuse;	147
(5) (6) Provides for the continued monitoring of children	148
who are born in this state to women who are addicted, at the	149
time of birth, to a drug of abuse, or who are born in this state	150
with an addiction to or dependency on a drug of abuse, after	151
their birth;	152
(6) (7) Provides for the treatment and rehabilitation of	153
any child who is born to a woman who is addicted, at the time of	154
birth, to a drug of abuse, and of any child who is born with an	155

addiction to or dependency on a drug of abuse. 156

(B) In developing the program described in division (A) of 157
this section, the department may obtain information from the 158
department of health and the department of job and family 159
services, and those departments shall cooperate with the 160
department of mental health and addiction services in its 161
development and implementation of the program. 162

(C) Immediately upon its development of the program 163
described in division (A) of this section, the department shall 164
implement the program. 165

(D) Any record or information that is obtained or 166
maintained by the department in connection with the program 167
described in division (A) of this section and could enable the 168
identification of any woman or child described in division (A) 169
(1) or (4) of this section is not a public record subject to 170
inspection or copying under section 149.43 of the Revised Code. 171

(E) A community addiction services provider that receives 172
public funds shall not refuse to treat a person solely because 173
the person is pregnant if appropriate treatment is offered by 174
the provider. 175

Sec. 5139.01. (A) As used in this chapter: 176

(1) "Commitment" means the transfer of the physical 177
custody of a child or youth from the court to the department of 178
youth services. 179

(2) "Permanent commitment" means a commitment that vests 180
legal custody of a child in the department of youth services. 181

(3) "Legal custody," insofar as it pertains to the status 182
that is created when a child is permanently committed to the 183

department of youth services, means a legal status in which the 184
department has the following rights and responsibilities: the 185
right to have physical possession of the child; the right and 186
duty to train, protect, and control the child; the 187
responsibility to provide the child with food, clothing, 188
shelter, education, and medical care; and the right to determine 189
where and with whom the child shall live, subject to the minimum 190
periods of, or periods of, institutional care prescribed in 191
sections 2152.13 to 2152.18 of the Revised Code; provided, that 192
these rights and responsibilities are exercised subject to the 193
powers, rights, duties, and responsibilities of the guardian of 194
the person of the child, and subject to any residual parental 195
rights and responsibilities. 196

(4) Unless the context requires a different meaning, 197
"institution" means a state facility that is created by the 198
general assembly and that is under the management and control of 199
the department of youth services or a private entity with which 200
the department has contracted for the institutional care and 201
custody of felony delinquents. 202

(5) "Full-time care" means care for twenty-four hours a 203
day for over a period of at least two consecutive weeks. 204

(6) "Placement" means the conditional release of a child 205
under the terms and conditions that are specified by the 206
department of youth services. The department shall retain legal 207
custody of a child released pursuant to division (C) of section 208
2152.22 of the Revised Code or division (C) of section 5139.06 209
of the Revised Code until the time that it discharges the child 210
or until the legal custody is terminated as otherwise provided 211
by law. 212

(7) "Home placement" means the placement of a child in the 213

home of the child's parent or parents or in the home of the guardian of the child's person.	214 215
(8) "Discharge" means that the department of youth services' legal custody of a child is terminated.	216 217
(9) "Release" means the termination of a child's stay in an institution and the subsequent period during which the child returns to the community under the terms and conditions of supervised release.	218 219 220 221
(10) "Delinquent child" has the same meaning as in section 2152.02 of the Revised Code.	222 223
(11) "Felony delinquent" means any child who is at least ten years of age but less than eighteen years of age and who is adjudicated a delinquent child for having committed an act that if committed by an adult would be a felony. "Felony delinquent" includes any adult who is between the ages of eighteen and twenty-one and who is in the legal custody of the department of youth services for having committed an act that if committed by an adult would be a felony.	224 225 226 227 228 229 230 231
(12) "Juvenile traffic offender" has the same meaning as in section 2152.02 of the Revised Code.	232 233
(13) "Public safety beds" means all of the following:	234
(a) Felony delinquents who have been committed to the department of youth services for the commission of an act, other than a violation of section 2911.01 or 2911.11 of the Revised Code, that is a category one offense or a category two offense and who are in the care and custody of an institution or have been diverted from care and custody in an institution and placed in a community corrections facility;	235 236 237 238 239 240 241

(b) Felony delinquents who, while committed to the 242
department of youth services and in the care and custody of an 243
institution or a community corrections facility, are adjudicated 244
delinquent children for having committed in that institution or 245
community corrections facility an act that if committed by an 246
adult would be a misdemeanor or a felony; 247

(c) Children who satisfy all of the following: 248

(i) They are at least ten years of age but less than 249
eighteen years of age. 250

(ii) They are adjudicated delinquent children for having 251
committed acts that if committed by an adult would be a felony. 252

(iii) They are committed to the department of youth 253
services by the juvenile court of a county that has had one- 254
tenth of one per cent or less of the statewide adjudications for 255
felony delinquents as averaged for the past four fiscal years. 256

(iv) They are in the care and custody of an institution or 257
a community corrections facility. 258

(d) Felony delinquents who, while committed to the 259
department of youth services and in the care and custody of an 260
institution are serving disciplinary time for having committed 261
an act described in division (A)(18)(a), (b), or (c) of this 262
section, and who have been institutionalized or 263
institutionalized in a secure facility for the minimum period of 264
time specified in divisions (A)(1)(b) to (e) of section 2152.16 265
of the Revised Code. 266

(e) Felony delinquents who are subject to and serving a 267
three-year period of commitment order imposed by a juvenile 268
court pursuant to divisions (A) and (B) of section 2152.17 of 269
the Revised Code for an act, other than a violation of section 270

2911.11 of the Revised Code, that would be a category one 271
offense or category two offense if committed by an adult. 272

(f) Felony delinquents who are described in divisions (A) 273
(13)(a) to (e) of this section, who have been granted a judicial 274
release to court supervision under division (B) or (D) of 275
section 2152.22 of the Revised Code or a judicial release to the 276
department of youth services supervision under division (C) or 277
(D) of that section from the commitment to the department of 278
youth services for the act described in divisions (A)(13)(a) to 279
(e) of this section, who have violated the terms and conditions 280
of that release, and who, pursuant to an order of the court of 281
the county in which the particular felony delinquent was placed 282
on release that is issued pursuant to division (E) of section 283
2152.22 of the Revised Code, have been returned to the 284
department for institutionalization or institutionalization in a 285
secure facility. 286

(g) Felony delinquents who have been committed to the 287
custody of the department of youth services, who have been 288
granted supervised release from the commitment pursuant to 289
section 5139.51 of the Revised Code, who have violated the terms 290
and conditions of that supervised release, and who, pursuant to 291
an order of the court of the county in which the particular 292
child was placed on supervised release issued pursuant to 293
division (F) of section 5139.52 of the Revised Code, have had 294
the supervised release revoked and have been returned to the 295
department for institutionalization. A felony delinquent 296
described in this division shall be a public safety bed only for 297
the time during which the felony delinquent is institutionalized 298
as a result of the revocation subsequent to the initial ninety- 299
day period of institutionalization required by division (F) of 300
section 5139.52 of the Revised Code. 301

(14) Unless the context requires a different meaning, 302
"community corrections facility" means a county or multicounty 303
rehabilitation center for felony delinquents who have been 304
committed to the department of youth services and diverted from 305
care and custody in an institution and placed in the 306
rehabilitation center pursuant to division (E) of section 307
5139.36 of the Revised Code. 308

(15) "Secure facility" means any facility that is designed 309
and operated to ensure that all of its entrances and exits are 310
under the exclusive control of its staff and to ensure that, 311
because of that exclusive control, no child who has been 312
institutionalized in the facility may leave the facility without 313
permission or supervision. 314

(16) "Community residential program" means a program that 315
satisfies both of the following: 316

(a) It is housed in a building or other structure that has 317
no associated major restraining construction, including, but not 318
limited to, a security fence. 319

(b) It provides twenty-four-hour care, supervision, and 320
programs for felony delinquents who are in residence. 321

(17) "Category one offense" and "category two offense" 322
have the same meanings as in section ~~2151.26~~2152.02 of the 323
Revised Code. 324

(18) "Disciplinary time" means additional time that the 325
department of youth services requires a felony delinquent to 326
serve in an institution, that delays the felony delinquent's 327
planned release, and that the department imposes upon the felony 328
delinquent following the conduct of an internal due process 329
hearing for having committed any of the following acts while 330

committed to the department and in the care and custody of an institution: 331
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(a) An act that if committed by an adult would be a felony; 333
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(b) An act that if committed by an adult would be a misdemeanor; 335
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(c) An act that is not described in division (A) (18) (a) or (b) of this section and that violates an institutional rule of conduct of the department. 337
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(19) "Unruly child" has the same meaning as in section 2151.022 of the Revised Code. 340
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(20) "Revocation" means the act of revoking a child's supervised release for a violation of a term or condition of the child's supervised release in accordance with section 5139.52 of the Revised Code. 342
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(21) "Release authority" means the release authority of the department of youth services that is established by section 5139.50 of the Revised Code. 346
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(22) "Supervised release" means the event of the release of a child under this chapter from an institution and the period after that release during which the child is supervised and assisted by an employee of the department of youth services under specific terms and conditions for reintegration of the child into the community. 349
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(23) "Victim" means the person identified in a police report, complaint, or information as the victim of an act that would have been a criminal offense if committed by an adult and that provided the basis for adjudication proceedings resulting 355
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in a child's commitment to the legal custody of the department 359
of youth services. 360

(24) "Victim's representative" means a member of the 361
victim's family or another person whom the victim or another 362
authorized person designates in writing, pursuant to section 363
5139.56 of the Revised Code, to represent the victim with 364
respect to proceedings of the release authority of the 365
department of youth services and with respect to other matters 366
specified in that section. 367

(25) "Member of the victim's family" means a spouse, 368
child, stepchild, sibling, parent, stepparent, grandparent, 369
other relative, or legal guardian of a child but does not 370
include a person charged with, convicted of, or adjudicated a 371
delinquent child for committing a criminal or delinquent act 372
against the victim or another criminal or delinquent act arising 373
out of the same conduct, criminal or delinquent episode, or plan 374
as the criminal or delinquent act committed against the victim. 375

(26) "Judicial release to court supervision" means a 376
release of a child from institutional care or institutional care 377
in a secure facility that is granted by a court pursuant to 378
division (B) of section 2152.22 of the Revised Code during the 379
period specified in that division or that is granted by a court 380
to court supervision pursuant to division (D) of that section 381
during the period specified in that division. 382

(27) "Judicial release to department of youth services 383
supervision" means a release of a child from institutional care 384
or institutional care in a secure facility that is granted by a 385
court pursuant to division (C) of section 2152.22 of the Revised 386
Code during the period specified in that division or that is 387
granted to department supervision by a court pursuant to 388

division (D) of that section during the period specified in that 389
division. 390

(28) "Juvenile justice system" includes all of the 391
functions of the juvenile courts, the department of youth 392
services, any public or private agency whose purposes include 393
the prevention of delinquency or the diversion, adjudication, 394
detention, or rehabilitation of delinquent children, and any of 395
the functions of the criminal justice system that are applicable 396
to children. 397

(29) "Metropolitan county criminal justice services 398
agency" means an agency that is established pursuant to division 399
(A) of section 5502.64 of the Revised Code. 400

(30) "Administrative planning district" means a district 401
that is established pursuant to division (A) or (B) of section 402
5502.66 of the Revised Code. 403

(31) "Criminal justice coordinating council" means a 404
criminal justice services agency that is established pursuant to 405
division (D) of section 5502.66 of the Revised Code. 406

(32) "Comprehensive plan" means a document that 407
coordinates, evaluates, and otherwise assists, on an annual or 408
multi-year basis, all of the functions of the juvenile justice 409
systems of the state or a specified area of the state, that 410
conforms to the priorities of the state with respect to juvenile 411
justice systems, and that conforms with the requirements of all 412
federal criminal justice acts. These functions include, but are 413
not limited to, all of the following: 414

(a) Delinquency; 415

(b) Identification, detection, apprehension, and detention 416
of persons charged with delinquent acts; 417

(c) Assistance to crime victims or witnesses, except that 418
the comprehensive plan does not include the functions of the 419
attorney general pursuant to sections 109.91 and 109.92 of the 420
Revised Code; 421

(d) Adjudication or diversion of persons charged with 422
delinquent acts; 423

(e) Custodial treatment of delinquent children; 424

(f) Institutional and noninstitutional rehabilitation of 425
delinquent children. 426

(B) There is hereby created the department of youth 427
services. The governor shall appoint the director of the 428
department with the advice and consent of the senate. The 429
director shall hold office during the term of the appointing 430
governor but subject to removal at the pleasure of the governor. 431
Except as otherwise authorized in section 108.05 of the Revised 432
Code, the director shall devote the director's entire time to 433
the duties of the director's office and shall hold no other 434
office or position of trust or profit during the director's term 435
of office. 436

The director is the chief executive and administrative 437
officer of the department and has all the powers of a department 438
head set forth in Chapter 121. of the Revised Code. The director 439
may adopt rules for the government of the department, the 440
conduct of its officers and employees, the performance of its 441
business, and the custody, use, and preservation of the 442
department's records, papers, books, documents, and property. 443
The director shall be an appointing authority within the meaning 444
of Chapter 124. of the Revised Code. Whenever this or any other 445
chapter or section of the Revised Code imposes a duty on or 446

requires an action of the department, the duty or action shall 447
be performed by the director or, upon the director's order, in 448
the name of the department. 449

Section 2. That existing sections 5119.17 and 5139.01 of 450
the Revised Code are hereby repealed. 451

Section 3. This act shall be known as "Maiden's Law." 452