

**March 16, 2021**  
**Proponent Testimony for House Bill 64**  
**Tyler J. Sniff, Attorney**

Chairman LaRe, Vice-Chairman Swearingen and Ranking Member Leland, my name is Tyler Sniff, and I am an attorney, a native son of Ohio, and a donor-conceived person. I support HB64, a bill to criminalize fertility fraud, provided that certain improvements summarized below are made. I am sharing my story with my home state to help show the many different types of fertility fraud and misconduct that are coming to light daily thanks to direct to consumer DNA testing. My story shows that the misconduct comes not just in the form of doctors who heinously use their own sperm to impregnate nonconsenting mothers but also doctors and gamete banks that recklessly fail to screen donors for basic diseases and verify and review basic information and medical records from donors, thereby causing untold physical and emotional pain and suffering to numerous Ohioans and their families.

Here is my story. I was born and raised in Medina County, Ohio. I am the oldest of six children—twins, triplets, and me. I was salutatorian of my high school class, graduating from Highland High School in Medina. I am now 32 years old, and I live in Atlanta with my wife where I work as an attorney for the U.S. Environmental Protection Agency (EPA). During law school I was proud to complete a federal judicial internship in Akron and a clerkship at the Ohio EPA in Columbus. Both of my parents are from Wayne County, and my mother in law is from the Youngstown area. For decades, I believed and was proud to say that my relatives and ancestors on my Dad's side were Amish and Brethren from near Smithville. I had no doubts about where I came from—until my wife got me an Ancestry DNA test for Christmas.

When I got the results back, I was shocked to learn at the age of 32 that these are not my relatives or ancestors, and I have been living a lie. In reality, I am half Jewish with close biological relatives living in Israel. I was also shocked to match with an unknown aunt and multiple half-siblings. I was even more shocked and dismayed to learn that my actual biological father was a now-deceased anesthesiologist who was a sperm donor while he was a medical student at Case Western Reserve University in Cleveland. My biological father was permitted to become a sperm donor despite being a carrier for a known Jewish genetic disease transmitted to one of my siblings and despite suffering from an opioid addiction before and during medical school. Sadly, my biological father succumbed to his addiction and died of an opioid overdose in 1996 when I was eight years old.

My biological father should never have been allowed to become a sperm donor. The law in effect in 1988 (and still in effect) required clinics and doctors to obtain a “complete medical history of the donor” including genetic history and test the donor for genetic diseases that they considered appropriate. *See* Ohio Rev. Code Ann. § 3111.33 (1986). The law also required doctors to inform parents of the known religious background of the donor. *See id.* at § 3111.35. In my case, the law was badly violated. A basic review of medical records would have revealed the donor’s drug addiction, and he was not screened for the well-known Jewish genetic disease. My parents were not informed of his religious background despite his very common Hebrew/Jewish surname.

Stories like mine and many other Ohioans show that part of the problem is that there is no penalty for this misconduct and even violations of the existing law. The civil and criminal penalties and causes of action created by HB64 are needed to deter the fraudulent and grossly negligent conduct that the Committee is hearing about today. The fraud and misconduct is particularly egregious and even heinous because it can lead to serious medical and psychological issues. Close your eyes and try to imagine waking up one day to find out that half of your identity and medical history is a lie and you will start to grasp the gravity of the issues here.

While I applaud Representative Powell’s efforts and support HB64 as a good framework for addressing these issues, I urge the members of the Committee to make the following simple amendments to the bill. These improvements keep the existing framework of Representative Powell’s bill while addressing some serious concerns that many donor-conceived people and their families have with the bill:

1. In Section 4731.87, the civil cause of action for parents and offspring should extend, like it does for donors, to cases where the professional knows or reasonably should have known that the human reproductive material was used in a manner or to an extent other than that to which the parents consented. This would allow the parents and offspring to address other types of fraudulent and grossly negligent misconduct like in my story. This change could be accomplished by adding this language that is already in Section 4731.88 for donors to Section 4731.87 for parents and offspring, or by simply adding it to the definition of “Assisted Reproduction Procedure Performed Without Consent” in Section 4731.86(B).

2. The criminal cause of action will be not be meaningful unless the statute of limitations in Section 2901.13(A)(5) is changed from within 10 years of the procedure to within 5 years of the discovery by DNA evidence or within 10 years of the procedure, whichever occurs later. This change is vital because very few if any parents will give their children a DNA test before they are a teenager.
3. The crime of fraudulent assisted reproduction should be a first or second-degree felony (like felony assault) instead of a third-degree felony. This is important because there is no presumption of prison time for third-degree felonies but there is for second-degree felonies. Ohio Rev. Code Ann. § 2929.13. A presumption of prison time is critical given the heinous nature of many of these cases and the vast financial resources of many of the defendant professionals.
4. The phrase “earliest date” should be removed from the statute of limitations for civil cases in Section 2305.118(C). This is necessary to avoid people being barred from bringing a claim where a recording or confession exists but the people do not know that they are also a victim because they have yet to take a DNA test.
5. The mens rea for the crime in Section 2901.13(B) should include not just intentional or knowing conduct but also reckless and grossly negligent conduct given how difficult it may be to prove intent or knowledge in these types of procedures.

Thank you very much for considering my testimony and requested amendments. I am eager to see my home state show leadership on these important issues, and I hope that this will just be the first of several bills passed by the Ohio legislature to protect families and donor-conceived people from fertility fraud and negligence. Given how common fertility problems are and that tens of millions of Americans have taken DNA tests, there is a chance that someone in your family may even be donor-conceived. In closing, I simply encourage you to think about how you would feel, and what you would want the law and redress to be, if this fraud and negligence happened to you or someone you love.

Sincerely,

*Tyler J. Sniff*