



Ohio Society of Addiction Medicine

A Chapter of American Society of Addiction Medicine

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February 8, 2021

The Honorable Nathan H. Manning
Chairman, Committee on the Judiciary
Ohio State Senate
1 Capitol Square
Columbus, Ohio 43215

Re: Ohio Society of Addiction Medicine (OHSAM) Comments on Senate Bill (SB) 216 (Dylan's Law)

Dear Chair Manning,

On behalf of OHSAM, a state medical society representing physicians and other clinicians who specialize in the prevention and treatment of addiction, we write to express our profound sadness regarding the tragic murder of Dylan Groves, the infant who is the namesake for SB 216 (Dylan's Law). We are committed to working with you and the members of the Senate Committee on the Judiciary to find solutions that diminish the chances of cases like this happening again. At the same time, we would like to express some concerns with SB 216, which, if enacted, would codify new law regarding parental custody of an infant identified as an "abused child" due to being "substance-exposed." Under the bill, "substance-exposed infant" means a child under the age of twelve months who has been subjected to alcoholism or drug addiction while in utero, and the term "abused child" does not include a substance-exposed infant if such exposure is as a result of the mother's medication for addiction treatment (MAT).

According to SB 216, the bill may prevent substance-exposed infants from returning to parental custody until parents meet a series of new requirements. At-risk infants are identified by reports to public children service agencies. Except as provided under section 2151.26 of the Ohio Revised Code, once an at-risk report is processed by such an agency, drug testing of either the infant or the mother is conducted to determine if any substances are present. Based on these tests, if there is a positive result, then the agency must file a complaint. The bill reiterates an exception to the adjudication of an infant as an abused child as a result of being substance-exposed if the court hearing the complaint determines that the positive test is due to a mother's MAT. If the court adjudicates a child as "abused," however, then the court has a menu of actions it can take, including the child's removal from parental custody.

To regain custody after a court orders temporary removal of a child adjudicated as an abused child as a result of being a substance-exposed infant, parents¹ must satisfy various new requirements, including the completion of an inpatient substance use recovery program administered by a community service provider. Upon a reunification, a parent or parents, as applicable, must submit to random drug tests, undergo monthly examinations by health care professionals, and host scheduled visits from public children services agency caseworker. The caseworker is required to visit the home monthly for three months after reunification. If these conditions are met, then the court is instructed to gradually return custody of the child back to their parent or parents, as applicable.

OHSAM is deeply committed to the health and well-being of mothers and children. This includes advocating for prevention and treatment of substance-related harm throughout a woman's reproductive years, with a particular focus on addiction and substance use during and following pregnancy. To that end, OHSAM is concerned about the appropriateness, feasibility, and quality of the drug testing requirement included in SB 216 at section 2151.261(A). This provision states that *“Except as provided under section 2151.26 of the Revised Code, a public children services agency shall conduct an alcohol or drug test on an infant or the infant's mother if the agency receives a report of child abuse regarding an alleged substance-exposed infant.”*ⁱⁱⁱ It appears that this provision would enable the public children services agency to file a complaint if such alcohol or drug test result is positive other than due to the mother's MAT, which would then set in motion court procedures that may end with removal of the child from the custody of the parent in question.

OHSAM is concerned with this language for several reasons. First, except as provided under section 2151.26 of the Revised Code, SB 216 may be construed to require that the public children services agency conduct a drug test on the parent/child for any complaint received noting child abuse regarding an alleged substance-exposed infant. The bill does not spell out how the agency should adjudicate which claims to submit to a drug test. This raises the possibility of frivolous complaints that could damage the image, credibility, likeness, or reputation of a parent. It is important to note that punitive measures related to substance use are not applied evenly across sex, race, and socioeconomic status. For example, in a landmark study among pregnant women who were anonymously tested for drug use, the prevalence of use was found to be similar between African American women and Caucasian women. However, African American women were 10 times more likely to be reported to law enforcement because of positive screening results.ⁱⁱⁱ **We encourage you to consider further refining this aspect of the bill to ensure a fair and transparent process.**

Second, it is important to recognize that while drug testing can provide evidence of the presence or absence of a compound in urine, it does not diagnose a substance use disorder (SUD) or define an impairment in the individual's ability to carry out life functions at work or at home. Evidence of substance use should prompt a conversation between a patient and their health care professional. A parent with a positive urine drug test requires further, comprehensive assessment, not punitive measures as a substitute for providing effective health care services.^{iv} **SB 216 should be revised to ensure punitive measures are never used as a substitute for providing effective health care services.**

At the same time, questions arise about exactly what type of drug test SB 216 would require. At present, SB 216 does not define whether the agency would employ presumptive or definitive drug testing. Both methods of testing have different implications and uses, as noted in [ASAM's Appropriate Use of Drug Testing in Clinical Addiction Medicine Consensus Document](#).^v **Given the personal and legal consequences that would result under SB 216 for a positive drug test, we strongly recommend that the bill be revised to define definitive drug testing as the method of testing, where appropriate.**

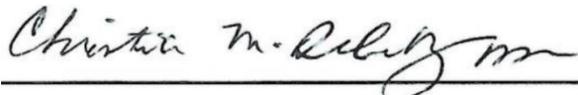
Furthermore, SB 216 contains many provisions regarding the requirement for routine drug testing. It should be noted that routine urine drug screening is controversial for several reasons. A positive drug test result is not in itself diagnostic of a SUD or its severity. Urine drug testing only assesses for current or recent substance use; therefore, a negative test does not rule out sporadic substance use. Also, urine toxicology testing may not detect many substances, including synthetic opioids, some benzodiazepines, and designer drugs. False-positive test results can occur with immune-assay testing and legal consequences can be devastating to the patient and their family.^{vi}

Finally, Section 2151.461(B) may require parents with a child who has been adjudicated as an abused child due to substance-exposure, receive inpatient addiction treatment. OHSAM believes treatment for any patient's SUD, however, should be based on a thorough evaluation of the patient by a knowledgeable and skilled clinician and designed in an individualized manner to best meet that patient's needs over time. Decisions about the appropriate type, modality and duration of treatment should remain the purview of the treatment provider and the individual patient, working in collaboration to achieve shared treatment goals. Arbitrary decisions about the type of treatment a patient is to receive for the treatment of a SUD should not be imposed by law or regulation. **OHSAM recommends SB 216 be revised accordingly since it will not be medically necessary for every such parent to undergo inpatient addiction treatment.**

In conclusion, sanctions against parents under child protective services interventions should be made only when there is objective evidence of danger to a child, not simply evidence of substance use.^{vii} When there is strong evidence of harm to a child that is due to parental SUD, such a case should be evaluated independently and fairly, and available services should focus on maintaining or reunifying families rather than punishing and stigmatizing parents. **OHSAM encourages close collaboration with addiction specialist physicians, pediatricians, and obstetricians/gynecologists on this bill to ensure that the need to protect Ohio's children from harm is balanced with measures that strive to keep families together.**

OHSAM is deeply committed to working with you to find a legislative solution that responds to the tragic death of Dylan Groves and advances high quality addiction treatment for those suffering in Ohio. Please do not hesitate to reach out to me at Christina.DelosReyes@UHhospitals.org if you wish to discuss these matters in greater detail. We look forward to working with you.

Sincerely,



Christina Delos Reyes, MD, FASAM
President, Ohio Society of Addiction Medicine

ⁱ Under the bill, a court must award legal custody of a child adjudicated to be an abused child as the result of being a substance-exposed infant to the child's father if, on investigation of the father by the public children services agency, the agency deems the father fit to care for the child.

² Dylan's Law. (2021). 134th General Assembly Bill. <https://s3.amazonaws.com/fn-document-service/file-by-sha384/34d186ce1cbe48db52c9e934f02c0cd447497304d7c3ef608c4506e85ceb571991538ec3f02ce80eb3d44351ff7e7f26>

ⁱⁱⁱ Chasnoff, I. J., Landress, H. J., & Barrett, M. E. (1990). The prevalence of illicit-drug or alcohol use during pregnancy and discrepancies in mandatory reporting in Pinellas County, Florida. *New England Journal of Medicine*, 322(17), 1202–1206. <https://doi.org/10.1056/nejm199004263221706>.

^{iv} American Society of Addiction Medicine. (2017, January 18). *American Society of Addiction Medicine*. Substance Use, Misuse, and Use Disorders During and Following Pregnancy, with an Emphasis on Opioids. Retrieved September 27, 2021, from <https://www.asam.org/advocacy/find-a-policy-statement/view-policy-statement/public-policy-statements/2017/01/19/substance-use-misuse-and-use-disorders-during-and-following-pregnancy-with-an-emphasis-on-opioids>.

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- ^v American Society of Addiction Medicine. (2017, April 5). *Appropriate Use of Drug Testing in Clinical Addiction Medicine*. American Society of Addiction Medicine. Retrieved from https://www.asam.org/docs/default-source/quality-science/the-asam-appropriate-use-of-drug-testing-in-clinical-addiction-medicine-full-document.pdf?Status=Temp&sfvrsn=700a7bc2_2.
- ^{vi} American Society of Addiction Medicine, & American College of Obstetricians and Gynecologists. (2017, July 25). *Opioid Use and Opioid Use Disorder in Pregnancy: A Joint Opinion of the American College of Obstetricians and Gynecologists' Committee on Obstetric Practice and the American Society of Addiction Medicine*. American Society of Addiction Medicine. Retrieved September 27, 2021, from <https://www.asam.org/advocacy/find-a-policy-statement/view-policy-statement/public-policy-statements/2017/07/25/opioid-use-and-opioid-use-disorder-in-pregnancy-a-joint-opinion-of-the-american-college-of-obstetricians-and-gynecologists'-committee-on-obstetric-practice-and-the-american-society-of-addiction-medicine>.
- ^{vii} American Society of Addiction Medicine. (2017, January 18). *American Society of Addiction Medicine*. Substance Use, Misuse, and Use Disorders During and Following Pregnancy, with an Emphasis on Opioids. Retrieved September 27, 2021, from <https://www.asam.org/advocacy/find-a-policy-statement/view-policy-statement/public-policy-statements/2017/01/19/substance-use-misuse-and-use-disorders-during-and-following-pregnancy-with-an-emphasis-on-opioids>.