

As Passed by the Senate

131st General Assembly

Regular Session

2015-2016

Am. 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

Senators Coley, Brown, Cafaro, Eklund, Gardner, Hite, Hughes, Jones, Lehner, Manning, Obhof, Sawyer, Schiavoni, Tavares, Thomas, Uecker

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, to authorize certain children's 5
crisis care facilities to maintain firearms, and 6
to make an appropriation. 7

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

Section 1. That sections 5119.17 and 5139.01 be amended 8
and sections 2151.26, 2945.65, 3701.70, and 5103.132 of the 9
Revised Code be enacted to read as follows: 10

Sec. 2151.26. (A) As used in this section: 11

(1) "Community addiction services provider" has the same meaning as in section 5119.01 of the Revised Code. 12
13

(2) "Controlled substance" has the same meaning as in section 3719.01 of the Revised Code. 14
15

(3) "Newborn" means a child who is less than thirty days old. 16
17

(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: 18
19
20
21
22
23

(a) Before the end of the twentieth week of pregnancy, enrolled in a drug treatment program provided by a community addiction services provider; 24
25
26

(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; 27
28
29

(c) Maintained her regularly scheduled appointments and prenatal care recommended by her health care provider for the remaining duration of her pregnancy; 30
31
32

(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. 33
34
35

(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: 36
37
38

(i) Subject to division (B) (2) (b) of this section, hold 39

the complaint in abeyance if the mother provides the court with 40
written evidence from the community addiction services provider 41
demonstrating that she is in the process of completing the 42
program; 43

(ii) Dismiss the complaint if the mother provides the 44
court with written evidence from the community addiction 45
services provider demonstrating that she successfully completed 46
the program or provides evidence satisfactory to the court of a 47
commitment to treatment and recovery. 48

(b) The court shall hold a complaint in abeyance under 49
division (B) (2) (a) (i) of this section so long as the mother 50
continues to provide the court with written evidence from the 51
community addiction services provider demonstrating that she is 52
in the process of completing the program. If the mother ceases 53
to provide such evidence to the satisfaction of the court, the 54
court shall consider the complaint. If the mother provides the 55
court with written evidence from the community addiction 56
services provider demonstrating that she has successfully 57
completed the program, the court shall dismiss the complaint. 58

(C) If a pregnant woman enrolled in a drug treatment 59
program after the end of the twentieth week of pregnancy, the 60
court, in its discretion, may do either of the following in lieu 61
of considering a complaint filed pursuant to section 2151.27 of 62
the Revised Code based solely on the newborn's mother's use of a 63
controlled substance while pregnant: 64

(1) Hold the complaint in abeyance if the court finds that 65
the woman is in the process of completing the program and 66
maintained her regularly scheduled appointments and prenatal 67
care recommended by her health care provider for the remaining 68
duration of her pregnancy; 69

(2) 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. 70
71
72
73
74

(D) This section does not prevent a public children services agency from filing a complaint pursuant to section 2151.27 of the Revised Code if the public children services agency determines that the newborn's mother, or any other adult caring for the newborn, is unable to provide adequate parental care. 75
76
77
78
79
80

Sec. 2945.65. Evidence of the use of a controlled substance obtained as part of a screening or test performed to determine pregnancy or provide prenatal care is not admissible in a criminal proceeding against the woman who was screened or tested. This section does not prohibit criminal prosecution based on evidence obtained through methods other than the screening or testing described in this section. 81
82
83
84
85
86
87

Sec. 3701.70. (A) As used in this section: 88

(1) "Community addiction services provider" has the same meaning as in section 5119.01 of the Revised Code. 89
90

(2) "Controlled substance" has the same meaning as in section 3719.01 of the Revised Code. 91
92

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

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

section, shall give priority to developing, and promptly shall 127
develop, with available public and private resources a program 128
that does all of the following: 129

(1) Provides a manner of identifying the aggregate number 130
of pregnant women in this state who are addicted to a drug of 131
abuse; 132

(2) Provides for an effective means of intervention to 133
eliminate the addiction of pregnant women to drugs of abuse 134
prior to the birth of their children; 135

(3) Gives priority to the treatment of pregnant women 136
addicted to drugs of abuse, including by requiring community 137
addiction services providers that receive public funds to give 138
priority to pregnant women referred for treatment; 139

~~(3)~~(4) Provides for the continued monitoring of women who 140
were addicted to a drug of abuse during their pregnancies, after 141
the birth of their children, and for the availability of 142
treatment and rehabilitation for those women; 143

~~(4)~~(5) Provides a manner of determining the aggregate 144
number of children who are born in this state to women who are 145
addicted, at the time of birth, to a drug of abuse, and of 146
children who are born in this state with an addiction to or a 147
dependency on a drug of abuse; 148

~~(5)~~(6) Provides for the continued monitoring of children 149
who are born in this state to women who are addicted, at the 150
time of birth, to a drug of abuse, or who are born in this state 151
with an addiction to or dependency on a drug of abuse, after 152
their birth; 153

~~(6)~~(7) Provides for the treatment and rehabilitation of 154
any child who is born to a woman who is addicted, at the time of 155

birth, to a drug of abuse, and of any child who is born with an 156
addiction to or dependency on a drug of abuse. 157

(B) In developing the program described in division (A) of 158
this section, the department may obtain information from the 159
department of health and the department of job and family 160
services, and those departments shall cooperate with the 161
department of mental health and addiction services in its 162
development and implementation of the program. 163

(C) Immediately upon its development of the program 164
described in division (A) of this section, the department shall 165
implement the program. 166

(D) Any record or information that is obtained or 167
maintained by the department in connection with the program 168
described in division (A) of this section and could enable the 169
identification of any woman or child described in division (A) 170
(1) or (4) of this section is not a public record subject to 171
inspection or copying under section 149.43 of the Revised Code. 172

(E) A community addiction services provider that receives 173
public funds shall not refuse to treat a person solely because 174
the person is pregnant if appropriate treatment is offered by 175
the provider. 176

Sec. 5139.01. (A) As used in this chapter: 177

(1) "Commitment" means the transfer of the physical 178
custody of a child or youth from the court to the department of 179
youth services. 180

(2) "Permanent commitment" means a commitment that vests 181
legal custody of a child in the department of youth services. 182

(3) "Legal custody," insofar as it pertains to the status 183

that is created when a child is permanently committed to the 184
department of youth services, means a legal status in which the 185
department has the following rights and responsibilities: the 186
right to have physical possession of the child; the right and 187
duty to train, protect, and control the child; the 188
responsibility to provide the child with food, clothing, 189
shelter, education, and medical care; and the right to determine 190
where and with whom the child shall live, subject to the minimum 191
periods of, or periods of, institutional care prescribed in 192
sections 2152.13 to 2152.18 of the Revised Code; provided, that 193
these rights and responsibilities are exercised subject to the 194
powers, rights, duties, and responsibilities of the guardian of 195
the person of the child, and subject to any residual parental 196
rights and responsibilities. 197

(4) Unless the context requires a different meaning, 198
"institution" means a state facility that is created by the 199
general assembly and that is under the management and control of 200
the department of youth services or a private entity with which 201
the department has contracted for the institutional care and 202
custody of felony delinquents. 203

(5) "Full-time care" means care for twenty-four hours a 204
day for over a period of at least two consecutive weeks. 205

(6) "Placement" means the conditional release of a child 206
under the terms and conditions that are specified by the 207
department of youth services. The department shall retain legal 208
custody of a child released pursuant to division (C) of section 209
2152.22 of the Revised Code or division (C) of section 5139.06 210
of the Revised Code until the time that it discharges the child 211
or until the legal custody is terminated as otherwise provided 212
by law. 213

(7) "Home placement" means the placement of a child in the	214
home of the child's parent or parents or in the home of the	215
guardian of the child's person.	216
(8) "Discharge" means that the department of youth	217
services' legal custody of a child is terminated.	218
(9) "Release" means the termination of a child's stay in	219
an institution and the subsequent period during which the child	220
returns to the community under the terms and conditions of	221
supervised release.	222
(10) "Delinquent child" has the same meaning as in section	223
2152.02 of the Revised Code.	224
(11) "Felony delinquent" means any child who is at least	225
ten years of age but less than eighteen years of age and who is	226
adjudicated a delinquent child for having committed an act that	227
if committed by an adult would be a felony. "Felony delinquent"	228
includes any adult who is between the ages of eighteen and	229
twenty-one and who is in the legal custody of the department of	230
youth services for having committed an act that if committed by	231
an adult would be a felony.	232
(12) "Juvenile traffic offender" has the same meaning as	233
in section 2152.02 of the Revised Code.	234
(13) "Public safety beds" means all of the following:	235
(a) Felony delinquents who have been committed to the	236
department of youth services for the commission of an act, other	237
than a violation of section 2911.01 or 2911.11 of the Revised	238
Code, that is a category one offense or a category two offense	239
and who are in the care and custody of an institution or have	240
been diverted from care and custody in an institution and placed	241
in a community corrections facility;	242

(b) Felony delinquents who, while committed to the 243
department of youth services and in the care and custody of an 244
institution or a community corrections facility, are adjudicated 245
delinquent children for having committed in that institution or 246
community corrections facility an act that if committed by an 247
adult would be a misdemeanor or a felony; 248

(c) Children who satisfy all of the following: 249

(i) They are at least ten years of age but less than 250
eighteen years of age. 251

(ii) They are adjudicated delinquent children for having 252
committed acts that if committed by an adult would be a felony. 253

(iii) They are committed to the department of youth 254
services by the juvenile court of a county that has had one- 255
tenth of one per cent or less of the statewide adjudications for 256
felony delinquents as averaged for the past four fiscal years. 257

(iv) They are in the care and custody of an institution or 258
a community corrections facility. 259

(d) Felony delinquents who, while committed to the 260
department of youth services and in the care and custody of an 261
institution are serving disciplinary time for having committed 262
an act described in division (A)(18)(a), (b), or (c) of this 263
section, and who have been institutionalized or 264
institutionalized in a secure facility for the minimum period of 265
time specified in divisions (A)(1)(b) to (e) of section 2152.16 266
of the Revised Code. 267

(e) Felony delinquents who are subject to and serving a 268
three-year period of commitment order imposed by a juvenile 269
court pursuant to divisions (A) and (B) of section 2152.17 of 270
the Revised Code for an act, other than a violation of section 271

2911.11 of the Revised Code, that would be a category one 272
offense or category two offense if committed by an adult. 273

(f) Felony delinquents who are described in divisions (A) 274
(13)(a) to (e) of this section, who have been granted a judicial 275
release to court supervision under division (B) or (D) of 276
section 2152.22 of the Revised Code or a judicial release to the 277
department of youth services supervision under division (C) or 278
(D) of that section from the commitment to the department of 279
youth services for the act described in divisions (A)(13)(a) to 280
(e) of this section, who have violated the terms and conditions 281
of that release, and who, pursuant to an order of the court of 282
the county in which the particular felony delinquent was placed 283
on release that is issued pursuant to division (E) of section 284
2152.22 of the Revised Code, have been returned to the 285
department for institutionalization or institutionalization in a 286
secure facility. 287

(g) Felony delinquents who have been committed to the 288
custody of the department of youth services, who have been 289
granted supervised release from the commitment pursuant to 290
section 5139.51 of the Revised Code, who have violated the terms 291
and conditions of that supervised release, and who, pursuant to 292
an order of the court of the county in which the particular 293
child was placed on supervised release issued pursuant to 294
division (F) of section 5139.52 of the Revised Code, have had 295
the supervised release revoked and have been returned to the 296
department for institutionalization. A felony delinquent 297
described in this division shall be a public safety bed only for 298
the time during which the felony delinquent is institutionalized 299
as a result of the revocation subsequent to the initial ninety- 300
day period of institutionalization required by division (F) of 301
section 5139.52 of the Revised Code. 302

(14) Unless the context requires a different meaning, 303
"community corrections facility" means a county or multicounty 304
rehabilitation center for felony delinquents who have been 305
committed to the department of youth services and diverted from 306
care and custody in an institution and placed in the 307
rehabilitation center pursuant to division (E) of section 308
5139.36 of the Revised Code. 309

(15) "Secure facility" means any facility that is designed 310
and operated to ensure that all of its entrances and exits are 311
under the exclusive control of its staff and to ensure that, 312
because of that exclusive control, no child who has been 313
institutionalized in the facility may leave the facility without 314
permission or supervision. 315

(16) "Community residential program" means a program that 316
satisfies both of the following: 317

(a) It is housed in a building or other structure that has 318
no associated major restraining construction, including, but not 319
limited to, a security fence. 320

(b) It provides twenty-four-hour care, supervision, and 321
programs for felony delinquents who are in residence. 322

(17) "Category one offense" and "category two offense" 323
have the same meanings as in section ~~2151.26~~2152.02 of the 324
Revised Code. 325

(18) "Disciplinary time" means additional time that the 326
department of youth services requires a felony delinquent to 327
serve in an institution, that delays the felony delinquent's 328
planned release, and that the department imposes upon the felony 329
delinquent following the conduct of an internal due process 330
hearing for having committed any of the following acts while 331

committed to the department and in the care and custody of an 332
institution: 333

(a) An act that if committed by an adult would be a 334
felony; 335

(b) An act that if committed by an adult would be a 336
misdemeanor; 337

(c) An act that is not described in division (A) (18) (a) or 338
(b) of this section and that violates an institutional rule of 339
conduct of the department. 340

(19) "Unruly child" has the same meaning as in section 341
2151.022 of the Revised Code. 342

(20) "Revocation" means the act of revoking a child's 343
supervised release for a violation of a term or condition of the 344
child's supervised release in accordance with section 5139.52 of 345
the Revised Code. 346

(21) "Release authority" means the release authority of 347
the department of youth services that is established by section 348
5139.50 of the Revised Code. 349

(22) "Supervised release" means the event of the release 350
of a child under this chapter from an institution and the period 351
after that release during which the child is supervised and 352
assisted by an employee of the department of youth services 353
under specific terms and conditions for reintegration of the 354
child into the community. 355

(23) "Victim" means the person identified in a police 356
report, complaint, or information as the victim of an act that 357
would have been a criminal offense if committed by an adult and 358
that provided the basis for adjudication proceedings resulting 359

in a child's commitment to the legal custody of the department 360
of youth services. 361

(24) "Victim's representative" means a member of the 362
victim's family or another person whom the victim or another 363
authorized person designates in writing, pursuant to section 364
5139.56 of the Revised Code, to represent the victim with 365
respect to proceedings of the release authority of the 366
department of youth services and with respect to other matters 367
specified in that section. 368

(25) "Member of the victim's family" means a spouse, 369
child, stepchild, sibling, parent, stepparent, grandparent, 370
other relative, or legal guardian of a child but does not 371
include a person charged with, convicted of, or adjudicated a 372
delinquent child for committing a criminal or delinquent act 373
against the victim or another criminal or delinquent act arising 374
out of the same conduct, criminal or delinquent episode, or plan 375
as the criminal or delinquent act committed against the victim. 376

(26) "Judicial release to court supervision" means a 377
release of a child from institutional care or institutional care 378
in a secure facility that is granted by a court pursuant to 379
division (B) of section 2152.22 of the Revised Code during the 380
period specified in that division or that is granted by a court 381
to court supervision pursuant to division (D) of that section 382
during the period specified in that division. 383

(27) "Judicial release to department of youth services 384
supervision" means a release of a child from institutional care 385
or institutional care in a secure facility that is granted by a 386
court pursuant to division (C) of section 2152.22 of the Revised 387
Code during the period specified in that division or that is 388
granted to department supervision by a court pursuant to 389

division (D) of that section during the period specified in that 390
division. 391

(28) "Juvenile justice system" includes all of the 392
functions of the juvenile courts, the department of youth 393
services, any public or private agency whose purposes include 394
the prevention of delinquency or the diversion, adjudication, 395
detention, or rehabilitation of delinquent children, and any of 396
the functions of the criminal justice system that are applicable 397
to children. 398

(29) "Metropolitan county criminal justice services 399
agency" means an agency that is established pursuant to division 400
(A) of section 5502.64 of the Revised Code. 401

(30) "Administrative planning district" means a district 402
that is established pursuant to division (A) or (B) of section 403
5502.66 of the Revised Code. 404

(31) "Criminal justice coordinating council" means a 405
criminal justice services agency that is established pursuant to 406
division (D) of section 5502.66 of the Revised Code. 407

(32) "Comprehensive plan" means a document that 408
coordinates, evaluates, and otherwise assists, on an annual or 409
multi-year basis, all of the functions of the juvenile justice 410
systems of the state or a specified area of the state, that 411
conforms to the priorities of the state with respect to juvenile 412
justice systems, and that conforms with the requirements of all 413
federal criminal justice acts. These functions include, but are 414
not limited to, all of the following: 415

(a) Delinquency; 416

(b) Identification, detection, apprehension, and detention 417
of persons charged with delinquent acts; 418

(c) Assistance to crime victims or witnesses, except that 419
the comprehensive plan does not include the functions of the 420
attorney general pursuant to sections 109.91 and 109.92 of the 421
Revised Code; 422

(d) Adjudication or diversion of persons charged with 423
delinquent acts; 424

(e) Custodial treatment of delinquent children; 425

(f) Institutional and noninstitutional rehabilitation of 426
delinquent children. 427

(B) There is hereby created the department of youth 428
services. The governor shall appoint the director of the 429
department with the advice and consent of the senate. The 430
director shall hold office during the term of the appointing 431
governor but subject to removal at the pleasure of the governor. 432
Except as otherwise authorized in section 108.05 of the Revised 433
Code, the director shall devote the director's entire time to 434
the duties of the director's office and shall hold no other 435
office or position of trust or profit during the director's term 436
of office. 437

The director is the chief executive and administrative 438
officer of the department and has all the powers of a department 439
head set forth in Chapter 121. of the Revised Code. The director 440
may adopt rules for the government of the department, the 441
conduct of its officers and employees, the performance of its 442
business, and the custody, use, and preservation of the 443
department's records, papers, books, documents, and property. 444
The director shall be an appointing authority within the meaning 445
of Chapter 124. of the Revised Code. Whenever this or any other 446
chapter or section of the Revised Code imposes a duty on or 447

requires an action of the department, the duty or action shall 448
be performed by the director or, upon the director's order, in 449
the name of the department. 450

Section 2. That existing sections 5119.17 and 5139.01 of 451
the Revised Code are hereby repealed. 452

Section 3. This act shall be known as "Maiden's Law." 453

Section 4. All items in this section are hereby 454
appropriated as designated out of any moneys in the state 455
treasury to the credit of the designated fund. For all 456
appropriations made in this act, those in the first column are 457
for fiscal year 2016 and those in the second column are for 458
fiscal year 2017. The appropriations made in this act are in 459
addition to any other appropriations made for the FY 2016-FY 460
2017 biennium. 461

MHA DEPARTMENT OF MENTAL HEALTH AND ADDICTION SERVICES 462

General Revenue Fund 463

GRF 336421	Continuum of Care	\$0	\$2,000,000	464
------------	-------------------	-----	-------------	-----

	Services			465
--	----------	--	--	-----

TOTAL GRF General Revenue Fund		\$0	\$2,000,000	466
--------------------------------	--	-----	-------------	-----

TOTAL ALL BUDGET FUND GROUPS		\$0	\$2,000,000	467
------------------------------	--	-----	-------------	-----

CONTINUUM OF CARE SERVICES 468

The foregoing appropriation item 336421, Continuum of Care 469
Services, shall be distributed to programs that address opiate 470
addiction. The Department shall give priority to programs that 471
are currently in operation and are scalable statewide. 472

Section 5. Within the limits set forth in this act, the 473
Director of Budget and Management shall establish accounts 474

indicating the source and amount of funds for each appropriation 475
made in this act, and shall determine the form and manner in 476
which appropriation accounts shall be maintained. Expenditures 477
from appropriations contained in this act shall be accounted for 478
as though made in Am. Sub. H.B. 64 of the 131st General 479
Assembly. 480

The appropriations made in this act are subject to all 481
provisions of Am. Sub. H.B. 64 of the 131st General Assembly 482
that are generally applicable to such appropriations. 483