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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

A BILL

To amend sections 5119.17 and 5139.01 and to enact 1
sections 2151.26, 2945.65, and 3701.70 of the 2
Revised Code regarding encouraging pregnant 3
women who are addicted to controlled substances 4
to seek treatment. 5

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

Section 1. That sections 5119.17 and 5139.01 be amended 6
and sections 2151.26, 2945.65, and 3701.70 of the Revised Code 7
be enacted to read as follows: 8

Sec. 2151.26. (A) As used in this section: 9

(1) "Addiction services" and "alcohol and drug addiction 10
services" have the same meanings as in section 5119.01 of the 11
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) A public children services agency shall not file 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 if the mother did all of the following: 17
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(1) Before the end of the twentieth week of pregnancy, enrolled in a drug treatment program provided by a provider of addiction services or alcohol and drug addiction services; 22
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(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; 25
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(3) Maintained her regularly scheduled appointments and prenatal care recommended by her health care provider for the remaining duration of her pregnancy. 28
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(C) If a pregnant woman enrolled in a drug treatment program after the end of the twentieth week of pregnancy, the court, in its discretion, may do either of the following in lieu of considering a complaint filed pursuant to section 2151.27 of the Revised Code based solely on the newborn's mother's use of a controlled substance while pregnant: 31
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(1) Hold the complaint in abeyance if the court finds that the woman is in the process of completing the program and maintained her regularly scheduled appointments and prenatal care recommended by her health care provider for the remaining duration of her pregnancy; 37
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(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. 42
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(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. 47
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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. 53
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Sec. 3701.70. (A) As used in this section: 60

(1) "Addiction services" and "alcohol and drug addiction services" have the same meanings as in section 5119.01 of the Revised Code. 61
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(2) "Controlled substance" has the same meaning as in section 3719.01 of the Revised Code. 64
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(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 66
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fetus in jeopardy shall encourage the woman to enroll in a drug treatment program offered by a provider of addiction services or alcohol and drug addiction services: 71
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(1) Physicians authorized under Chapter 4731. of the Revised Code to practice medicine and surgery or osteopathic medicine and surgery; 74
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(2) Registered nurses and licensed practical nurses licensed under Chapter 4723. of the Revised Code; 77
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(3) Physician assistants licensed under Chapter 4730. of the Revised Code. 79
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(C) A health care professional is immune from civil liability and is not subject to criminal prosecution with regard to both of the following: 81
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(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; 84
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(2) Any action taken in good faith compliance with this section. 87
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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 develop, with available public and private resources a program that does all of the following: 89
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(1) Provides a manner of identifying the aggregate number of pregnant women in this state who are addicted to a drug of abuse; 94
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(2) Provides for an effective means of intervention to eliminate the addiction of pregnant women to drugs of abuse 97
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prior to the birth of their children;	99
<u>(3) Gives priority to the treatment of pregnant women</u>	100
<u>addicted to drugs of abuse, including by requiring community</u>	101
<u>addiction services providers that receive public funds to give</u>	102
<u>priority to pregnant women referred for treatment;</u>	103
(3) (4) Provides for the continued monitoring of women who	104
were addicted to a drug of abuse during their pregnancies, after	105
the birth of their children, and for the availability of	106
treatment and rehabilitation for those women;	107
(4) (5) Provides a manner of determining the aggregate	108
number of children who are born in this state to women who are	109
addicted, at the time of birth, to a drug of abuse, and of	110
children who are born in this state with an addiction to or a	111
dependency on a drug of abuse;	112
(5) (6) Provides for the continued monitoring of children	113
who are born in this state to women who are addicted, at the	114
time of birth, to a drug of abuse, or who are born in this state	115
with an addiction to or dependency on a drug of abuse, after	116
their birth;	117
(6) (7) Provides for the treatment and rehabilitation of	118
any child who is born to a woman who is addicted, at the time of	119
birth, to a drug of abuse, and of any child who is born with an	120
addiction to or dependency on a drug of abuse.	121
(B) In developing the program described in division (A) of	122
this section, the department may obtain information from the	123
department of health and the department of job and family	124
services, and those departments shall cooperate with the	125
department of mental health and addiction services in its	126
development and implementation of the program.	127

(C) Immediately upon its development of the program 128
described in division (A) of this section, the department shall 129
implement the program. 130

(D) Any record or information that is obtained or 131
maintained by the department in connection with the program 132
described in division (A) of this section and could enable the 133
identification of any woman or child described in division (A) 134
(1) or (4) of this section is not a public record subject to 135
inspection or copying under section 149.43 of the Revised Code. 136

(E) A community addiction services provider that receives 137
public funds shall not refuse to treat a person solely because 138
the person is pregnant if appropriate treatment is offered by 139
the provider. 140

Sec. 5139.01. (A) As used in this chapter: 141

(1) "Commitment" means the transfer of the physical 142
custody of a child or youth from the court to the department of 143
youth services. 144

(2) "Permanent commitment" means a commitment that vests 145
legal custody of a child in the department of youth services. 146

(3) "Legal custody," insofar as it pertains to the status 147
that is created when a child is permanently committed to the 148
department of youth services, means a legal status in which the 149
department has the following rights and responsibilities: the 150
right to have physical possession of the child; the right and 151
duty to train, protect, and control the child; the 152
responsibility to provide the child with food, clothing, 153
shelter, education, and medical care; and the right to determine 154
where and with whom the child shall live, subject to the minimum 155
periods of, or periods of, institutional care prescribed in 156

sections 2152.13 to 2152.18 of the Revised Code; provided, that 157
these rights and responsibilities are exercised subject to the 158
powers, rights, duties, and responsibilities of the guardian of 159
the person of the child, and subject to any residual parental 160
rights and responsibilities. 161

(4) Unless the context requires a different meaning, 162
"institution" means a state facility that is created by the 163
general assembly and that is under the management and control of 164
the department of youth services or a private entity with which 165
the department has contracted for the institutional care and 166
custody of felony delinquents. 167

(5) "Full-time care" means care for twenty-four hours a 168
day for over a period of at least two consecutive weeks. 169

(6) "Placement" means the conditional release of a child 170
under the terms and conditions that are specified by the 171
department of youth services. The department shall retain legal 172
custody of a child released pursuant to division (C) of section 173
2152.22 of the Revised Code or division (C) of section 5139.06 174
of the Revised Code until the time that it discharges the child 175
or until the legal custody is terminated as otherwise provided 176
by law. 177

(7) "Home placement" means the placement of a child in the 178
home of the child's parent or parents or in the home of the 179
guardian of the child's person. 180

(8) "Discharge" means that the department of youth 181
services' legal custody of a child is terminated. 182

(9) "Release" means the termination of a child's stay in 183
an institution and the subsequent period during which the child 184
returns to the community under the terms and conditions of 185

supervised release.	186
(10) "Delinquent child" has the same meaning as in section 2152.02 of the Revised Code.	187 188
(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.	189 190 191 192 193 194 195 196
(12) "Juvenile traffic offender" has the same meaning as in section 2152.02 of the Revised Code.	197 198
(13) "Public safety beds" means all of the following:	199
(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;	200 201 202 203 204 205 206
(b) Felony delinquents who, while committed to the department of youth services and in the care and custody of an institution or a community corrections facility, are adjudicated delinquent children for having committed in that institution or community corrections facility an act that if committed by an adult would be a misdemeanor or a felony;	207 208 209 210 211 212
(c) Children who satisfy all of the following:	213

(i) They are at least ten years of age but less than eighteen years of age.	214 215
(ii) They are adjudicated delinquent children for having committed acts that if committed by an adult would be a felony.	216 217
(iii) They are committed to the department of youth services by the juvenile court of a county that has had one- tenth of one per cent or less of the statewide adjudications for felony delinquents as averaged for the past four fiscal years.	218 219 220 221
(iv) They are in the care and custody of an institution or a community corrections facility.	222 223
(d) Felony delinquents who, while committed to the department of youth services and in the care and custody of an institution are serving disciplinary time for having committed an act described in division (A)(18)(a), (b), or (c) of this section, and who have been institutionalized or institutionalized in a secure facility for the minimum period of time specified in divisions (A)(1)(b) to (e) of section 2152.16 of the Revised Code.	224 225 226 227 228 229 230 231
(e) Felony delinquents who are subject to and serving a three-year period of commitment order imposed by a juvenile court pursuant to divisions (A) and (B) of section 2152.17 of the Revised Code for an act, other than a violation of section 2911.11 of the Revised Code, that would be a category one offense or category two offense if committed by an adult.	232 233 234 235 236 237
(f) Felony delinquents who are described in divisions (A) (13)(a) to (e) of this section, who have been granted a judicial release to court supervision under division (B) or (D) of section 2152.22 of the Revised Code or a judicial release to the department of youth services supervision under division (C) or	238 239 240 241 242

(D) of that section from the commitment to the department of 243
youth services for the act described in divisions (A) (13) (a) to 244
(e) of this section, who have violated the terms and conditions 245
of that release, and who, pursuant to an order of the court of 246
the county in which the particular felony delinquent was placed 247
on release that is issued pursuant to division (E) of section 248
2152.22 of the Revised Code, have been returned to the 249
department for institutionalization or institutionalization in a 250
secure facility. 251

(g) Felony delinquents who have been committed to the 252
custody of the department of youth services, who have been 253
granted supervised release from the commitment pursuant to 254
section 5139.51 of the Revised Code, who have violated the terms 255
and conditions of that supervised release, and who, pursuant to 256
an order of the court of the county in which the particular 257
child was placed on supervised release issued pursuant to 258
division (F) of section 5139.52 of the Revised Code, have had 259
the supervised release revoked and have been returned to the 260
department for institutionalization. A felony delinquent 261
described in this division shall be a public safety bed only for 262
the time during which the felony delinquent is institutionalized 263
as a result of the revocation subsequent to the initial ninety- 264
day period of institutionalization required by division (F) of 265
section 5139.52 of the Revised Code. 266

(14) Unless the context requires a different meaning, 267
"community corrections facility" means a county or multicounty 268
rehabilitation center for felony delinquents who have been 269
committed to the department of youth services and diverted from 270
care and custody in an institution and placed in the 271
rehabilitation center pursuant to division (E) of section 272
5139.36 of the Revised Code. 273

(15) "Secure facility" means any facility that is designed 274
and operated to ensure that all of its entrances and exits are 275
under the exclusive control of its staff and to ensure that, 276
because of that exclusive control, no child who has been 277
institutionalized in the facility may leave the facility without 278
permission or supervision. 279

(16) "Community residential program" means a program that 280
satisfies both of the following: 281

(a) It is housed in a building or other structure that has 282
no associated major restraining construction, including, but not 283
limited to, a security fence. 284

(b) It provides twenty-four-hour care, supervision, and 285
programs for felony delinquents who are in residence. 286

(17) "Category one offense" and "category two offense" 287
have the same meanings as in section ~~2151.26~~2152.02 of the 288
Revised Code. 289

(18) "Disciplinary time" means additional time that the 290
department of youth services requires a felony delinquent to 291
serve in an institution, that delays the felony delinquent's 292
planned release, and that the department imposes upon the felony 293
delinquent following the conduct of an internal due process 294
hearing for having committed any of the following acts while 295
committed to the department and in the care and custody of an 296
institution: 297

(a) An act that if committed by an adult would be a 298
felony; 299

(b) An act that if committed by an adult would be a 300
misdemeanor; 301

(c) An act that is not described in division (A) (18) (a) or 302
(b) of this section and that violates an institutional rule of 303
conduct of the department. 304

(19) "Unruly child" has the same meaning as in section 305
2151.022 of the Revised Code. 306

(20) "Revocation" means the act of revoking a child's 307
supervised release for a violation of a term or condition of the 308
child's supervised release in accordance with section 5139.52 of 309
the Revised Code. 310

(21) "Release authority" means the release authority of 311
the department of youth services that is established by section 312
5139.50 of the Revised Code. 313

(22) "Supervised release" means the event of the release 314
of a child under this chapter from an institution and the period 315
after that release during which the child is supervised and 316
assisted by an employee of the department of youth services 317
under specific terms and conditions for reintegration of the 318
child into the community. 319

(23) "Victim" means the person identified in a police 320
report, complaint, or information as the victim of an act that 321
would have been a criminal offense if committed by an adult and 322
that provided the basis for adjudication proceedings resulting 323
in a child's commitment to the legal custody of the department 324
of youth services. 325

(24) "Victim's representative" means a member of the 326
victim's family or another person whom the victim or another 327
authorized person designates in writing, pursuant to section 328
5139.56 of the Revised Code, to represent the victim with 329
respect to proceedings of the release authority of the 330

department of youth services and with respect to other matters 331
specified in that section. 332

(25) "Member of the victim's family" means a spouse, 333
child, stepchild, sibling, parent, stepparent, grandparent, 334
other relative, or legal guardian of a child but does not 335
include a person charged with, convicted of, or adjudicated a 336
delinquent child for committing a criminal or delinquent act 337
against the victim or another criminal or delinquent act arising 338
out of the same conduct, criminal or delinquent episode, or plan 339
as the criminal or delinquent act committed against the victim. 340

(26) "Judicial release to court supervision" means a 341
release of a child from institutional care or institutional care 342
in a secure facility that is granted by a court pursuant to 343
division (B) of section 2152.22 of the Revised Code during the 344
period specified in that division or that is granted by a court 345
to court supervision pursuant to division (D) of that section 346
during the period specified in that division. 347

(27) "Judicial release to department of youth services 348
supervision" means a release of a child from institutional care 349
or institutional care in a secure facility that is granted by a 350
court pursuant to division (C) of section 2152.22 of the Revised 351
Code during the period specified in that division or that is 352
granted to department supervision by a court pursuant to 353
division (D) of that section during the period specified in that 354
division. 355

(28) "Juvenile justice system" includes all of the 356
functions of the juvenile courts, the department of youth 357
services, any public or private agency whose purposes include 358
the prevention of delinquency or the diversion, adjudication, 359
detention, or rehabilitation of delinquent children, and any of 360

the functions of the criminal justice system that are applicable 361
to children. 362

(29) "Metropolitan county criminal justice services 363
agency" means an agency that is established pursuant to division 364
(A) of section 5502.64 of the Revised Code. 365

(30) "Administrative planning district" means a district 366
that is established pursuant to division (A) or (B) of section 367
5502.66 of the Revised Code. 368

(31) "Criminal justice coordinating council" means a 369
criminal justice services agency that is established pursuant to 370
division (D) of section 5502.66 of the Revised Code. 371

(32) "Comprehensive plan" means a document that 372
coordinates, evaluates, and otherwise assists, on an annual or 373
multi-year basis, all of the functions of the juvenile justice 374
systems of the state or a specified area of the state, that 375
conforms to the priorities of the state with respect to juvenile 376
justice systems, and that conforms with the requirements of all 377
federal criminal justice acts. These functions include, but are 378
not limited to, all of the following: 379

(a) Delinquency; 380

(b) Identification, detection, apprehension, and detention 381
of persons charged with delinquent acts; 382

(c) Assistance to crime victims or witnesses, except that 383
the comprehensive plan does not include the functions of the 384
attorney general pursuant to sections 109.91 and 109.92 of the 385
Revised Code; 386

(d) Adjudication or diversion of persons charged with 387
delinquent acts; 388

(e) Custodial treatment of delinquent children;	389
(f) Institutional and noninstitutional rehabilitation of delinquent children.	390 391
(B) There is hereby created the department of youth services. The governor shall appoint the director of the department with the advice and consent of the senate. The director shall hold office during the term of the appointing governor but subject to removal at the pleasure of the governor. Except as otherwise authorized in section 108.05 of the Revised Code, the director shall devote the director's entire time to the duties of the director's office and shall hold no other office or position of trust or profit during the director's term of office.	392 393 394 395 396 397 398 399 400 401
The director is the chief executive and administrative officer of the department and has all the powers of a department head set forth in Chapter 121. of the Revised Code. The director may adopt rules for the government of the department, the conduct of its officers and employees, the performance of its business, and the custody, use, and preservation of the department's records, papers, books, documents, and property. The director shall be an appointing authority within the meaning of Chapter 124. of the Revised Code. Whenever this or any other chapter or section of the Revised Code imposes a duty on or requires an action of the department, the duty or action shall be performed by the director or, upon the director's order, in the name of the department.	402 403 404 405 406 407 408 409 410 411 412 413 414
Section 2. That existing sections 5119.17 and 5139.01 of the Revised Code are hereby repealed.	415 416
Section 3. This act shall be known as "Maiden's Law."	417