

SHORT TITLE: Public health; prohibiting use of certain substances during pregnancy; setting penalty; codification; effective date.

STATE OF OKLAHOMA

1st Session of the 44th Legislature (1993)

SENATE BILL NO. 450

By: Easley

AS INTRODUCED

An Act relating to public health; amending 21 O.S.

1991, Section 846, as amended by Section 2, Chapter 265, O.S.L. 1992 (21 O.S. Supp. 1992, Section 846), and 10 O.S. 1991, Section 1101, as amended by Section 14, Chapter 298, O.S.L. 1992 (10 O.S. Supp. 1992, Section 1101), which relate to mandatory reporting of child abuse and definitions relating to children; adding language; prohibiting use of certain substances during pregnancy; requiring treatment; authorizing additional penalties; providing exception; limiting defense; setting penalty for second or subsequent offense; providing for codification; and providing an effective date.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1-516.10 of Title 63, unless there is created a duplication in numbering, reads as follows:

A. If any pregnant woman knowingly and willfully:

1. Smells, inhales, breathes, drinks, ingests, injects, or otherwise consumes any compound, liquid, chemical, controlled dangerous substance, prescription drug or any other substance or chemical containing any ketones, aldehydes, organic acetones, ether, chlorinated hydrocarbons or metallic powders, such as gasoline,

glue, fingernail polish, adhesive cement, mucilage, dope, paint dispensed from pressurized containers or any other substance or combination thereof containing solvents releasing toxic vapors; or

2. Smokes, inhales, injects, ingests or otherwise uses any controlled substance listed in schedules I through V of Title 63 of the Oklahoma Statutes,

with intent to:

3. Cause any condition of intoxication, inebriation, excitement, euphoria, elation, stupefaction, paralysis, irrationality, or dulling of the brain or nervous system;

4. Cause any changing, distorting or disturbing of the eyesight, thinking processes, judgment, balance, mood or coordination;

5. Satisfy any chemical or substance addiction, dependency or craving; or

6. Induce labor and birth, and as a result of such use or consumption the child is born:

7. In a condition of dependence on a controlled dangerous substance or other substance prohibited by this section; or

8. With a birth defect which is a direct result of maternal use or consumption of any substance described in this section, then the woman shall be guilty of a misdemeanor, upon conviction.

B. The court shall require the person, upon conviction, to attend a treatment program for chemical dependency approved by the Alcohol and Drug Abuse Prevention, Training, Treatment and Rehabilitation Authority. The cost of such program and treatment, if any, is to be paid by the person. In addition the court may:

1. Sentence the person to imprisonment in the county jail for not more than one (1) year;

2. Fine the person not exceeding Two Thousand Dollars (\$2,000.00);

3. Order the person to perform community service not exceeding two hundred (200) hours;

4. Order the person to attend parenting classes;

5. Order the person to attend child development classes;

6. Order the person to be tested for substance abuse on a monthly basis for a twelve-month period following completion of the treatment program or for a twelve-month period after the child is returned home; or

7. Order any combination or all of the sentencing options listed in paragraphs 1 through 6 of this subsection.

C. The provisions of this section shall not apply to any woman who commits a violation of this section pursuant to the direction or prescription of any licensed doctor, physician, surgeon, dentist, nurse, or certified midwife administering prenatal care, emergency medical care, routine treatments for disease, injury or illness, or attending to the birth.

D. It shall not be a defense to a violation of this section that the person did not know of the pregnancy or the harmful effects of the substance upon the developing child if the use or consumption prohibited by this section is continued after the time a reasonable person would know, suspect or recognize the signs of pregnancy and the person fails to seek prenatal care and substance abuse treatment from a medical professional from such time until the birth.

E. Any second or subsequent violation of this section shall constitute a felony punishable by imprisonment in the State Penitentiary not exceeding two (2) years, or by a fine not exceeding Five Thousand Dollars (\$5,000.00), or by both such fine and imprisonment.

SECTION 2. AMENDATORY 21 O.S. 1991, Section 846, as amended by Section 2, Chapter 265, O.S.L. 1992 (21 O.S. Supp. 1992, Section 846), is amended to read as follows:

Section 846. A. 1. Every:

- a. physician or surgeon, including doctors of medicine and dentistry, licensed osteopathic physicians, residents and interns, examining, attending or treating a child under the age of eighteen (18) years,
- b. registered nurse examining, attending or treating such a child in the absence of a physician or surgeon,
- c. teacher of any child under the age of eighteen (18) years, and
- d. other person,

having reason to believe that a child under the age of eighteen (18) years has had physical injury or injuries inflicted upon him by other than accidental means where the injury appears to have been caused as a result of physical abuse or neglect, shall report the matter promptly to the county office of the Department of Human Services in the county wherein the suspected injury occurred.

2. Every physician or surgeon, including doctors of medicine, licensed osteopathic physicians, residents and interns, or any other health care professional attending the birth of a child who appears to be a child born in a condition of dependence on a controlled dangerous substance or other substance prohibited by this act shall promptly report the matter to the county office of the Department of Human Services and the district attorney in the county in which such birth occurred.

B. It shall be a misdemeanor for any person to knowingly and willfully fail to promptly report any incident as provided in this section. If the report is not made in writing in the first instance, it shall be reduced to writing by the maker thereof as soon as may be after it is initially made by telephone or otherwise and shall contain the names and addresses of the child and his parents or other persons responsible for his care, the child's age, the nature and extent of the child's injuries, including any evidence of previous injuries, the nature and extent of the child's

dependence on a controlled dangerous substance or other substance prohibited by this act and any other information that the maker of the report believes might be helpful in establishing the cause of the injuries and the identity of the person or persons responsible therefor if such information or any part thereof is known to the person making the report.

C. 1. The county office of the Department of Human Services receiving any report as provided in this section shall investigate said report in accordance with priority guidelines established by the Department of Human Services and if the county office finds evidence of abuse ~~and~~ or neglect forward its findings to the district attorney's office in the county wherein the suspected injury occurred together with its recommendation as to disposition. In addition, a copy of the findings shall be sent to the Child Welfare Division of the Department of Human Services for the purposes set forth in subsection D of this section.

2. Whenever, after a preliminary inquiry or investigation, the Department of Human Services determines that an alleged abuse or neglect of a child was:

- a. perpetrated by someone other than a person responsible for the child's health and welfare, and
- b. does not appear to be attributable to failure on the part of a person responsible for the child's health or welfare to provide protection for the child,

the Department shall immediately verbally notify an appropriate local law enforcement agency for the purpose of conducting a possible criminal investigation. The verbal notification to the local law enforcement agency shall be followed by written referral. After making the referral, the Department shall not be responsible for further investigation of the case unless notice is received from the law enforcement agency as provided by paragraph 3 of this subsection. The Department of Human Services shall promulgate rules

and regulations for the implementation of the provisions of this subsection. Said rules and regulations shall include but not be limited to provision for adequate and appropriate inquiry or investigation by the Department prior to notification of a local law enforcement agency.

3. Any law enforcement agency receiving a referral as provided in this subsection shall provide the Department of Human Services' local child welfare office with a copy of the report of its investigation resulting from a referral from the Department. Whenever, in the course of a criminal investigation related to child abuse or neglect, a law enforcement agency determines that there is cause to believe that the alleged abuse or neglect was perpetrated by a person responsible for the health and welfare of the child or is attributable to failure on the part of a person responsible for the child's health or welfare to provide protection for the child, the law enforcement agency shall immediately verbally contact the local child welfare office for the purpose of an investigation by that office. The verbal notification to the local child welfare office shall be followed by a written referral.

D. The Child Welfare Division of the Department of Human Services shall be responsible for maintaining a permanent central registry, suitably cross-indexed, of all such reported findings. Any information contained in the central registry shall be available to any county office and to any district attorney's office or public law enforcement agency investigating a report of suspected child abuse or neglect. The Department of Human Services may promulgate rules and regulations in furtherance of the provisions of this subsection.

E. 1. All records concerning child abuse shall be confidential and shall be open to inspection only to persons duly authorized by the state or United States in connection with the performance of their official duties.

2. It shall be unlawful and a misdemeanor for the Commission, or any employee working under the direction of the Department of Human Services, any other public officer or employee, or any court-appointed special advocate to furnish or permit to be taken off of the records any information therein contained for commercial, political or any other unauthorized purpose.

F. No provision of this section shall be construed to mean that a child has been abused or neglected because said child's parent, guardian or custodian in good faith selects and depends upon spiritual means or prayer for the treatment or cure of disease or remedial care of such child.

G. 1. In every case filed under Section 843 of this title or Section 1 of this act, the judge of the district court shall appoint an attorney-at-law to appear for and represent ~~a~~ the child who is the alleged subject of child abuse in such case. The attorney may be allowed a reasonable fee for such services to be paid from the court fund to be fixed by the district court. The attorney shall be given access to all reports relevant to the case and to any reports of examination of the child's parents or other custodian made pursuant to this section. The attorney shall be charged with the representation of the child's best interests. To that end, he shall make such further investigation that he deems necessary to ascertain the facts, to interview witnesses, examine and cross-examine witnesses at the preliminary hearing and trial, make recommendations to the court and participate further in the proceedings to the degree appropriate for adequately representing the child.

2. A court-appointed special advocate as defined by Section 1109 of Title 10 of the Oklahoma Statutes may be appointed to represent a child who is the alleged subject of child abuse or neglect. The court-appointed special advocate shall be given access to all reports relevant to the case and to any reports of

examination of the child's parents or other custodian made pursuant to this section.

3. At such time as the information maintained by the registry provided for by subsection D of this section is indexed by perpetrator and the necessary and appropriate due process procedures are established by the Department of Human Services, a court-appointed special advocate organization, in accordance with the policies and rules of the Department, may utilize the registry for the purpose of completing background screenings of volunteers with the organization.

SECTION 3. AMENDATORY 10 O.S. 1991, Section 1101, as amended by Section 14, Chapter 298, O.S.L. 1992 (10 O.S. Supp. 1992, Section 1101), is amended to read as follows:

Section 1101. When used in this title, unless the context otherwise requires:

1. "Child" means any person under eighteen (18) years of age, except for any person sixteen (16) or seventeen (17) years of age who is charged with any crime specified in subsection A of Section 1104.2 of this title, or who has been certified as an adult pursuant to Section 1112 of this title; provided that any person under eighteen (18) years of age who is not convicted after being charged with a crime pursuant to Section 1104.2 of this title, or who is not convicted after certification as an adult pursuant to Section 1112 of this title, shall continue to be subject to the jurisdiction of the juvenile court.

2. "Delinquent child" means a child who:

- a. has violated any federal or state law or municipal ordinance, except a traffic statute or traffic ordinance, or any lawful order of the court made pursuant to the provisions of Sections 1101 through 1506 of this title, or

- b. has habitually violated traffic laws or traffic ordinances.
3. "Child in need of supervision" means a child who:
- a. has repeatedly disobeyed reasonable and lawful commands or directives of his parent, legal guardian, or other custodian, or
 - b. is willfully and voluntarily absent from his home without the consent of his parent, legal guardian, or other custodian for a substantial length of time or without intent to return, or
 - c. is willfully and voluntarily absent from school for fifteen (15) or more days or parts of days within a semester or four (4) or more days or parts of days within a four-week period without a valid excuse as defined by the local school boards, if said child is subject to compulsory school attendance.
4. "Deprived child" means a child:
- a. who is for any reason destitute, homeless, or abandoned, or
 - b. who does not have the proper parental care or guardianship or whose home is an unfit place for the child by reason of neglect, cruelty, or depravity on the part of his parents, legal guardian, or other person in whose care the child may be, or
 - c. who is a child in need of special care and treatment because of his physical or mental condition including a child born in a condition of dependence on a controlled dangerous substance or other substance specified in Section 1 of this act, and his parents, legal guardian, or other custodian is unable or willfully fails to provide said special care and treatment, or

- d. who is a handicapped child deprived of the nutrition necessary to sustain life or of the medical treatment necessary to remedy or relieve a life-threatening medical condition in order to cause or allow the death of said child if such nutrition or medical treatment is generally provided to similarly situated nonhandicapped or handicapped children, provided that no medical treatment is necessary if, in the reasonable medical judgment of the attending physician, such treatment would be futile in saving the life of the child, or
- e. who is, due to improper parental care and guardianship, absent from school for fifteen (15) or more days or parts of days within a semester or four (4) or more days or parts of days within a four-week period without a valid excuse as defined by the local school boards if said child is subject to compulsory school attendance, or
- f. whose parent or legal custodian for good cause desires to be relieved of his custody.

No child who, in good faith, is being provided with treatment and care by spiritual means alone in accordance with the tenets and practice of a recognized church or religious denomination by a duly accredited practitioner thereof shall be considered, for that reason alone, to be a deprived child pursuant to any provision of Sections 1101 through 1506 of this title. The phrase dependent and neglected shall be deemed to mean deprived.

5. "Child in need of mental health treatment" means a child in need of mental health treatment as defined by the Inpatient Mental Health Treatment of Children Act.

6. "Handicapped child" means any child who has a physical or mental impairment which substantially limits one or more of the

major life activities of the child or who is regarded as having such an impairment by a competent medical professional.

7. "Department" means the Department of Human Services.

8. "Adjudicatory hearing" means a hearing to determine whether the allegations of a petition pursuant to the provisions of Section 1103 of this title are supported by the evidence and whether a child should be adjudged to be a ward of the court.

9. "Dispositional hearing" means a hearing to determine the order of disposition which should be made with respect to a child adjudged to be a ward of the court.

10. "Preliminary inquiry" or "intake" means a mandatory, preadjudicatory interview of the child and, if available, his parents, legal guardian, or other custodian, which is performed by a duly authorized individual to determine whether a child comes within the purview of this chapter, whether other nonadjudicatory alternatives are available and appropriate, and if the filing of a petition is necessary.

11. "Facility" means a place, an institution, a building or part thereof, a set of buildings, or an area whether or not enclosing a building or set of buildings which is used for the lawful custody and treatment of juveniles and may be owned or operated by a public or private agency.

12. "Secure facility" means a facility which is designed and operated to ensure that all entrances and exits from the facility are subject to the exclusive control of the staff of the facility, whether or not the person being detained has freedom of movement within the perimeter of the facility, or a facility which relies on locked rooms and buildings, fences, or physical restraint in order to control behavior of its residents.

13. "Community-based" means a facility, program or service, or open group home or other suitable place located near the home or family of the child, and programs of community supervision and

service which maintain community participation in their planning, operation, and evaluation. These programs may include but are not limited to medical, educational, vocational, social, and psychological guidance, training, counseling, alcoholism treatment, drug treatment, transitional living, independent living and other rehabilitative services.

14. "Day treatment" means a program which provides intensive services to children who reside in their own home, the home of a relative, or a foster home. Day treatment programs include educational services and may be operated as a part of a residential facility.

15. "Group home" means a residential facility housing no more than twelve children with a program which emphasizes family-style living in a homelike environment. Said group home may also offer a program within the community to meet the specialized treatment needs of its residents.

16. "Transitional living program" means a residential program that may be attached to an existing facility or operated solely for the purpose of assisting children to develop the skills and abilities necessary for successful adult living. Said program may include but shall not be limited to reduced staff supervision, vocational training, educational services, employment and employment training, and other appropriate independent living skills training as a part of the transitional living program.

17. "Independent living program" means a program designed to assist a child to enhance skills and abilities necessary for successful adult living and may include but shall not be limited to minimal direct staff supervision and supportive services in making the arrangements necessary for an appropriate place of residence, completing an education, vocational training, obtaining employment or other similar services.

18. "Community residential center" means a residential facility for no more than twenty children which offers a range of services including personal and social services, and emphasizes normal group living, school attendance, securing employment, and general participation in the community.

19. "Institution" means a residential facility offering care and treatment for more than twenty residents. Said institution may:

- a. have a program which includes community participation and community-based services, or
- b. be a secure facility with a program exclusively designed for a particular category of resident.

20. "Mental health facility" means a mental health facility as defined by the Inpatient Mental Health Treatment of Children Act.

21. "Training school" means an institution maintained by the state exclusively for the care, education, training, treatment, and rehabilitation of delinquent children.

22. "Rehabilitative facility" means a facility maintained by the state exclusively for the care, education, training, treatment, and rehabilitation of children in need of supervision.

23. "Treatment center" means a facility maintained by the state for the care, education, training, treatment, and rehabilitation of children who are in the custody of the Department and who have been found by the court to be in need of treatment.

SECTION 4. This act shall become effective September 1, 1993.

44-1-0076

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