

STATE OF OKLAHOMA

2nd Session of the 47th Legislature (2000)

HOUSE BILL HB2487

By: Roach

AS INTRODUCED

An Act relating to child health; creating the "Oklahoma Prenatal Addiction Act"; providing for short title; stating legislative findings; adding to the duties of specified state agencies; directing the implementation of program by certain date; designating lead agency; prohibiting certain entities from refusing services to certain pregnant women; prohibiting failure or refusal to take certain action; providing penalties; providing for immunity from prosecution under certain conditions; providing for reviews by multidisciplinary teams for certain purposes; providing for petition for involuntary commitment under certain circumstances; requiring persons to make reports of unborn child in danger; prohibiting action; providing for penalties; granting immunity to certain individuals; 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 1-546.1 of Title 63, unless there is created a duplication in numbering, reads as follows:

Sections 1 through 5 of this act shall be known and may be cited as the "Oklahoma Prenatal Addiction Act."

SECTION 2. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1-546.2 of Title 63, unless there is created a duplication in numbering, reads as follows:

It is the finding of the Oklahoma Legislature that the state has a substantial interest in protecting children from harm resulting from the abuse of drugs or alcohol by their mothers during pregnancy, both for the sake of the child and because of the potential cost to the state in providing medical and other care to

such children. The Legislature recognizes that the preferable and most effective means of preventing birth defects and health problems due to substance abuse by pregnant women is for prenatal care and appropriate substance abuse treatment services to be readily available and accessible, but further recognizes that in some instances it may be necessary to use the authority of the state to preserve and protect the health and well-being of the child.

SECTION 3. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1-546.3 of Title 63, unless there is created a duplication in numbering, reads as follows:

A. On or before January 1, 2001, a collaborative program to encourage and assist pregnant women who abuse or are addicted to drugs or alcohol to obtain prenatal care and substance abuse treatment services shall be implemented by the following state agencies:

1. State Department of Health;
2. Department of Mental Health and Substance Abuse Services;
3. Oklahoma Health Care Authority;
4. District Attorneys Council;
5. Department of Human Services; and
6. Oklahoma Commission on Children and Youth.

B. The State Department of Health shall be the lead agency and shall be responsible for convening meetings and staff support.

C. The Department of Mental Health and Substance Abuse Services shall prohibit all substance abuse treatment services administered by or contracted for by the Department from refusing to treat pregnant women and shall assist them to develop and implement appropriate treatment modalities and services.

D. The Oklahoma Health Care Authority shall establish procedures to expedite Medicaid eligibility determination for pregnant women who may abuse or be addicted to drugs or alcohol.

SECTION 4. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1-546.4 of Title 63, unless there is created a duplication in numbering, reads as follows:

A. Any pregnant woman who abuses or is addicted to drugs or alcohol, who continues to abuse drugs or alcohol, and who fails to seek or refuses to accept treatment or refuses to comply with a program of treatment for drug or alcohol abuse or addiction shall upon conviction be guilty of a misdemeanor. Any subsequent conviction pursuant to this subsection shall be a felony punishable by not more than two (2) years imprisonment in the custody of the Department of Corrections or a fine of Five Thousand Dollars (\$5,000.00), or by both fine and imprisonment.

B. Any pregnant woman who seeks or accepts substance abuse treatment and actively participates in and complies with the treatment program shall not be subject to prosecution for any illegal purchase or possession of a controlled dangerous substance that occurred prior to seeking or accepting treatment.

C. All cases prosecuted pursuant to subsection A of this section shall be reviewed by a multidisciplinary team for the purpose of making recommendations for appropriate disposition of the case. Women subject to the provisions of this section may be eligible for deferred prosecution, supervised probation, drug court or the alternatives available through the Community Sentencing Act.

D. In addition to or in lieu of any other penalty provided for by law, a petition seeking involuntary commitment as a drug-addicted or alcohol-addicted person pursuant to Title 43A of the Oklahoma Statutes may be filed for any pregnant woman subject to the provisions of this section who persistently refuses to refrain from substance abuse or who is incapable of refraining from substance abuse during her pregnancy.

SECTION 5. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1-546.5 of Title 63, unless there is created a duplication in numbering, reads as follows:

A. 1. Every:

- a. physician or surgeon, including doctors of medicine and dentistry, licensed osteopathic physicians, residents and interns, examining, attending or treating a pregnant woman,
- b. registered nurse examining, attending or treating a pregnant woman in the absence of a physician or surgeon, and
- c. other person;

having reason to believe that a pregnant woman is abusing or is addicted to drugs or alcohol and that her unborn quick child is at risk of serious harm or injury shall report the matter promptly to the office or person designated by the State Department of Health to receive the report. Such reports may be made by telephone, in writing, personally or by any other method prescribed by the Department. Any report of abuse or neglect made pursuant to this section shall be made in good faith.

2. No privilege or contract shall relieve any person from the requirement of reporting pursuant to this section.

3. The reporting obligations under this section are individual, and no employer, supervisor or administrator shall impede or inhibit the reporting obligations of any employee or other person.

B. Any person who knowingly and willfully makes a false report pursuant to the provisions of this section or a report that the person knows lacks factual foundation may be reported by the Department of Health to local law enforcement for criminal investigation and, upon conviction thereof, shall be guilty of a misdemeanor.

C. Any person participating in good faith and exercising due care in the making of a report pursuant to the provisions of the Oklahoma Prenatal Addiction Act, or any person who, in good faith and exercising due care, allows access to a child by persons authorized to investigate a report concerning the child shall have immunity from any liability, civil or criminal, that might otherwise be incurred or imposed. Any such participant shall have the same immunity with respect to participation in any judicial proceeding resulting from such report.

SECTION 6. This act shall become effective November 1, 2000.

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