

AN ACT relating to alcohol and substance abuse treatment for pregnant and post-partum women.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

➔SECTION 1. A NEW SECTION OF KRS CHAPTER 222 IS CREATED TO READ AS FOLLOWS:

The General Assembly of the Commonwealth of Kentucky recognizes that all children should have the right to be born free of alcohol and drugs abused by their mothers during pregnancy. Appropriate alcohol and drug abuse treatment for pregnant and post-partum women is the most desirable course for preventing negative outcomes for children born to mothers with alcohol or drug abuse problem. It is the intent of the General Assembly to encourage the availability of alcohol and drug treatment programs for pregnant and post-partum women across the state and to encourage medical professionals, courts, child welfare employees, and other individuals in contact with pregnant and post-partum women to refer pregnant and post-partum women with alcohol or drug abuse problems to appropriate treatment programs.

➔Section 2. KRS 214.160 is amended to read as follows:

- (1) Every physician and every other person legally permitted to engage in attendance upon a pregnant woman in this state shall take or cause to be taken from the woman a specimen of blood for serological test for syphilis as soon as he is engaged to attend the woman and has reasonable grounds for suspecting that pregnancy exists. If the woman is in labor at the time the diagnosis of pregnancy is made, which may make it inadvisable to obtain a blood specimen at that time, the specimen shall be obtained within ten (10) days after delivery. The specimen of blood shall be submitted to the laboratory of the Cabinet for Health and Family Services or a laboratory approved by the cabinet for the purpose of having made a serological test for syphilis. The test shall be of a type approved by the Cabinet for Health and Family Services.
- (2) The Cabinet for Health and Family Services shall, as often as necessary, publish a

list of the five (5) most frequently abused substances, including alcohol, by pregnant women in the Commonwealth. Any physician and any other person legally permitted to engage in attendance upon a pregnant woman in this state may perform a screening for alcohol or substance dependency or abuse, including a comprehensive history of such behavior. Any physician may administer a toxicology test to a pregnant woman under the physician's care within eight (8) hours after delivery to determine whether there is evidence that she has ingested alcohol, a controlled substance, or a substance identified on the list provided by the cabinet, or if the woman has obstetrical complications that are a medical indication of possible use of any such substance for a nonmedical purpose.

- (3) Any physician or person legally permitted to engage in attendance upon a pregnant woman may administer to each newborn infant born under that person's care a toxicology test to determine whether there is evidence of prenatal exposure to alcohol, a controlled substance, or a substance identified on the list provided by the Cabinet for Health and Family Services, if the attending person has reason to believe, based on a medical assessment of the mother or the infant, that the mother used any such substance for a nonmedical purpose during the pregnancy.
- (4) The circumstances surrounding any positive toxicology finding shall be evaluated by the attending person to determine if abuse or neglect of the infant, as defined under KRS 600.020(1), has occurred and whether investigation by the Cabinet for Health and Family Services is necessary. **If the cabinet conducts an investigation, it may notify the county attorney in the county where the birth occurs of a possible violation of Section 4 of this Act.**
- (5) No prenatal screening for alcohol or other substance abuse or positive toxicology finding shall be used as prosecutorial evidence.
- (6) No person shall conduct or cause to be conducted any toxicological test pursuant to this section on any pregnant woman without first informing the pregnant woman of

the purpose of the test.

- (7) Every physician or other person legally permitted to engage in attendance upon a pregnant woman in the Commonwealth shall take or cause to be taken from the woman a specimen of blood which shall be submitted for the purpose of serologic testing for the presence of hepatitis B surface antigen to a laboratory certified by the United States Department for Health and Human Services pursuant to Section 333 of the Public Health Service Act (42 U.S.C. sec. 263a), as revised by the Clinical Laboratory Improvement Amendments (CLIA), Pub.L. 100-578.

➔Section 3. KRS 222.037 is amended to read as follows:

- (1) The Cabinet for Health and Family Services may establish four (4) or more pilot projects within the Commonwealth to demonstrate the effectiveness of different methods of providing community services to prevent smoking and alcohol and substance abuse by pregnant females; improving agency coordination to better identify the pregnant smoker and substance abuser and other females who have smoking and substance abuse problems; linking with community services and treatment for the chemically dependent woman, her children, and other family members; and gaining access to early intervention services for infants in need.
- (2) **The cabinet may establish pilot projects to treat pregnant and post-partum women for alcohol and drug abuse. Pilot projects may be specifically designed to treat women guilty of alcohol or controlled substance endangerment of a child prior to birth under Section 4 of this Act.**
- (3) The cabinet may use any state appropriation and any gifts, grants, or federal funds that become available for the purposes of implementing the provisions of this section.

➔SECTION 4. A NEW SECTION OF KRS CHAPTER 222 IS CREATED TO READ AS FOLLOWS:

- (1) As used in this section and Section 5 of this Act, unless the context requires**

otherwise:

(a) "Alcohol" has the same meaning as under KRS 241.010; and

(b) "Controlled substance" has the same meaning as under KRS 218A.010.

(2) A woman is guilty of alcohol or controlled substance endangerment of a child prior to birth when, knowing she is pregnant, she causes her child to be born with:

(a) A controlled substance in its bodily fluids or bodily substances which was not lawfully prescribed to the mother by a practitioner;

(b) A controlled substance in its bodily fluids or bodily substances which, if lawfully prescribed to the mother by a practitioner, was knowingly taken in an amount in excess of the lawfully prescribed amount;

(c) A dangerous level of alcohol in its bodily fluids or bodily substances;

(d) Clear symptoms of withdrawal from a controlled substance or alcohol; or

(e) A health problem directly resulting from the pregnant mother's abuse before birth of:

1. A controlled substance not lawfully prescribed to the mother by a practitioner;

2. A controlled substance which, if lawfully prescribed to the mother by a practitioner was knowingly taken in an amount in excess of the lawfully prescribed amount; or

3. Alcohol.

(3) (a) A court may order a toxicology test, drug test, or alcohol test for the mother, child, or both, if there is probable cause as indicated by a qualified health professional, upon motion of the prosecution, the mother, or on its own motion.

(b) The results of a court-ordered, confirmed toxicology test of the child's bodily fluids or bodily substances, the bodily fluids or bodily substances of

the mother, the placenta, the umbilical cord, the mucosa, the child's meconium, or a combination thereof, may be used as evidence to establish a violation of this section.

➔SECTION 5. A NEW SECTION OF KRS CHAPTER 222 IS CREATED TO READ AS FOLLOWS:

(1) Alcohol or controlled substance endangerment of a child prior to birth is a Class B misdemeanor for the first offense.

(2) Alcohol or controlled substance endangerment of a child prior to birth is a Class A misdemeanor for the second or subsequent offense.

(3) Unless the court finds compelling reason otherwise, the court shall sentence a defendant found guilty of an offense under subsection (1) or (2) of this section to an alcohol or drug abuse treatment or education program instead of, under suspension of, or subject to delay of other penalties, subject to the following terms and conditions:

(a) The sentence shall be for a period of up to six (6) months and shall provide an assessment to the court of the defendant's alcohol or other substance abuse problems;

(b) Each defendant shall pay the cost of the treatment or education program up to her ability to pay but no more than the actual cost of the treatment;

(c) A defendant may, upon written recommendation to the court by the administrator of the program, be released by the court prior to the expiration of the period; and

(d) Failure to complete the treatment or education program or to pay the amount specified by the program shall constitute contempt of court and the court may, in addition to any other remedy for contempt, reinstitute all penalties which were previously imposed but suspended or delayed pending the completion of treatment or education program.