

SENATE BILL 1796

By Herron

AN ACT to amend Tennessee Code Annotated, Title 37, Chapter 10 and Title 37, Chapter 5, relative to unborn child protection.

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

SECTION 1. Tennessee Code Annotated, Section 37-5-106(a), is amended by adding the following as a new subdivision:

(22) Administer and fully implement the Unborn Child Protection Act, compiled in this title, including making such contracts as may be necessary to carry out the evaluations and treatment called for in that act;

SECTION 2. Tennessee Code Annotated, Title 37, Chapter 10, is amended by adding the following as a new part:

§ 37-10-501. This part shall be known and may be cited as the "Unborn Child Protection Act".

§ 37-10-502.

(a) If a child protective services worker knows or has reasonable grounds to believe that an expectant mother is using methamphetamine and the expectant mother fails or refuses to comply with any voluntary medical examination, monitoring and treatment, the worker shall petition the general sessions court in the county in which the expectant mother resides for an order requiring the expectant mother to cooperate with all intervention efforts to prevent harm to her unborn child. The order to cooperate shall include a statement that, unless the expectant mother complies with the actions required in the order, the worker may petition the general sessions court for an order requiring the mother to be taken into emergency custody and to undergo compulsory examination,

monitoring and treatment. If the expectant mother is a minor or an incapacitated person, the worker shall use reasonable efforts to locate, contact and confer with the expectant mother's parent or guardian.

(b) A sheriff, law enforcement officer or other person who is authorized to serve notice shall serve an order issued pursuant to this section on the expectant mother or, if the expectant mother is a minor or an incapacitated person, on her parent or guardian. If personal service cannot be performed despite the exercise of due diligence, the order may be delivered by certified mail. The child protective service worker shall maintain a copy of the affidavit of service in the case file.

(c) If the expectant mother refuses to comply with an order issued pursuant to subsection (a) or if the child protective services worker reasonably believes that the expectant mother has previously failed or refused to comply with an appropriate prescribed course of treatment or monitoring and believes that emergency custody is necessary to protect her unborn child, the worker may petition the court for an emergency custody order directing a sheriff or law enforcement officer to take the expectant mother into custody and to transport the expectant mother to an institution or facility specified in the order. The emergency custody order may be an oral order followed by the issuance of a written order by the end of the next business day. The receiving institution shall provide suitable housing and care of the expectant mother.

(d) At the time the expectant mother is taken into emergency custody pursuant to subsection (c), the child protective services worker promptly shall notify the expectant mother's husband, physician, parent or guardian or an adult member of the expectant mother's family of the detention and treatment, including the location of the detention and treatment, the terms of custody and the authority that ordered the expectant mother's detention and treatment. The worker shall inform the expectant mother or, if the

expectant mother is a minor or an incapacitated person, the expectant mother's parent or guardian of the expectant mother's right to consult with an attorney and the right to have an attorney appointed by the court if the expectant mother cannot afford an attorney. The worker shall also inform the expectant mother that the court shall appoint an attorney to consult with and to represent the expectant mother if she cannot afford an attorney.

§ 37-10-503.

(a) A petition for emergency custody shall include:

(1) The expectant mother's name, address, date of birth and physical location or last known address. The petitioner shall refer to the expectant mother by a pseudonym if specifically requested by the expectant mother or if the expectant mother is a minor;

(2) A statement that contains the grounds and underlying facts demonstrating that the expectant mother is using methamphetamine;

(3) A statement that the expectant mother has failed to comply with a voluntary treatment plan or an order to cooperate or has a history of noncompliance with an appropriate prescribed course of treatment or interventions;

(4) The least restrictive alternatives to court ordered examination, monitoring or treatment that are appropriate or available; and

(5) A statement that identifies the expectant mother as a minor or an incapacitated person, if applicable, and any facts that could assist the court in determining whether to appoint a guardian or conservator.

(b) The petition for emergency custody shall be accompanied by the affidavit or affidavits of the child protective services worker. The affidavits shall detail the evidence

that indicates that the person is pregnant. The petition shall include a summary of the facts that support the allegations of the petition.

(c) The petition for emergency custody shall request that the court issue an immediate order authorizing the compulsory detention and treatment and the continued detention and treatment of the expectant mother in a designated facility for supervised monitoring and treatment pending a detention hearing as prescribed by § 37-10-502. § 37-10-504.

(a) Before the general sessions court has an opportunity to rule on the petition's merits, the court may order the immediate or continued detention of the expectant mother in an appropriate institution if the court determines that there is reasonable cause to believe that the expectant mother is likely to be a substantial danger to her unborn child.

(b) If the court orders the expectant mother to be immediately detained, the court shall issue orders necessary to provide for the apprehension, transportation and detention of the expectant mother pending the outcome of the detention hearing and shall provide notice of detention to the expectant mother's husband or, if the expectant mother is a minor or an incapacitated person, the expectant mother's parent or guardian, or if none, the next of kin. The court shall appoint an attorney for the expectant mother if one has not been appointed.

(c) If, after reviewing the petition for emergency custody and supporting documents and other evidence, the court determines that the petition and supporting documentation and evidence submitted to the court do not support a finding that the person is an expectant mother or is a substantial danger to her unborn child, the court shall issue a written order to release the expectant mother as soon as reasonably possible.

(d) If, after a petition for emergency custody has been filed and before the hearing, the petitioner or the medical director of the receiving institution determines that the person is not an expectant mother, the petitioner shall withdraw the petition and the petitioner or the medical director of the receiving institution shall discharge the person as soon as reasonably possible.

§ 37-10-505.

(a) A detention hearing shall be held within fifteen (15) days after the petition for emergency custody is filed with the general sessions court unless:

(1) The court determines for good cause shown that a continuance of the detention hearing is necessary. For the purposes of this subsection, "good cause" includes the unavailability of necessary witnesses or that additional time is necessary to receive and interpret laboratory test results; or

(2) The expectant mother or, if the expectant mother is a minor or an incapacitated person, the expectant mother's parent or guardian, on consultation with an attorney, determines that it would be in the expectant mother's best interest to request a continuance.

(b) A continuance granted to any party by the court pursuant to subsection (a) shall not exceed thirty (30) days unless the parties agree to an additional continuance.

§ 37-10-506. The purpose of a detention hearing is to determine if the expectant mother is using methamphetamine. The burden of proof is on the petitioner to prove by clear and convincing evidence that detention is necessary because the person is an expectant mother and is a substantial danger to her unborn child.

§ 37-10-507.

(a) Within five (5) days after the filing of a petition for emergency custody, the petitioner shall serve on the expectant mother or, if the expectant mother is a minor or

an incapacitated person, the expectant mother's parent or guardian a copy of the petition and supporting affidavits and the notice of the hearing. The notice shall inform the expectant mother of the purpose of the hearing and the right to an attorney. If the expectant mother has not employed an attorney, the court shall appoint an attorney at least seven (7) days before the hearing. The notice shall fix the date, time and place for the hearing. The notice requirements of this subsection cannot be waived.

(b) At least five (5) days before the court conducts the hearing on the petition or within a reasonable time after the appointment of a court-appointed attorney, the petitioner shall make copies of the petition, supporting affidavits, notice of the hearing, investigation reports, expectant mother's medical records and other exhibits available to the expectant mother or, if the expectant mother is a minor or an incapacitated person, the expectant mother's parent or guardian or that person's attorney for examination and reproduction.

§ 37-10-508. An expectant mother has the right to have an evaluation performed by an independent physician. Such evaluation shall include a physical examination and laboratory analysis. If the expectant mother is unable to afford an examination, then the court shall appoint an independent evaluator acceptable to the expectant mother from a list of licensed physicians who are willing to accept court appointed evaluations. The expectant mother may require the independent physician who performed the evaluation to appear as a witness at a hearing conducted pursuant to this section.

§ 37-10-509.

(a) The expectant mother or, if the expectant mother is a minor or an incapacitated person, the expectant mother's parent or guardian and that person's attorney have the right to be present at all hearings. The expectant mother or a minor expectant mother's parent or guardian may waive any appearance before the court.

(b) If the expectant mother is unable or unwilling to be present at the hearing or the hearing cannot be reasonably conducted where the expectant mother is being treated or confined or cannot be reasonably conducted in the expectant mother's presence, the court shall enter a finding and may proceed with the hearing on the merits of the petition.

§ 37-10-510.

(a) Parties to the proceedings may present evidence and subpoena and cross-examine witnesses.

(b) Persons who are appointed to conduct an examination and evaluation of the expectant mother shall make their reports in writing to the court. The reports shall include a recommendation as to the least restrictive alternative measures available to the court.

(c) A verbatim record of all proceedings under this section shall be made by stenographic or electronic means. The stenographic notes or electronic tape shall be retained as prescribed by law.

(d) The court hearing is not open to the public and all records, notices, exhibits and other evidence are confidential and shall not be released to the public. The court may order any portion released or a public hearing to be held on a request from the expectant mother or, if the expectant mother is a minor or an incapacitated person, the expectant mother's parent or guardian or the expectant mother's attorney. The court's records and exhibits are available to the petitioner and the expectant mother or a legal representative of any of these persons.

(e) An expectant mother who is ordered by the court to undergo examination, monitoring, treatment or detention or, if the expectant mother is a minor or an incapacitated person, the expectant mother's parent or guardian, may request a certified

transcript of the hearing. To obtain a copy the person shall pay for the transcript or shall file an affidavit that the expectant mother cannot afford to pay for a transcript. If the affidavit is found to be true by the court, the court shall charge the expense of the transcript to the county in which the proceedings were held. If an intergovernmental agreement by the counties has required an evaluation in a county other than that of the expectant mother's residence, this expense may be charged to the county of the expectant mother's residence or in which the expectant mother was found before the evaluation.

§ 37-10-511. Any party to the proceedings may appeal the decision of the general sessions court pursuant to § 27-5-108.

SECTION 3. The commissioner of children's services is authorized to promulgate rules and regulations to effectuate the purposes of this act. All such rules and regulations shall be promulgated in accordance with Tennessee Code Annotated, Title 4, Chapter 5.

SECTION 4. This act shall take effect upon becoming a law, the public welfare requiring it.