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123rd General Assembly
(As Passed by the General Assembly)

Reps. Winkler, Schuring, Allen, Barrett, Bender, Brading, Britton, Calvert, Grendell, Hollister, Hoops, Mettler, Netzley, O'Brien, Patton, Schuler, Smith, Sullivan, Van Vyven, Williams, J. Beatty, Metzger, Kilbane, Peterson, Vesper, Myers, Austria, Womer Benjamin, Jones, Healy, Taylor, Ford, Mottley, Mead, Tiberi, Collier

Sens. Drake, Hagan, Prentiss, Spada, Kearns, Watts, Fingerhut

Effective date: *

ACT SUMMARY

- Permits a parent to voluntarily deliver a child who is not more than 72 hours old to an emergency medical service worker, peace officer, or hospital employee.
- Imposes duties on law enforcement agencies, hospitals, emergency medical service organizations, and public children services agencies regarding the care, custody, and treatment of the child.
- Establishes a juvenile court procedure for adjudication of the child as a deserted child and for disposition of the deserted child, and requires the child to be treated by a court, public children services agency, or private child placing agency the same as a child adjudicated a neglected child under the Ohio Juvenile Code.
- Requires the Director of the Ohio Department of Job and Family Services to create medical information forms that may be filled out by a parent delivering a child and materials to be given to the parent describing services available to assist parents and newborns.

* *The Legislative Service Commission had not received formal notification of the effective date at the time this analysis was prepared.*

- Establishes a rebuttable presumption that it is not in a deserted child's best interest to return the child to the parents.
- Provides that the parent has the absolute right to remain anonymous and may leave the place at which the child is delivered at any time after delivering the child.
- Provides that the court must require a person, at the person's expense, to submit to a DNA test if that person claims to be the parent and seeks to be reunited with a deserted child.
- Provides that a parent does not commit a crime in Ohio and is not subject to criminal prosecution for delivering a child in accordance with the act.
- Provides civil and criminal immunity to a person or governmental entity that takes possession of a child under the act or takes emergency temporary custody of and provides temporary emergency care for a child from liability that might be incurred or imposed for taking those actions, unless the person or entity acted in bad faith or with malicious purpose.
- Prohibits any person, with respect to a parent who delivers the child, from (1) coercing or trying to force the parent to reveal the parent's identity, to not desert the child, to complete all or any part of the medical information forms, or to accept materials regarding services for parents and newborns, or (2) pursuing or following the parent after the parent leaves the place at which the child was delivered.
- Provides that, if the child has been abused or neglected, the following apply: (1) the parent does not have the right to remain anonymous and may be subject to arrest, (2) the person who delivers the child may be forced to reveal the identity of the child's parents and may be pursued or followed, (3) the person to whom the child is delivered must attempt to identify and pursue the person who delivered the child, and (4) the person who delivers the child will not have civil or criminal immunity as provided in the act.

CONTENT AND OPERATION

Voluntary delivery of a child

(sec. 2151.3516)

The act requires the following persons, while acting in an official capacity, to take possession of a child who is not more than 72 hours old if the parent has voluntarily delivered the child to that person without expressing an intent to return for the child:

A peace officer, on behalf of a law enforcement agency that employs the officer;¹

A hospital employee, on behalf of the hospital that has granted the person privilege to practice at the hospital or that employs the person;²

¹ *The act defines "peace officer" as a sheriff, deputy sheriff, constable, police officer of a township or joint township police district, marshal, deputy marshal, municipal police officer, or a state highway patrol trooper. "Law enforcement agency" is defined as an organization or entity made up of peace officers.*

² *The act defines "hospital employee" as any of the following persons: a physician granted privileges to practice at the hospital; a nurse, physician assistant, or nursing assistant employed by the hospital; an authorized person employed by the hospital who is acting under the direction of a physician granted privileges to practice at the hospital.*

"Hospital" is defined as an institution classified as a hospital under current law in which are provided to inpatients diagnostic, medical, surgical, obstetrical, psychiatric, or rehabilitation care for longer than 24 hours; a tuberculosis hospital; and a hospital operated by an HMO.

A "physician" is an individual authorized under law to practice medicine and surgery, osteopathic medicine and surgery, or podiatry.

A "physician assistant" is a skilled person qualified by training to provide services to patients under the supervision and direction of one or more physicians.

A "nurse" is a person licensed under Ohio law to practice as a registered nurse or licensed practical nurse.

A "nursing assistant" is an individual designated by a hospital as a nurse aide or nursing assistant who aids nurses, physicians, and physician assistants in the performance of their duties.

An emergency medical service worker, on behalf of the emergency medical service organization that employs the worker or for which the worker provides services.³

Duties on taking possession of a voluntarily delivered child

(sec. 2151.3517)

On taking possession of a child under the act, a law enforcement agency, hospital, or emergency medical service organization must do all of the following:

- (1) Perform any act necessary to protect the child's health or safety;
- (2) Notify the public children services agency (PCSA) of the county in which the law enforcement agency, hospital, or emergency medical service organization is located that the child has been taken into possession;
- (3) If possible, make available to the parent who delivered the child the following materials developed by the Ohio Department of Job and Family Services (ODJFS): medical information forms designed to gather medical information concerning the child and the child's parents and written materials that describe services available to assist parents and newborns;
- (4) If the child has suffered a physical or mental wound, injury, disability, or condition of a nature that reasonably indicates abuse or neglect of the child, attempt to identify and pursue the person who delivered the child.

An emergency medical service worker who takes possession of a child must, in addition to the duties described above, perform any medical service the worker is authorized to perform that is necessary to protect the physical health or safety of the child.

Duties of a PCSA with respect to a voluntarily delivered child

(sec. 2151.3518)

On receipt of a notice that a child has been taken into possession under the act's provisions, a PCSA must do all of the following in accordance with rules adopted by ODJFS:

³ "Emergency service worker" means a first responder, emergency medical technician-basic, emergency medical technician-intermediate, or paramedic. "Emergency medical service organization" means a public or private organization that uses any type or combination of emergency service workers to provide emergency medical services.

- (1) Consider the child to be in need of public care and protective services;
- (2) Accept and take emergency temporary custody of the child;
- (3) Provide temporary emergency care for the child, without agreement or commitment;
- (4) Make an investigation concerning the child;
- (5) File a motion with the juvenile court of the county in which the PCSA is located requesting that the court grant temporary custody of the child to the agency or to a private child placing agency (PCPA);⁴
- (6) Provide any care for the child that the PCSA considers to be in the best interest of the child, including placing the child in shelter care;
- (7) Provide any care and perform any duties that are required of PCSAs under current law;
- (8) Prepare and keep written records of the investigation of the child, of the care and treatment afforded the child, and any other records required by ODJFS.

Juvenile proceedings regarding a voluntarily delivered child

Adjudication of the child as a deserted child

(sec. 2151.3519)

Under the act, when a PCSA files the motion requesting the granting of temporary custody to the PCSA or a PCPA, the juvenile court must hold an emergency hearing as soon as possible to determine whether the child is a deserted child.⁵ The court is required to give notice to the parents of the child only if the

⁴ Under current law not proposed to be changed by the act: (1) "temporary custody" means legal custody of a child who is removed from the child's home, which custody may be terminated at any time at the discretion of the court or, if the legal custody is granted in an agreement for temporary custody, by the person who executed the agreement, (2) "legal custody" means a legal status that vests in the custodian the right to have physical care and control of the child and to determine where and with whom the child will live, and the right and duty to protect, train, and discipline the child and to provide the child with food, shelter, education, and medical care, all subject to any residual parental rights, privileges, and responsibilities.

⁵ Under the act, a "deserted child" is a child whose parent has voluntarily delivered the child to an emergency medical service worker, peace officer, or hospital employee without expressing an intent to return.

court has knowledge of the names of the parents. If the court determines at the initial hearing or at any other hearing that a child is a deserted child, the court must adjudicate the child a deserted child and enter its findings in the record of the case.

Disposition of child

(secs. 2151.3520, 2151.3521, and 2151.3522)

Under the act, if a juvenile court adjudicates a child a deserted child, the court must commit the child to the temporary custody of a PCSA or PCPA. The court must consider the order to be an order of disposition placing a child adjudicated to be a neglected child in temporary custody of a PCSA or PCPA.⁶

If the court issues an order placing the child in temporary custody, the court is to treat the child the same as a child adjudicated a neglected child when performing its duties under the Ohio Juvenile Code with respect to the child. Those duties include hearing and deciding motions for further disposition on termination of temporary custody and, if made, motions for permanent custody; review of case plans, placement, and custody arrangements; and hearing and deciding on proposed changes to case plans. In performing those duties, the court is to be bound to a rebuttable presumption that it is not in the child's best interest to return the child to the natural parents.

A PCSA or PCPA that receives temporary custody of a child adjudicated a deserted child must prepare case plans, conduct investigations, conduct periodic reviews of case plans, and provide services for the child as if the child were adjudicated a neglected child and must follow the same procedures under the

⁶ *Under current law not proposed to be changed by the act a "neglected child" includes any child: (1) who is abandoned by the child's parents, guardian, or custodian, (2) who lacks adequate parental care because of the faults or habits of the child's parents, guardian, or custodian, (3) whose parents, guardian, or custodian neglects the child or refuses to provide proper or necessary subsistence, education, medical or surgical care or treatment, or other care necessary for the child's health, morals, or well being, (4) whose parents, guardian, or custodian neglects the child or refuses to provide special care made necessary by the child's mental condition, (5) whose parents, legal guardian, or custodian have placed or attempted to place the child in violation of Ohio law regarding the acceptance of temporary or permanent custody of a child and regarding inducement of parents to part with their children, (6) who, because of the omission of the child's parents, guardian, or custodian, suffers physical or mental injury that harms or threatens to harm the child's health or welfare, or (7) who is subjected to abuse or neglect while in out-of-home care.*

Juvenile Code in performing those functions as if the deserted child was a neglected child.

Right of parent to anonymity

(sec. 2151.3524)

A parent who voluntarily delivers a child in accordance with the act has the absolute right to remain anonymous. The anonymity of a parent who voluntarily delivers a child does not affect any duty imposed on an emergency medical service organization, hospital, law enforcement agency, or PCSA under the act. A parent who voluntarily delivers a child may leave the place at which the parent delivers the child at any time after the delivery of the child.

The right to anonymity and to leave at any time after delivering a child does not apply if the child has suffered any physical or mental wound, injury, disability, or condition of a nature that reasonably indicates abuse or neglect of the child. In such case, the parent may be subject to arrest.

Reclaiming a deserted child

(sec. 2151.3528)

Under the act, if a child is adjudicated a deserted child and a person indicates to the court that the person is the parent of the child and seeks to be reunited with the child, the court that adjudicated the child must require the person, at the person's expense, to submit to a DNA test to verify that the person is a parent of the child.

Immunity

(sec. 2151.3523)

The act provides that a parent does not commit a criminal offense under Ohio law and cannot be subject to criminal prosecution for the act of voluntarily delivering a child pursuant to the act. But, a person who delivers or attempts to deliver a child who has suffered any physical or mental wound, injury, disability, or condition of a nature that reasonably indicates abuse or neglect of the child is not immune from civil or criminal liability for abuse or neglect.

A person or governmental entity that takes possession of a child under the act or takes emergency temporary custody of and provides temporary emergency care for a child under the act is immune for any criminal or civil liability that might otherwise be incurred or imposed as a result of those actions, unless the person or entity has acted in bad faith or with malicious purpose. The immunity

from civil liability does not apply if the person or governmental entity has immunity from civil liability under Ohio law governing immunity of state employees and officers and political subdivisions. The act states that the immunity granted under it does not create a new cause of action or substantive legal right against a person or governmental entity and does not affect any immunities or defenses established under the Revised Code or available at common law for circumstances not covered by the civil immunity granted in the act.

Prohibitions

(sec. 2151.3527)

The act provides that no person may do the following with respect to a parent who voluntarily delivers a child under the act:

(1) Coerce or otherwise try to force the parent into revealing the identity of the child's parents;

(2) Pursue or follow the parent after the parent leaves the place at which the child was delivered;

(3) Coerce or otherwise try to force the parent not to desert the child;

(4) Coerce or otherwise try to force the parent to complete all or any part of the medical information forms provided to the parent by the person to whom the parent delivers the child;

(5) Coerce or otherwise try to force the parent to accept the materials that describe services available to assist parents and newborns from the person to whom the parent delivers the child.

Items (1) and (2) above do not apply to a person who delivers or attempts to deliver a child who has suffered any physical or mental wound, injury, disability, or condition of a nature that reasonably indicates abuse or neglect of the child.

Medical forms and material describing services to assist parents and newborns

(secs. 2151.3525, 2151.3526, 2151.3529, and 2151.3520)

The act requires the Director of ODJFS to promulgate forms designed to gather pertinent medical information concerning a deserted child and the child's parents. The forms must clearly and unambiguously state on each page that the information requested is to facilitate medical care for the child, that the forms may be fully or partially completed or left blank, that completing the forms or parts of

the forms is completely voluntary, and that no adverse legal consequence will result from failure to complete any part of the forms. The Director is also required to promulgate written materials to be given to the parents of a child delivered under the act. The materials must describe services available to assist parents and newborns and must include information directly relevant to situations that might cause parents to desert a child and information on the procedures for a person to follow in order to reunite with a child the person delivered, including notice that the person will be required to submit to a DNA test, at that person's expense, to prove that the person is the parent of the child.

A parent who voluntarily delivers a child under the act may complete all or any part of the medical information forms the parent receives when delivering the child. The parent may deliver the fully or partially completed forms at the same time as delivering the child or at a later time. The parent is not required to complete all or any part of the forms. The parent also may refuse to accept the materials describing services available to assist parents and newborns.

The Director of ODJFS must distribute the medical information forms and written materials promulgated under the act to entities permitted to receive a deserted child, to PCSAs, and to other public or private agencies that, in the Director's discretion, are best able to disseminate the forms and materials to the persons who are most in need of the forms and materials.

HISTORY

ACTION	DATE	JOURNAL ENTRY
Introduced	04-12-00	p. 1825
Reported, H. Children & Family Services	09-13-00	p. 2246
Passed House (92-4)	09-20-00	pp. 2271-2272
Reported, S. Health, Human Services and Aging	12-05-00	p. 2288
Passed Senate (31-0)	12-07-00	pp. 2350-2351
House concurred in Senate amendments (90-4)	12-12-00	p. 2477

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