

HOUSE COMMITTEE OF REFERENCE REPORT

Chairman of Committee

April 26, 2016
Date

Committee on Public Health Care & Human Services.

After consideration on the merits, the Committee recommends the following:

HB16-1385 be amended as follows, and as so amended, be referred to the Committee on Appropriations with favorable recommendation:

1 Amend printed bill, strike everything below the enacting clause and
2 substitute:

3 **"SECTION 1. Legislative declaration.** (1) The general
4 assembly finds and declares that:

5 (a) The definition of "child abuse or neglect" in the Children's
6 Code needs to be modified to accommodate behavioral changes relating
7 to substances;

8 (b) The general assembly's intent behind any modifications to the
9 definition of "child abuse or neglect" in the Children's Code as it relates
10 to substances is to focus on guiding assessments and investigations in the
11 child welfare system after an allegation of abuse or neglect rather than to
12 dictate absolute findings of abuse or neglect in a given situation;

13 (c) Every child welfare situation is unique, the issues surrounding
14 substances and abuse or neglect have multiple nuances, and one question
15 or one test alone may not yield an accurate finding of abuse or neglect;
16 and

17 (d) Therefore, a modification to the definition of "child abuse or
18 neglect" in the Children's Code requires the department of human services
19 to provide guidance, through the promulgation of rules, on assessments
20 to county-level case workers.

21 (2) The general assembly further finds that to create stronger
22 cooperation, transparency, and consistency between the multiple parties

1 involved in these difficult child welfare situations, the collection of
2 additional data following any modification of the definition of "child
3 abuse or neglect" as it relates to substances is a necessary component of
4 successfully protecting the best interests of the children of Colorado and
5 their parents.

6 **SECTION 2.** In Colorado Revised Statutes, 19-1-103, **amend** (1)
7 (a) (VI) and (1) (a) (VII) as follows:

8 **19-1-103. Definitions.** As used in this title or in the specified
9 portion of this title, unless the context otherwise requires:

10 (1) (a) "Abuse" or "child abuse or neglect", as used in part 3 of
11 article 3 of this title, means an act or omission in one of the following
12 categories that threatens the health or welfare of a child:

13 (VI) Any case in which ~~in the presence of a child, or on the~~
14 ~~premises where a child is found, or where a child resides, a controlled~~
15 ~~substance, as defined in section 18-18-102 (5), C.R.S., is manufactured~~
16 ~~or attempted to be manufactured;~~ SUBSTANCE USE OR SUBSTANCE
17 EXPOSURE THREATENS OR RESULTS IN HARM TO THE CHILD'S HEALTH OR
18 WELFARE UNDER ANY OF THE FOLLOWING CIRCUMSTANCES:

19 (A) BEHAVIOR INDICATING IMPAIRMENT OF A PERSON THAT
20 THREATENS OR RESULTS IN HARM TO THE CHILD. FOR PURPOSES OF THIS
21 SUB-SUBPARAGRAPH (A), A "PERSON" INCLUDES A PARENT, STEPPARENT,
22 GUARDIAN, LEGAL CUSTODIAN, RELATIVE, SPOUSAL EQUIVALENT, OR ANY
23 OTHER PERSON WHO RESIDES IN THE CHILD'S HOME OR WHO IS REGULARLY
24 IN THE CHILD'S HOME AND HAS SOLE AUTHORITY OVER OR SOLE
25 RESPONSIBILITY FOR THE CARE OF THE CHILD.

26 (B) THE KNOWING, RECKLESS, OR NEGLIGENT EXPOSURE TO OR
27 INGESTION OF ANY LEGAL OR ILLEGAL SUBSTANCE BY A CHILD THAT
28 THREATENS OR RESULTS IN HARM TO THE CHILD, UNLESS SUCH EXPOSURE
29 OR INGESTION IS THE RESULT OF THE CHILD'S LAWFUL INTAKE OF SUCH
30 SUBSTANCE; OR

31 (C) THE MANUFACTURE, DISTRIBUTION, PRODUCTION, OR
32 CULTIVATION PRACTICES OF A LEGAL OR ILLEGAL SUBSTANCE THAT
33 CREATES AN ENVIRONMENT THAT THREATENS OR RESULTS IN HARM TO
34 THE CHILD.

35 (VII) (A) Any case in which a child tests positive at birth for
36 ~~either a schedule I controlled substance, as defined in section 18-18-203,~~
37 ~~C.R.S., or a schedule II controlled substance, as defined in section~~
38 ~~18-18-204, C.R.S.~~ AN EXPOSURE TO ALCOHOL OR FOR A CONTROLLED
39 SUBSTANCE, AS DEFINED IN SECTION 18-18-102, C.R.S., unless the child
40 tests positive ~~for a schedule II controlled substance~~ as a result of the

1 mother's lawful intake of such substance as prescribed OR RECOMMENDED
2 BY A LICENSED HEALTH CARE PROVIDER WHO IS AWARE OF THE
3 PREGNANCY AND THE USE OF SUCH SUBSTANCE, AND MONITORED BY THE
4 SAME OR ANOTHER LICENSED HEALTH CARE PROVIDER WHO IS AWARE OF
5 THE PREGNANCY AND THE USE OF SUCH SUBSTANCE.

6 (B) A COUNTY DEPARTMENT SHALL NOT DETERMINE A CHILD TO
7 BE ABUSED OR NEGLECTED BASED SOLELY ON THE CHILD TESTING POSITIVE
8 FOR A LEGAL SUBSTANCE UNDER COLORADO LAW AT BIRTH.

9 **SECTION 3.** In Colorado Revised Statutes, **add** 19-3-308.1 as
10 follows:

11 **19-3-308.1. Implementation of the definition of abuse as it**
12 **relates to use of or exposure to substances - rules - SMART report.**

13 (1) ON OR BEFORE JULY 1, 2017, THE STATE DEPARTMENT SHALL
14 PROMULGATE AND ADOPT RULES TO IMPROVE THE CONSISTENT
15 IMPLEMENTATION OF THE DEFINITION OF ABUSE SET FORTH IN SECTION
16 19-1-103 (1) (a) (VI) AND 19-1-103 (1) (a) (VII) AS IT RELATES TO THE
17 USE OF OR EXPOSURE TO SUBSTANCES. THE RULES MUST ADDRESS, AT A
18 MINIMUM, ANY PROCEDURES A COUNTY DEPARTMENT MUST FOLLOW UPON
19 RECEIVING A REPORT THAT AN INFANT HAS TESTED POSITIVE FOR A
20 SUBSTANCE AT BIRTH.

21 (2) THE STATE DEPARTMENT SHALL COLLECT DATA ON THE USE OF
22 THE MODIFIED DEFINITION OF "CHILD ABUSE OR NEGLECT" IN SECTION
23 19-1-103 (1) (a) AS CREATED IN HOUSE BILL 16-1385, AS WELL AS THE
24 USE OF THE GUIDELINES FOR THE IMPLEMENTATION OF THAT DEFINITION
25 ESTABLISHED THROUGH RULES PROMULGATED PURSUANT TO SUBSECTION
26 (1) OF THIS SECTION. THE STATE DEPARTMENT SHALL INCLUDE SUCH DATA
27 AS PART OF ITS "STATE MEASUREMENT FOR ACCOUNTABLE, RESPONSIVE,
28 AND TRANSPARENT (SMART) GOVERNMENT ACT" HEARING REQUIRED BY
29 SECTION 2-7-203, C.R.S. AT A MINIMUM, THE STATE DEPARTMENT SHALL
30 COLLECT AND REPORT DATA ON THE DISPOSITION OF CHILD WELFARE
31 ASSESSMENTS RELATED TO THE MODIFIED DEFINITION OF "CHILD ABUSE OR
32 NEGLECT" AS IT RELATES TO SUBSTANCES AND CORRELATED WITH
33 ECONOMIC STATUS, RACE, AND ZIP CODE. THE FOLLOWING REPORTS MUST
34 INCLUDE DATA AS FOLLOWS:

35 (a) THE JANUARY 2017 REPORT MUST INCLUDE DATA FROM JULY
36 1, 2016, THROUGH DECEMBER 31, 2016;

37 (b) THE JANUARY 2018 REPORT MUST INCLUDE DATA FROM
38 JANUARY 1, 2017, THROUGH JULY 1, 2017, OR SUCH DATE AS THE RULES
39 PROMULGATED PURSUANT TO SUBSECTION (1) OF THIS SECTION TAKE
40 EFFECT, AND A SEPARATE COMPARISON DATA SET FROM THE DATE THE

1 RULES TAKE EFFECT THROUGH DECEMBER 31, 2017; AND
2 (c) THE JANUARY 2019 REPORT MUST INCLUDE DATA FROM
3 JANUARY 1, 2018, THROUGH DECEMBER 31, 2018. THE JANUARY 2019
4 REPORT MUST PROVIDE SEGREGATED DATA GATHERED FOR ALL THREE
5 TIME PERIODS TO ALLOW FOR A COMPARISON OF THE EFFECT BEFORE THE
6 CHANGE IN THE DEFINITION, AFTER THE CHANGE IN THE DEFINITION BUT
7 BEFORE THE RULES WERE IMPLEMENTED, AND AFTER THE PROMULGATION
8 OF RULES REGARDING THE IMPLEMENTATION OF THE MODIFIED DEFINITION.
9 **SECTION 4. Safety clause.** The general assembly hereby finds,
10 determines, and declares that this act is necessary for the immediate
11 preservation of the public peace, health, and safety."

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