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Seventy-fourth General Assembly
STATE OF COLORADO

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BILL 3

LLS NO. 24-0344.02 Conrad Imel x2313

INTERIM COMMITTEE BILL

Colorado's Child Welfare System Interim Study Committee

BILL TOPIC: Keeping Families Together Act

A BILL FOR AN ACT

101 **CONCERNING MEASURES RELATING TO REMOVING A CHILD FROM THE**
102 **CHILD'S HOME, AND, IN CONNECTION THEREWITH, CLARIFYING**
103 **WHEN A CHILD IS NEGLECTED OR DEPENDENT AND REGULATING**
104 **DRUG AND ALCOHOL TESTING OF PREGNANT AND POSTPARTUM**
105 **PERSONS AND NEWBORN CHILDREN.**

Bill Summary

(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at <http://leg.colorado.gov/>.)

Colorado's Child Welfare System Interim Study Committee.
Under existing law, a child is neglected or dependent if, among other

*Capital letters or bold & italic numbers indicate new material to be added to existing law.
Dashes through the words indicate deletions from existing law.*

criteria, the child's environment is injurious to the child's health or if the child's parent, guardian, or legal custodian (legal guardian) fails or refuses to provide the child with proper or necessary subsistence, education, medical care, or other care. The bill amends these criteria to state that in those circumstances, a child is neglected or dependent if:

- The child's environment is injurious to the child's health and the legal guardian has the power to change the child's environment but fails to do so; and
- The child's legal guardian fails or refuses to provide the child with proper or necessary subsistence, education, medical care, or other care and the failure or refusal presents a substantial risk of harm to the child's health or welfare.

The bill requires a forensic consultant working on a county department of human or social services (county department) investigation or assessment of intrafamilial abuse or neglect to identify him- or herself as a forensic consultant when the consultant has direct contact with a child or a child's family. The bill requires the county department to inform the subject of an investigation of a forensic consultant's opinion and provide the subject the opportunity to submit a second opinion to the county department.

The bill sets forth court procedures and standards for a court to remove a child from the child's home, including the findings a court must make to order removal.

The bill prohibits a licensed health-care professional from performing a drug, marijuana, or alcohol test on a person who is pregnant or up to one year postpartum or on a newborn child without consent, except in emergency situations involving a newborn child or as otherwise required by law. The bill permits a licensed health-care professional or mental health professional to perform a drug, marijuana, or alcohol screen on a pregnant or postpartum person only if the person consents and other conditions are met, except as otherwise required by law.

1 *Be it enacted by the General Assembly of the State of Colorado:*

2 **SECTION 1. Short title.** The short title of this act is the
3 "Keeping Families Together Act".

4 **SECTION 2. Legislative declaration.** (1) The general assembly
5 finds and declares that:

6 (a) Children and families are better served when the state provides
7 support to allow children to be cared for by their loved ones and in their

1 communities, and that decades of research shows that Black, Hispanic,
2 and Indigenous children are still disproportionately removed from their
3 families and communities despite reform efforts;

4 (b) Black families are subjected to invasive testing more
5 frequently than White families, including prenatal and postnatal drug
6 testing, skeletal surveys, and other medical examinations used to diagnose
7 child abuse or neglect, despite evidence that Black parents are no more
8 likely than White parents to test positive for substances while pregnant or
9 to physically abuse their children; and

10 (c) The biases that lead to increased testing continue throughout
11 the child welfare system, leading to increased removals and placement in
12 out-of-home care.

13 (2) Therefore, it is the general assembly's intent to safely reduce
14 the number of children in foster care and reduce racial bias in the system
15 by applying a standard criteria for determining whether to remove a child
16 from a parent when necessary to prevent imminent physical harm to the
17 child due to child abuse or neglect, including sexual abuse, sexual
18 exploitation, or a pattern of severe neglect.

19 **SECTION 3.** In Colorado Revised Statutes, 19-3-102, **amend**
20 (1)(c) and (1)(d) as follows:

21 **19-3-102. Neglected or dependent child.** (1) A child is
22 neglected or dependent if:

23 (c) The child's environment is injurious to ~~his or her~~ THE CHILD'S
24 welfare AND A PARENT, GUARDIAN, OR LEGAL CUSTODIAN HAS THE POWER
25 TO CHANGE THE CHILD'S ENVIRONMENT BUT FAILS TO DO SO WHEN A
26 REASONABLE AND PRUDENT PARENT WOULD ACT TO CHANGE THE CHILD'S
27 ENVIRONMENT;

1 (d) A parent, guardian, or legal custodian fails or refuses to
2 provide the child with proper or necessary subsistence, education, medical
3 care, or any other care necessary for ~~his or her~~ THE CHILD'S health,
4 guidance, or well-being AND THE PARENT'S, GUARDIAN'S, OR LEGAL
5 CUSTODIAN'S FAILURE OR REFUSAL PRESENTS A SUBSTANTIAL RISK OF
6 HARM TO THE CHILD'S HEALTH OR WELFARE;

7 **SECTION 4.** In Colorado Revised Statutes, 19-1-103, **add** (65.5)
8 as follows:

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

11 (65.5) "FORENSIC CONSULTANT" MEANS A MEDICALLY TRAINED
12 PROFESSIONAL WHO CONDUCTS A MEDICAL EXAMINATION, PSYCHOSOCIAL
13 EVALUATION, MEDICAL CASE REVIEW, SPECIALTY EVALUATION, OR OTHER
14 EVALUATION SERVICE FOR THE PURPOSE OF OR IN ANTICIPATION OF
15 PROVIDING THE STATE DEPARTMENT, A COUNTY DEPARTMENT, A LAW
16 ENFORCEMENT AGENCY, OR THE COURT WITH EXPERT ADVICE,
17 RECOMMENDATIONS, OR TESTIMONY.

18 **SECTION 5.** In Colorado Revised Statutes, 19-3-308, **add** (4.7)
19 as follows:

20 **19-3-308. Action upon report of intrafamilial, institutional, or**
21 **third-party abuse - investigations - child protection team - rules -**
22 **report.** (4.7) WHEN A COUNTY DEPARTMENT CONDUCTING AN
23 INVESTIGATION OR ASSESSMENT OF INTRAFAMILIAL ABUSE OR NEGLECT
24 PURSUANT TO THIS SECTION CONSULTS WITH AND RELIES UPON A FORENSIC
25 CONSULTANT TO DETERMINE WHETHER THE ABUSE OR NEGLECT HAS
26 OCCURRED:

27 (a) THE FORENSIC CONSULTANT ASSESSING OR INVESTIGATING IN

1 WHOLE OR IN PART THE ISSUE OF WHETHER INTRAFAMILIAL ABUSE OR
2 NEGLECT HAS OCCURRED SHALL AS A FORENSIC CONSULTANT WHO IS
3 ASSESSING ABUSE OR NEGLECT, INSTEAD OF AS A MEMBER OF THE CHILD'S
4 TREATMENT TEAM, WHENEVER THE FORENSIC CONSULTANT HAS DIRECT
5 CONTACT WITH THE CHILD OR THE CHILD'S FAMILY. THE FORENSIC
6 CONSULTANT SHALL ALSO PROVIDE THE CHILD'S PARENT, GUARDIAN, OR
7 LEGAL CUSTODIAN WITH ACCURATE INFORMATION ABOUT ANY MEDICAL
8 SPECIALTIES FOR WHICH THE FORENSIC CONSULTANT IS CERTIFIED OR
9 LICENSED.

10 (b) THE COUNTY DEPARTMENT CONDUCTING AN INVESTIGATION OF
11 KNOWN OR SUSPECTED INTRAFAMILIAL ABUSE OR NEGLECT SHALL INFORM
12 THE SUBJECT OF AN INVESTIGATION OF ANY MEDICAL ASSESSMENT OR
13 INVESTIGATIVE OPINION THAT THE COUNTY DEPARTMENT HAS OBTAINED
14 FROM A FORENSIC CONSULTANT, AND THE COUNTY DEPARTMENT SHALL
15 PROVIDE THE SUBJECT A REASONABLE OPPORTUNITY TO SUBMIT A SECOND
16 MEDICAL OPINION TO THE COUNTY DEPARTMENT.

17 **SECTION 6.** In Colorado Revised Statutes, 19-3-403, **amend**
18 (3.5) as follows:

19 **19-3-403. Temporary custody - hearing - time limits -**
20 **restriction - rules.** (3.5) (a) When temporary custody is placed with the
21 county department of human or social services pursuant to this section or
22 section 19-3-405 or when an emergency protection order is entered
23 pursuant to section 19-3-405, the court shall hold a hearing within
24 seventy-two hours after placement, excluding Saturdays, Sundays, and
25 court holidays, to determine further custody of the child or whether the
26 emergency protection order should continue. ~~Such a~~ THE hearing need not
27 be held if a hearing has previously been held pursuant to subsection (2)

1 of this section.

2 (b) NO LATER THAN ONE HOUR PRIOR TO THE COMMENCEMENT OF
3 A HEARING HELD PURSUANT TO THIS SUBSECTION (3.5), IF A PETITIONER IS
4 SEEKING CONTINUED CUSTODY OR REMOVAL OF THE CHILD FROM A
5 PARENT, GUARDIAN, OR LEGAL CUSTODIAN, THE PETITIONER SHALL FILE A
6 WRITTEN MOTION CONTAINING A CLEAR AND SPECIFIC STATEMENT OF THE
7 HARM THAT WILL OCCUR IF THE CHILD REMAINS IN THE CARE OF THE
8 PARENT, GUARDIAN, OR LEGAL CUSTODIAN, AND THE FACTS THAT SUPPORT
9 THAT CONCLUSION; EXCEPT THAT THE MOTION MAY BE FILED LATER IF THE
10 COURT FINDS GOOD CAUSE FOR GRANTING AN EXTENSION. THE MOTION
11 MUST SPECIFY WHY THE RISK OF ALLOWING THE CHILD TO REMAIN AT
12 HOME SUBSTANTIALLY OUTWEIGHS THE HARM OF REMOVING THE CHILD.

13 (c) A CHILD'S ATTORNEY, PARENT, GUARDIAN, OR LEGAL
14 CUSTODIAN WHO, FOR GOOD CAUSE, IS UNABLE TO ATTEND OR
15 ADEQUATELY PREPARE FOR THE HEARING CONDUCTED PURSUANT TO THIS
16 SUBSECTION (3.5) MAY REQUEST THAT THE INITIAL HEARING BE
17 CONTINUED OR THAT A SUBSEQUENT HEARING BE SCHEDULED. UPON THE
18 REQUEST, THE COURT SHALL SCHEDULE THE HEARING WITHIN
19 SEVENTY-TWO HOURS AFTER THE REQUEST, EXCLUDING SATURDAYS,
20 SUNDAYS, AND COURT HOLIDAYS.

21 (d) IN MAKING A DETERMINATION OF FURTHER CUSTODY OR
22 WHETHER THE EMERGENCY PROTECTION ORDER SHOULD CONTINUE, THE
23 COURT SHALL WEIGH AND EVALUATE THE HARM TO THE CHILD THAT WILL
24 RESULT FROM REMOVAL AND DETERMINE IF ALLOWING THE CHILD TO
25 REMAIN IN THE HOME SUBSTANTIALLY OUTWEIGHS THE HARM OF
26 REMOVAL. A COURT SHALL SPECIFICALLY CONSIDER:

27 (I) WHETHER THE ISSUANCE OF A TEMPORARY PROTECTION ORDER

1 DIRECTING THE REMOVAL OF A PERSON OR PERSONS FROM THE CHILD'S
2 RESIDENCE WOULD PREVENT THE NEED FOR REMOVAL OF THE CHILD; AND

3 (II) WHETHER PARTICIPATION BY THE PARENTS, GUARDIANS, OR
4 LEGAL CUSTODIANS IN ANY PREVENTION SERVICES WOULD PREVENT OR
5 ELIMINATE THE NEED FOR REMOVAL AND, IF SO, THE COURT SHALL ASK
6 THE PARENT WHETHER THEY ARE WILLING TO PARTICIPATE IN PREVENTION
7 SERVICES. THE COURT SHALL NOT ORDER A PARENT TO PARTICIPATE IN
8 PREVENTION SERVICES IF THE PARENT REFUSES.

9 (e) THE COURT SHALL RELEASE A CHILD ALLEGED TO BE
10 NEGLECTED OR DEPENDENT TO THE CARE, CUSTODY, AND CONTROL OF THE
11 CHILD'S PARENT, GUARDIAN, OR LEGAL CUSTODIAN UNLESS THE COURT
12 FINDS THERE IS REASONABLE CAUSE TO BELIEVE THAT:

13 (I) AFTER CONSIDERATION OF THE SPECIFIC SERVICES THAT HAVE
14 BEEN PROVIDED, REASONABLE EFFORTS HAVE BEEN MADE TO PREVENT OR
15 ELIMINATE THE NEED FOR REMOVAL OF THE CHILD FROM THE CHILD'S
16 HOME AND TO MAKE IT POSSIBLE FOR THE CHILD TO RETURN HOME, AND
17 THE REASONABLE EFFORTS HAVE FAILED TO PREVENT OR ELIMINATE THE
18 NEED TO REMOVE THE CHILD;

19 (II) IT IS CONTRARY TO THE WELFARE OF THE CHILD TO BE
20 RETURNED HOME;

21 (III) AFTER CONSIDERING THE PARTICULAR CIRCUMSTANCES OF
22 THE CHILD, ANY IMMINENT PHYSICAL HARM TO THE CHILD OUTWEIGHS THE
23 HARM THE CHILD WILL EXPERIENCE AS A RESULT OF REMOVAL. IN MAKING
24 A DETERMINATION PURSUANT TO THIS SUBSECTION (3.5)(e)(III), THE
25 COURT SHALL CONSIDER THE FOLLOWING:

26 (A) THE EMOTIONAL TRAUMA THE CHILD IS LIKELY TO EXPERIENCE
27 IF SEPARATED FROM THE FAMILY;

1 (B) THE CHILD'S RELATIONSHIPS WITH OTHER MEMBERS OF THE
2 HOUSEHOLD, INCLUDING SIBLINGS, AND HOW THOSE RELATIONSHIPS MAY
3 BE IMPACTED BY REMOVING THE CHILD FROM THE HOME;

4 (C) THE CHILD'S SCHOOL AND SOCIAL RELATIONSHIPS THAT MAY
5 BE DISRUPTED WITH A PLACEMENT OUT OF THE NEIGHBORHOOD;

6 (D) THE IMPACT THE REMOVAL WOULD HAVE ON SERVICES THE
7 CHILD IS RECEIVING AND ON EXTRACURRICULAR ACTIVITIES THAT BENEFIT
8 THE CHILD; AND

9 (E) IF THE CHILD IS CURRENTLY BREAST-FEEDING OR IS A
10 NEWBORN CHILD, THE CHILD'S CONTINUED ACCESS TO BREAST MILK.

11 (IV) IF THE COURT DETERMINES THAT PARTICIPATION BY THE
12 CHILD'S PARENT, GUARDIAN, OR LEGAL CUSTODIAN IN PREVENTION
13 SERVICES WOULD PREVENT OR ELIMINATE THE NEED FOR REMOVAL, BUT
14 THE PARENT, GUARDIAN, OR LEGAL CUSTODIAN IS NOT WILLING TO
15 PARTICIPATE IN PREVENTION SERVICES; AND

16 (V) (A) THE CHILD DOES NOT HAVE A PARENT, GUARDIAN, OR
17 LEGAL CUSTODIAN TO PROVIDE SUPERVISION AND CARE FOR THE CHILD; OR

18 (B) REMOVAL OF THE CHILD IS NECESSARY TO PREVENT IMMINENT
19 PHYSICAL HARM DUE TO CHILD ABUSE OR NEGLECT. THE EVIDENCE MUST
20 SHOW A CAUSAL RELATIONSHIP BETWEEN THE PARTICULAR CONDITIONS IN
21 THE HOME AND IMMINENT PHYSICAL HARM TO THE CHILD. THE EXISTENCE
22 OF COMMUNITY OR FAMILY POVERTY, ISOLATION, SINGLE PARENTHOOD,
23 AGE OF THE PARENT, CROWDED OR INADEQUATE HOUSING, SUBSTANCE
24 ABUSE, PRENATAL DRUG OR ALCOHOL EXPOSURE, MENTAL ILLNESS,
25 DISABILITY OR SPECIAL NEEDS OF THE PARENT OR CHILD, OR
26 NONCOMFORMING SOCIAL BEHAVIOR DOES NOT BY ITSELF CONSTITUTE
27 IMMINENT PHYSICAL HARM.

1 (f) THE COURT SHALL INCLUDE IN AN ORDER THAT REMOVES A
2 CHILD FROM THE CHILD'S HOME A FINDING THAT:

3 (I) CONTINUED RESIDENCE OF THE CHILD WITH THE PARENT IS
4 CONTRARY TO THE WELFARE OF THE CHILD;

5 (II) AN OUT-OF-HOME PLACEMENT IS IN THE BEST INTERESTS OF
6 THE CHILD; AND

7 (III) THE RISK OF ALLOWING THE CHILD TO REMAIN IN THE HOME
8 SUBSTANTIALLY OUTWEIGHS THE HARM OF REMOVAL.

9 **SECTION 7.** In Colorado Revised Statutes, 19-3-405, **add** (2)(c),
10 (5), and (6) as follows:

11 **19-3-405. Temporary protective custody.** (2) (c) WHEN
12 REQUESTING A TEMPORARY PROTECTIVE CUSTODY ORDER, THE COUNTY
13 DEPARTMENT SHALL PROVIDE THE COURT WITH THE FOLLOWING
14 INFORMATION:

15 (I) WHETHER PLACEMENT WITH A RELATIVE OR A KINSHIP
16 PLACEMENT IS AVAILABLE TO MEET THE EMOTIONAL, PHYSICAL, AND
17 MENTAL HEALTH NEEDS OF THE CHILD;

18 (II) WHERE THE PROPOSED PLACEMENT IS LOCATED IN RELATION
19 TO THE CHILD'S HOME;

20 (III) WHETHER THE PROPOSED PLACEMENT CAN ACCOMMODATE
21 THE PROPOSED FAMILY TIME SCHEDULE;

22 (IV) IF THE PETITION CONCERNS A CHILD WHO HAS A SIBLING WHO
23 IS ALSO BEING PLACED, WHETHER THE SIBLINGS CAN BE PLACED
24 TOGETHER;

25 (V) WHETHER THE CHILD WILL BE ABLE TO OBSERVE RELIGIOUS OR
26 CULTURAL PRACTICES IMPORTANT TO THE CHILD; AND

27 (VI) WHETHER THE PROPOSED PLACEMENT IS ABLE TO

1 ACCOMMODATE ANY SPECIAL NEEDS THE CHILD MAY HAVE.

2 (5) IN DETERMINING WHETHER TO ISSUE AN ORDER THAT REQUIRES
3 A CHILD TO BE REMOVED FROM THE CHILD'S HOME, THE COURT SHALL
4 WEIGH AND EVALUATE THE HARM TO THE CHILD THAT WILL RESULT FROM
5 REMOVAL AND DETERMINE IF ALLOWING THE CHILD TO REMAIN IN THE
6 HOME SUBSTANTIALLY OUTWEIGHS THE HARM OF REMOVAL. A COURT
7 SHALL SPECIFICALLY CONSIDER:

8 (a) WHETHER THE ISSUANCE OF AN EMERGENCY PROTECTION
9 ORDER WOULD PREVENT THE NEED TO REMOVE THE CHILD FROM THE
10 CHILD'S HOME; AND

11 (b) WHETHER PARTICIPATION BY THE PARENTS, GUARDIANS, OR
12 LEGAL CUSTODIANS IN ANY PREVENTION SERVICES WOULD PREVENT OR
13 ELIMINATE THE NEED TO REMOVE A CHILD. IF SO, THE COURT SHALL ASK
14 THE PARENT WHETHER THE PARENT IS WILLING TO PARTICIPATE IN
15 PREVENTION SERVICES. THE COURT SHALL NOT ORDER A PARENT TO
16 PARTICIPATE IN PREVENTION SERVICES IF THE PARENT REFUSES.

17 (6) AN ORDER TO REMOVE A CHILD FROM THE CHILD'S HOME MUST
18 INCLUDE A FINDING THAT:

19 (a) THE CHILD'S CONTINUED RESIDENCE WITH THE PARENT IS
20 CONTRARY TO THE WELFARE OF THE CHILD;

21 (b) AN OUT-OF-HOME PLACEMENT IS IN THE BEST INTERESTS OF
22 THE CHILD; AND

23 (c) THE RISK OF ALLOWING THE CHILD TO REMAIN IN THE HOME
24 SUBSTANTIALLY OUTWEIGHS THE HARM OF REMOVAL.

25 **SECTION 8.** In Colorado Revised Statutes, **add** 12-30-123 as
26 follows:

27 **12-30-123. Informed consent for drug testing required -**

1 **pregnant and postpartum persons - newborn children - definitions.**

2 (1) AS USED IN THIS SECTION, UNLESS THE CONTEXT OTHERWISE
3 REQUIRES:

4 (a) "DRUG" MEANS A CONTROLLED SUBSTANCE AS DEFINED IN
5 SECTION 18-18-102.

6 (b) "DRUG, MARIJUANA, OR ALCOHOL SCREEN" MEANS THE USE OF
7 A VALIDATED VERBAL OR WRITTEN TOOL OR QUESTIONNAIRE BY A
8 LICENSED HEALTH-CARE PROFESSIONAL TO DETERMINE THE USE OF DRUGS,
9 MARIJUANA, OR ALCOHOL.

10 (c) "DRUG, MARIJUANA, OR ALCOHOL TEST" MEANS A TEST USING
11 A BIOLOGICAL SAMPLE TO DETERMINE THE PRESENCE OF DRUGS,
12 MARIJUANA, OR ALCOHOL.

13 (d) "LICENSED HEALTH-CARE PROFESSIONAL" MEANS ANY
14 HEALTH-CARE PROFESSIONAL WHO IS REGISTERED, CERTIFIED, OR
15 LICENSED PURSUANT TO TITLE 12, OR WHO PROVIDES SERVICES UNDER THE
16 SUPERVISION OF A HEALTH-CARE PROFESSIONAL WHO IS REGISTERED,
17 CERTIFIED, OR LICENSED PURSUANT TO TITLE 12, AND WHO PROVIDES
18 HEALTH-CARE SERVICES IN A HEALTH-CARE FACILITY.

19 (e) "MARIJUANA" HAS THE SAME MEANING AS SET FORTH IN
20 SECTION 18-18-102 AND INCLUDES MARIJUANA CONCENTRATE AS DEFINED
21 IN SECTION 18-18-102.

22 (f) "MENTAL HEALTH PROFESSIONAL" MEANS A PSYCHOLOGIST,
23 SOCIAL WORKER, MARRIAGE AND FAMILY THERAPIST, LICENSED
24 PROFESSIONAL COUNSELOR, UNLICENSED PSYCHOTHERAPIST, OR
25 ADDICTION COUNSELOR LICENSED, REGISTERED, OR CERTIFIED UNDER
26 ARTICLE 245 OF THIS TITLE 12.

27 (g) "NEWBORN CHILD" HAS THE SAME MEANING AS SET FORTH IN

1 SECTION 19-1-103.

2 (h) "PREGNANT OR POSTPARTUM PERSON" MEANS A PERSON WHO
3 IS PREGNANT OR UP TO ONE YEAR POSTPARTUM.

4 (2) A LICENSED HEALTH-CARE PROFESSIONAL SHALL NOT:

5 (a) PERFORM A DRUG, MARIJUANA, OR ALCOHOL TEST ON A
6 PREGNANT OR POSTPARTUM PERSON UNLESS:

7 (I) THE PREGNANT OR POSTPARTUM PERSON GIVES PRIOR WRITTEN
8 AND ORAL INFORMED CONSENT SPECIFIC TO THE DRUG, MARIJUANA, OR
9 ALCOHOL TEST; AND

10 (II) THE PERFORMANCE OF THE DRUG, MARIJUANA, OR ALCOHOL
11 TEST IS NECESSARY TO THE MEDICAL CARE BEING PROVIDED TO THE
12 PREGNANT OR POSTPARTUM PERSON; AND

13 (b) PERFORM A DRUG, MARIJUANA, OR ALCOHOL TEST ON A
14 NEWBORN CHILD UNLESS:

15 (I) THE PERSON AUTHORIZED TO CONSENT FOR THE NEWBORN
16 CHILD GIVES PRIOR WRITTEN AND ORAL INFORMED CONSENT SPECIFIC TO
17 THE DRUG, MARIJUANA, OR ALCOHOL TEST; AND

18 (II) THE PERFORMANCE OF THE DRUG, MARIJUANA, OR ALCOHOL
19 TEST IS NECESSARY TO THE MEDICAL CARE BEING PROVIDED TO THE
20 NEWBORN CHILD.

21 (3) A LICENSED HEALTH-CARE PROFESSIONAL OR MENTAL HEALTH
22 PROFESSIONAL MAY PERFORM A DRUG, MARIJUANA, OR ALCOHOL SCREEN
23 ON A PREGNANT OR POSTPARTUM PERSON IF:

24 (a) THE PREGNANT OR POSTPARTUM PERSON GIVES PRIOR WRITTEN
25 AND ORAL INFORMED CONSENT;

26 (b) THE PURPOSE OF THE SCREENING IS TO PROVIDE INFORMATION
27 ABOUT WHAT SERVICES, SUPPORT, OR TREATMENT FOR DRUG, MARIJUANA,

1 OR ALCOHOL USE ARE AVAILABLE TO THE PREGNANT OR POSTPARTUM
2 PERSON AND TO DEVELOP A PLAN OF SAFE CARE;

3 (c) THE HEALTH-CARE OR MENTAL HEALTH PROFESSIONAL
4 UNDERSTANDS THAT THE PROFESSIONAL IS NOT PERMITTED TO MAKE A
5 REPORT TO CHILD WELFARE REGARDING A PREGNANT OR POSTPARTUM
6 PERSON BASED ON THE RESULTS OF THE TEST OR SCREEN; AND

7 (d) THE PURPOSE OF THE SCREEN IS NOT TO OBTAIN INFORMATION
8 TO PROVIDE AS PART OF A MANDATED REPORT TO A CHILD WELFARE
9 HOTLINE.

10 (4) THE WRITTEN OR ORAL INFORMED CONSENT TO A DRUG,
11 MARIJUANA, OR ALCOHOL TEST OR SCREEN REQUIRED PURSUANT TO
12 SUBSECTION (2) OR (3) OF THIS SECTION MUST BE GIVEN PRIOR TO OR AT
13 THE TIME OF THE TESTING OR SCREENING, IN LANGUAGE
14 UNDERSTANDABLE TO THE PERSON GIVING CONSENT, UNDER
15 CIRCUMSTANCES THAT MINIMIZE THE POSSIBILITY OF COERCION OR UNDUE
16 INFLUENCE, AND THAT PROVIDE THE PERSON SUFFICIENT OPPORTUNITY TO
17 CONSIDER WHETHER OR NOT TO CONSENT TO THE DRUG, MARIJUANA, OR
18 ALCOHOL TEST OR SCREEN. WRITTEN CONSENT MUST BE DATED, SIGNED
19 BY THE PERSON GIVING CONSENT, AND INCLUDE THE FOLLOWING:

20 (a) A STATEMENT EXPLAINING THAT CONSENTING TO A DRUG,
21 MARIJUANA, OR ALCOHOL TEST OR SCREEN IS VOLUNTARY AND REQUIRES
22 WRITTEN AND ORAL INFORMED CONSENT, EXCEPT WHEN AN EMERGENCY
23 AS DESCRIBED IN SUBSECTION (5) OF THIS SECTION EXISTS;

24 (b) A STATEMENT THAT TESTING OR SCREENING POSITIVE FOR
25 DRUGS, MARIJUANA, OR ALCOHOL COULD HAVE LEGAL CONSEQUENCES,
26 INCLUDING A REPORT TO A LOCAL CHILD PROTECTIVE SERVICES AGENCY,
27 AND A STATEMENT THAT THE PERSON MAY CONSULT WITH LEGAL COUNSEL

1 PRIOR TO OR AFTER CONSENTING TO A DRUG, MARIJUANA, OR ALCOHOL
2 TEST OR SCREEN;

3 (c) A STATEMENT EXPLAINING THE EXTENT OF CONFIDENTIALITY
4 OF THE DRUG, MARIJUANA, OR ALCOHOL TEST OR SCREEN RESULTS;

5 (d) A STATEMENT OF THE MEDICAL PURPOSE OF THE DRUG,
6 MARIJUANA, OR ALCOHOL TEST OR SCREEN; AND

7 (e) A GENERAL DESCRIPTION OF THE DRUG, MARIJUANA, OR
8 ALCOHOL TEST OR SCREEN AND ANY AVAILABLE ALTERNATIVES TO A TEST
9 OR SCREEN.

10 (5)(a) A LICENSED HEALTH-CARE PROFESSIONAL MAY PERFORM A
11 DRUG, MARIJUANA, OR ALCOHOL TEST ON A NEWBORN CHILD WITHOUT
12 CONSENT OF THE PERSON AUTHORIZED TO CONSENT FOR THE NEWBORN
13 CHILD WHEN, IN THE LICENSED HEALTH-CARE PROFESSIONAL'S JUDGMENT,
14 AN EMERGENCY EXISTS, THE PATIENT IS IN IMMEDIATE NEED OF MEDICAL
15 ATTENTION, REASONABLE ATTEMPTS TO OBTAIN CONSENT FROM THE
16 PERSON AUTHORIZED TO CONSENT FOR THE NEWBORN CHILD HAVE BEEN
17 UNSUCCESSFUL, AND THE RESULTS OF THE DRUG, MARIJUANA, OR
18 ALCOHOL TEST ARE MEDICALLY NECESSARY IN ORDER TO PROVIDE
19 EMERGENCY MEDICAL TREATMENT.

20 (b) IF A DRUG, MARIJUANA, OR ALCOHOL TEST IS PERFORMED ON
21 A PATIENT IN AN EMERGENCY PURSUANT TO SUBSECTION (5)(a) OF THIS
22 SECTION:

23 (I) THE LICENSED HEALTH-CARE PROFESSIONAL WHO PERFORMS
24 THE DRUG, MARIJUANA, OR ALCOHOL TEST SHALL INCLUDE IN THE
25 PATIENT'S MEDICAL RECORD A DESCRIPTION OF THE EMERGENCY THAT
26 NECESSITATED THE DRUG, MARIJUANA, OR ALCOHOL TEST WITHOUT
27 CONSENT; AND

1 (II) A LICENSED HEALTH-CARE PROFESSIONAL SHALL DISCUSS THE
2 DRUG, MARIJUANA, OR ALCOHOL TEST RESULTS WITH THE PERSON
3 AUTHORIZED TO CONSENT FOR THE NEWBORN CHILD IN LANGUAGE
4 UNDERSTANDABLE TO THE PERSON, AND THE LICENSED HEALTH-CARE
5 PROFESSIONAL SHALL PROVIDE THE PERSON WITH WRITTEN TEST RESULTS
6 THAT INCLUDE THE FOLLOWING:

7 (A) A STATEMENT THAT TESTING POSITIVE FOR DRUGS,
8 MARIJUANA, OR ALCOHOL COULD HAVE LEGAL CONSEQUENCES, INCLUDING
9 A POTENTIAL REPORT TO A LOCAL CHILD PROTECTIVE SERVICES AGENCY,
10 AND THAT THE PERSON AUTHORIZED TO CONSENT FOR THE NEWBORN
11 CHILD MAY CONSULT WITH LEGAL COUNSEL; AND

12 (B) A STATEMENT EXPLAINING THE EXTENT OF CONFIDENTIALITY
13 OF THE DRUG, MARIJUANA, OR ALCOHOL TEST RESULTS.

14 (c) NOTHING IN THIS SECTION PROHIBITS A LICENSED HEALTH-CARE
15 PROFESSIONAL FROM PERFORMING A DRUG, MARIJUANA, OR ALCOHOL TEST
16 OR SCREEN ON A PREGNANT OR POSTPARTUM PERSON OR A NEWBORN
17 CHILD WITHOUT CONSENT OF THE PREGNANT OR POSTPARTUM PERSON OR
18 THE PERSON AUTHORIZED TO CONSENT FOR THE NEWBORN CHILD, AS
19 APPLICABLE, IF THE TEST OR SCREEN IS REQUIRED PURSUANT TO ANY
20 OTHER STATE OR FEDERAL LAW.

21 (6) A LICENSED HEALTH-CARE PROFESSIONAL SHALL NOT REFUSE
22 TO TREAT A PREGNANT OR POSTPARTUM PERSON OR A NEWBORN CHILD
23 BECAUSE THE PATIENT OR PERSON AUTHORIZED TO CONSENT FOR THE
24 NEWBORN CHILD REFUSES TO CONSENT TO A DRUG, MARIJUANA, OR
25 ALCOHOL TEST OR SCREEN.

26 (7) NOTHING IN THIS SECTION DIMINISHES ANY OTHER
27 REQUIREMENT TO OBTAIN INFORMED CONSENT FOR A DRUG, MARIJUANA,

1 OR ALCOHOL TEST OR SCREEN OR ANY OTHER PROCEDURE.

2 **SECTION 9. Act subject to petition - effective date.** This act
3 takes effect January 1, 2025; except that, if a referendum petition is filed
4 pursuant to section 1 (3) of article V of the state constitution against this
5 act or an item, section, or part of this act within the ninety-day period
6 after final adjournment of the general assembly, then the act, item,
7 section, or part will not take effect unless approved by the people at the
8 general election to be held in November 2024 and, in such case, will take
9 effect January 1, 2025, or on the date of the official declaration of the
10 vote thereon by the governor, whichever is later.