

# An Act

HOUSE BILL 12-1100

BY REPRESENTATIVE(S) Summers, Barker, Brown, Court, Fields, Fischer, Jones, Kagan, Kerr A., Kerr J., Labuda, Liston, Massey, Nikkel, Pabon, Pace, Ramirez, Ryden, Solano, Stephens, Todd, Vigil, Wilson, Young;

also SENATOR(S) Aguilar, Bacon, Boyd, Carroll, Foster, Giron, Guzman, Heath, Hudak, Johnston, Morse, Newell, Nicholson, Schwartz, Steadman, Tochtrop, Williams S.

CONCERNING THE ADMISSIBILITY IN CRIMINAL PROCEEDINGS OF THE RESULTS OF A PRENATAL SCREENING FOR ILLEGAL SUBSTANCES.

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

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

(a) Substance use during pregnancy is a widespread and concerning problem in the state of Colorado;

(b) Based on prevalence and population figures, among pregnant women 15 to 44 years of age, 4.4% reported current illicit drug use and 10.8% reported current alcohol use. In Colorado, an estimated 14.5% of pregnant women use alcohol during the third trimester of pregnancy. Across

substances, use rates are highest among pregnant women 15 to 17 years of age, with approximately 15% reporting illicit substance use, followed closely by women 18 to 25 years of age.

(c) Prenatal substance exposure can have a devastating impact on a developing fetus;

(d) For many women, pregnancy can be a time of increased motivation to address their addictions out of concern for their unborn child;

(e) Relatively few pregnant women with substance use issues, however, participate in treatment programs, despite the availability of services to help them quit using drugs and alcohol, often because of fear of criminal prosecution; and

(f) Members of the Substance Exposed Newborns Steering Committee of the State Methamphetamine Task Force, in collaboration with the Colorado Commission on Criminal and Juvenile Justice and the Colorado District Attorney's Council, studied the issue and developed recommendations to address the problem.

(2) The general assembly further finds and declares that in order to encourage pregnant women with substance use issues to seek important prenatal care and appropriate treatment, legislation is necessary to provide protection from criminal prosecution for pregnant women who are identified during prenatal care as having used substances.

**SECTION 2.** In Colorado Revised Statutes, **add** 13-25-136 as follows:

**13-25-136. Criminal actions - prenatal drug and alcohol screening - admissibility of evidence.** A COURT SHALL NOT ADMIT IN A CRIMINAL PROCEEDING INFORMATION RELATING TO SUBSTANCE USE NOT OTHERWISE REQUIRED TO BE REPORTED PURSUANT TO SECTION 19-3-304, C.R.S., OBTAINED AS PART OF A SCREENING OR TEST PERFORMED TO DETERMINE PREGNANCY OR TO PROVIDE PRENATAL CARE FOR A PREGNANT WOMAN. THIS SECTION SHALL NOT BE INTERPRETED TO PROHIBIT PROSECUTION OF ANY CLAIM OR ACTION RELATED TO SUCH SUBSTANCE USE BASED ON EVIDENCE OBTAINED THROUGH METHODS OTHER THAN THE SCREENING OR TESTING DESCRIBED IN THIS SECTION.

**SECTION 3. Safety clause.** The general assembly hereby finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health, and safety.

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Frank McNulty  
SPEAKER OF THE HOUSE  
OF REPRESENTATIVES

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Brandon C. Shaffer  
PRESIDENT OF  
THE SENATE

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Marilyn Eddins  
CHIEF CLERK OF THE HOUSE  
OF REPRESENTATIVES

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Cindi L. Markwell  
SECRETARY OF  
THE SENATE

APPROVED \_\_\_\_\_

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John W. Hickenlooper  
GOVERNOR OF THE STATE OF COLORADO