Keeping Police, Prosecutors [& Child Welfare Services] Out of Perinatal Care

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www.advocatesforpregnantwomen.org
Goals

• Understanding our role in the criminalization of pregnancy and how it fits into social determinants
• Reduce maternal and perinatal health disparities by reducing criminalization
• Truth about the Federal CAPTA requirements
• Truth about drug use & pregnancy
• Keep police, prosecutors and child welfare out of the womb!
NAPW’s Mission

• Securing the human and civil rights, health, and welfare of pregnant and parenting people and their families.
NAPW’s Work: Defending women against prosecution and other interventions related to pregnancy and parenting

- Pregnancy loss
- Allegations of drug use
- Abortion
- Other actions or inactions during pregnancy
- Birth
- Criminal and civil child abuse/neglect charges
CRIMINALIZATION AND PUNISHMENT

- Allegations of drug use
- Abortion
- Other conduct during pregnancy
- Pregnancy loss
- Child welfare proceedings
- Obestetric violence
- Murder
- Feticide
- Criminal child endangerment
- Abuse of a corpse
- “Unborn child abuse”
- Fetal assault
- Civil child abuse or child neglect
- Civil commitment/detention
ALABAMA - Chemical Endangerment of a Child Law
Take a Valium, Lose Your Kid, Go to Jail

In Alabama, anti-drug fervor and abortion politics have turned a medication into the country’s harshest weapon against pregnant women.

by Nina Hernandez  ProPublica
September 18, 2017

The Criminalization of Bad Mothers
Case Explores Rights of Fetus Versus Mother

Alicia Beltran, 28, was sent to a drug treatment center despite insisting she was not using drugs.

By ERIK ECKHOLM
Published: October 23, 2013 | 679 Comments

JACKSON, Wis. — Alicia Beltran cried with fear and disbelief when county sheriffs surrounded her home on July 18 and took her in handcuffs to a holding cell.
TENNESSEE - Fetal Assault Law
More organizations and international human rights bodies recognize that punitive responses to pregnant women violate well-established human rights laws and principles.
MISSISSIPPI - Prosecutions of Stillbirth & Drug Use as Child Neglect & Abuse

READ: Black Woman in Mississippi Charged With Second-Degree Murder After Stillbirth
Advocates fear this is the latest in a trend of women of color being criminalized for their pregnancy outcomes.

Miriam Zoila Pérez (@writers/miriam-zoila-p%03%4brea) | FEB 8, 2018 10:37AM EST
NEW YORK - Forced Caesarean Surgery
You can't cut open pregnant women because you disagree with their choices
Jessica Valenti
Why is this occurring?
We cannot add personhood to a fetus without subtracting the personhood of the pregnant woman.

If *Roe Goes - More Than Abortion is at Stake*

Women are already being arrested in relationship to their pregnancies and pregnancy outcomes, including abortions. NAPW has documented more than 1,200 arrests and our successful defense of many of these women is in part because *Roe* is still on the books. Opponents of abortion say they do not want women to be locked up, but it is clear that if the Supreme Court overturns *Roe v. Wade*, there will be more arrests and more women will be locked up.

*Forty Years Late: Roe vs. Wade*

- 87% of U.S. counties have no abortion provider. (Source: Kaiser Family Foundation)

- Over 1,200 documented arrests
Legislation

- Statutes, Regulations, Constitutional amendments
- Fetal personhood → paves the way for:
  - Abortion restrictions
  - New crimes, e.g. fetal assault/ feticide
  - Civil commitment and detention for drug/alcohol use
  - Increased neglect/abuse reporting requirements
  - Medical interventions
  - New political environment, new bolder proposals
• “Many recall that ‘crack babies,’ or babies born to mothers who used crack cocaine while pregnant, were at one time written off by many as a lost generation . . . It was later found that this was a gross exaggeration.”

• As the U.S. Sentencing Commission concluded, “[t]he negative effects of prenatal cocaine exposure are significantly less severe than previously believed” and those negative effects “do not differ from the effects of prenatal exposure to other drugs, both legal and illegal.”
PUBLIC HEALTH CONSENSUS

• “Drug enforcement policies that deter women from seeking prenatal care are contrary to the welfare of the mother and fetus. Incarceration and the threat of incarceration have proven to be ineffective in reducing the incidence of alcohol or drug abuse ... The use of the legal system to address perinatal alcohol and substance abuse is inappropriate.” American College of Obstetricians and Gynecologists Committee on Ethics, Committee Opinion 473, Substance Abuse Reporting and Pregnancy: The Role of the Obstetrician-Gynecologist (2011, reaffirmed 2014).

• “Seeking obstetric-gynecologic care should not expose a woman to criminal or civil penalties, such as incarceration, involuntary commitment, loss of custody of her children, or loss of housing. These approaches treat addiction as a moral failing. Addiction is a chronic relapsing biological and behavioral disorder with genetic components. The disease of substance addiction is subject to medical and behavioral management in the same fashion as hypertension and diabetes.” American College of Obstetricians and Gynecologists Committee on Ethics, Committee Opinion 473, Substance Abuse Reporting and Pregnancy: The Role of the Obstetrician-Gynecologist (2011, reaffirmed 2014).

• What is more likely to effect a child/person long-term is not the 10 or so months in the womb but all things that happen to a person throughout their life ~ stress, poor/non-existent access to healthcare, systemic racism, genetics, poverty.
• There is virtually no evidence-based, peer-reviewed research examining the question of what, *if any*, causal relationship exists between parental drug use and child neglect or abuse.
Mandatory Reporting Requirements
CAPTA is the key federal legislation addressing child abuse and neglect. Originally enacted in 1974, the law provides federal funding to states to support the “prevention, assessment, investigation, prosecution, and treatment” of child abuse, in exchange for states’ fulfillment of certain requirements. One such requirement is that states enact laws mandating that certain professionals report known or suspected child abuse to a child protective services agency.
No. CAPTA specifically does not “establish a definition under Federal law of what constitutes child abuse or neglect; or (II) require prosecution for any . . . action.”
Under CAPTA, states must have: "policies and procedures (including appropriate referrals to child protection service systems and for other appropriate services) to address the needs of infants born with and identified as being affected by substance abuse or withdrawal symptoms resulting from prenatal drug exposure, or a Fetal Alcohol Spectrum Disorder, including a requirement that health care providers involved in the delivery or care of such infants notify the child protective services system of the occurrence of such condition in such infants.”
No. CAPTA does not require testing of all newborn babies, and CAPTA only requires states to have policies in place to “notify” child welfare agencies of babies who fall into one of the three enumerated categories: being “affected by substance abuse,” affected by “withdrawal symptoms resulting from prenatal drug exposure” or having Fetal Alcohol Spectrum Disorder (FASD). Such notifications or reports are for the purpose of identifying whether the family is in need of care or services (“to address the needs of infants”).
No. The law specifically states that these reports are not for the purpose of redefining child neglect or abuse, nor for the purpose of accusing the mother of abuse or neglect. In fact, it should be noted the purpose of the federal funds is to assist states in creating programs and services designed to help newborns and their families. CAPTA-based reports are not required to be, and should not be, treated in the same manner as a report of suspected neglect or abuse against a parent.

CAPTA does not require reports of suspected child neglect or abuse against parents whose newborns were prenatally exposed to drugs or alcohol, even if those newborns receive a diagnosis of neonatal abstinence syndrome or FASD. Nor does it say that a baby’s positive toxicology result is *per se* evidence of civil child neglect or abuse."
Does CAPTA Require States to Mandate CPS Involvement with All Babies After a Report?

No. CAPTA’s grant eligibility criteria require state programs to include “the development of a plan of safe care” for infants identified as affected by substance abuse, withdrawal symptoms, or Fetal Alcohol Syndrome Disorder. It is up to individual states to determine which agency or entity (such as hospitals, community organizations, or a child protective services department that is established to receive CAPTA reports separate from reports of child neglect/abuse) is responsible for developing the plan of care.

Ideally, states should create a separate reporting and data collection process to receive CAPTA reports. The federal funds can be used by states to develop a myriad of ways to offer confidential services and support to families after a baby has been identified in a report, outside of the context of a punitive child neglect investigation and proceeding. At a minimum, separate reporting and data collection processes should include a separate database, separate staff, and separate contact person/office. They could also include collaborating with another agency to collect the information and “notify” the child welfare agency. For example, the state’s de-identified Pregnancy Risk Assessment Monitoring system could be used to collect data in the three enumerated categories.

States should also use an agency or entity outside of the child welfare system to develop plans of care. Hospitals could work with providers, care groups, community organizations, nurse-family partnerships, or university-based social work programs to develop and track plans of safe care when/if they are needed.
BARRIERS TO TREATMENT during pregnancy

- Myths about standard of care
- Lack of health insurance coverage
- Programs that exclude pregnant women
- Waiting lists
- Fear of prosecution or child welfare surveillance → DETERRENCE
- Improper discontinuance of treatment after birth if incarcerated
Model Policies

• NAPW supports policies/regulations where patients and/or their newborn children are only requested to be drug tested if a specific medical need has been identified, and the patient’s explicit and informed consent has been received.

• NAPW recommends healthcare providers to carefully review their state’s mandatory reporting laws, as all states’ laws differ and some explicitly prohibit the reporting of drug test results as the sole basis of a report of suspected child neglect/abuse.
Illinois Proposed Legislation

(e) with the exception of medical emergencies with inadequate time to obtain consent, the right of each patient, or patient’s representative, to specific informed consent, or informed permission in the case of an infant, including the health and legal benefits and risks regarding biochemical testing for controlled substances. Health care providers will provide to patients, or patient’s representative, a written description of the foreseeable health and legal risks and benefits of biochemical testing for controlled substances, information about reasonable alternatives, information about how to obtain answers to questions about substance abuse treatment, applicability of Federal Safe Harbor Protections, extent of confidentiality and the voluntariness of agreement to biochemical testing for controlled substances.
WHAT CAN I DO?

• FIRST DO NO HARM
• BE DETAILED IN YOUR REPORTS ABOUT YOUR CONCLUSIONS
• REMEMBER WHO YOUR PATIENT IS
• CONSIDER WHO YOU ARE TESTING & WHY
• BE INFORMED & ENGAGED
• BE INTERSECTIONAL
• REPLACE PUNITIVE DRUG WAR POLICIES WITH PUBLIC HEALTH POLICIES
• LEGALLY LIMIT THE ROLE OF CPS & LAW ENFORCEMENT
• HOLD YOUR ELECTED OFFICIALS ACCOUNTABLE
• ORGANIZE EVEN AS A PROFESSIONAL