



Medical and Public Health Group Statements
Opposing Prosecution and Punishment of Pregnant Women
Revised June 2021

American Medical Association



“Pregnant women will be likely to avoid seeking prenatal or open medical care for fear that their physician's knowledge of substance abuse or other potentially harmful behavior could result in a jail sentence rather than proper medical treatment.” Report of American Medical Association Board of Trustees, *Legal Interventions During Pregnancy: Court-Ordered Medical Treatments and Legal Penalties for Potentially Harmful Behavior by Pregnant Women*, JAMA Vol. 264, No. 20 p.2667 (1990).

“Judicial intervention is inappropriate when a woman has made an informed refusal of a medical treatment designed to benefit her fetus. If an exceptional circumstance could be found in which a medical treatment poses an insignificant or no health risk to the woman, entails a minimal invasion of her bodily integrity, and would clearly prevent substantial and irreversible harm to her fetus, it might be appropriate for a physician to seek judicial intervention. However, the fundamental principle against compelled medical procedures should control in all cases which do not present such exceptional circumstances. The physician's duty is to provide appropriate information, such that the pregnant woman may make an informed and thoughtful decision, not to dictate the woman's decision. ... Criminal sanctions or civil liability for harmful behavior by the pregnant woman toward her fetus are inappropriate. Pregnant substance abusers should be provided with rehabilitative treatment appropriate to their specific physiological and psychological needs.” American Medical Association, Policy Statement H-420.969, *Legal Interventions During Pregnancy* (last modified 2018).

“Our AMA: (1) opposes the criminalization of self-induced abortion as it increases patients’ medical risks and deters patients from seeking medically necessary services; and (2) will advocate against any legislative efforts to criminalize self-induced abortion.” American Medical Association, Policy Statement- H. 5980, *Oppose the Criminalization of Self-Induced Abortion* (2018).

“Our AMA will oppose any efforts to imply that the diagnosis of substance use disorder during pregnancy represents child abuse; support legislative and other appropriate efforts for the expansion and improved access to evidence-based treatment for substance use disorders during pregnancy; oppose the removal of infants from their mothers solely based on a single positive prenatal drug screen without appropriate evaluation; and advocate for appropriate medical evaluation prior to the removal of a child, which takes into account the desire to preserve the individual’s family structure, the patient’s treatment status, and current impairment status when substance use is suspected.”

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American Medical Association, Policy Statement H-420.950, *Substance Use Disorders During Pregnancy* (last modified 2019).



“Transplacental drug transfer should not be subject to criminal sanctions or civil liability... In particular, support is crucial for establishing and making broadly available specialized treatment programs for drug-addicted pregnant and breastfeeding women wherever possible ... Pregnant and breastfeeding patients with substance use disorders should be provided with physician-led, team-based care that is evidence-based and offers the ancillary and supportive services that are necessary to support rehabilitation.” American Medical Association, Policy Statement H-420.962, *Perinatal Addiction -Issues in Care and Prevention* (last modified 2019).

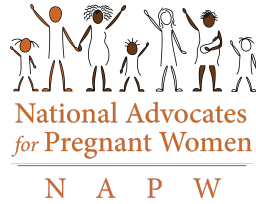
“It is the policy of the AMA to reconfirm its position that drug addiction is a disease amenable to treatment rather than a criminal activity; ...and there is a pressing need for adequate maternal drug treatment and family supportive child protective services; to oppose legislation which criminalizes maternal drug addiction or requires physicians to function as agents of law enforcement - gathering evidence for prosecution rather than provider of treatment; and to provide concentrated lobbying efforts to encourage legislature funding for maternal drug addiction treatment rather than prosecution, and to encourage state and specialty medical societies to do the same.” American Medical Association, Policy Statement H-420.970, *Treatment Versus Criminalization – Physician Role in Drug Addiction During Pregnancy* (last modified 2020).

American College of Obstetricians and Gynecologists

“Confidentiality and trust are at the core of the patient–practitioner relationship. Policies and practices that criminalize individuals during pregnancy and the postpartum period create fear of punishment that compromises this relationship and prevents many pregnant people from seeking vital health services. Criminalization of pregnant people violates the pillars of medical ethics including patient autonomy (bodily autonomy despite the potential life within the pregnant person, the right to refuse care), justice (gendered discrimination), beneficence, and non-maleficence. The American College of Obstetricians and Gynecologists (ACOG) opposes any policies or practices that seek to criminalize individuals for conduct alleged to be harmful to their pregnancy. ... Criminalization of pregnant people for actions allegedly aimed at harming their fetus poses serious threats to people’s health and the health system itself. Threatening patients with criminal punishment erodes trust in the medical system, making people less likely to seek help when they need it. Criminalization makes people less safe and harms the confidential patient–practitioner relationship by creating uncertainty as to whether law enforcement will become involved. In the worst circumstances, this leads people to be treated as suspects instead of patients, subject to bedside interrogations and legal scrutiny. Harm reduction strategies should be implemented in order to reduce negative consequences and support agency and autonomy in the decision making of pregnant

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and parenting people.” American College of Obstetricians and Gynecologists, Statement of Policy: *Opposition to Criminalization of Individuals During Pregnancy and the Postpartum Period* (2020).

“Pregnancy is not an exception to the principle that a decisionally capable patient has the right to refuse treatment, even treatment needed to maintain life. Therefore, a decisionally capable pregnant woman’s decision to refuse recommended medical or surgical interventions should be respected. ... The College opposes the use of coerced medical interventions for pregnant women, including the use of the courts to mandate medical interventions for unwilling patients. ... The College strongly discourages medical institutions from pursuing court-ordered interventions or taking action against obstetrician–gynecologists who refuse to perform them.” American College of Obstetricians and Gynecologists Committee on Ethics, Committee Opinion 664, *Refusal of Medically Recommended Treatment During Pregnancy* (2016; reaffirmed 2019).



“The American College of Obstetricians and Gynecologists (ACOG) opposes the prosecution of a pregnant woman for conduct alleged to have harmed her fetus, including the criminalization of self-induced abortion... Obstetrician-gynecologists should protect patient autonomy, confidentiality, and the integrity of the parent-physician relationship with regard to self-induced abortion attempts and should advocate against mandated reporting.” American College of Obstetricians and Gynecologists, Position Statement: *Decriminalization of Self-Induced Abortion* (2017).

“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.”

“The use of the legal system to address perinatal alcohol and substance abuse is inappropriate. Obstetrician–gynecologists should be aware of the reporting requirements related to alcohol and drug abuse within their states. In states that mandate reporting, policy makers, legislators, and physicians should work together to retract punitive legislation and identify and implement evidence-based strategies outside the legal system to address the needs of women with addictions.” American College of Obstetricians and Gynecologists Committee on Health Care for Underserved Women, Committee Opinion 473, *Substance Abuse Reporting and Pregnancy: The Role of the Obstetrician-Gynecologist* (2011, reaffirmed 2014).

“[I]t is important to advocate for this often-marginalized group of patients, particularly in terms of working to improve availability of treatment and to ensure that pregnant women with opioid use disorder who seek prenatal care are not criminalized.” American College of Obstetricians and Gynecologists Committee on Obstetric Practice, Committee Opinion 711, *Opioid Use and Opioid Use Disorder in Pregnancy* (2017).

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“... Laws should not interfere with the ability of physicians to determine appropriate treatment options and have open, honest, and confidential communications with their patients. Nor should laws interfere with the patient’s right to be counseled by a physician according to the best currently available medical evidence and the physician’s professional medical judgment. ACOG strongly opposes any governmental interference that threatens communication between patients and their physicians or causes a physician to compromise his or her medical judgment about what information or treatment is in the best interest of the patient.” American College of Obstetricians and

Gynecologists, Statement of Policy: *Legislative Interference with Patient Care, Medical Decisions, and the Patient-Physician Relationship* (2013; reaffirmed 2019).

National Perinatal Association



“Treating this personal and public health issue (perinatal substance use) as a criminal issue-or a deficiency in parenting that warrants child welfare intervention-results in pregnant and parenting people avoiding prenatal and obstetric care and putting the health of themselves and their infants at increased risk...The threats of discrimination, incarceration, loss of parental rights, and loss of personal autonomy are powerful deterrents to seeking appropriate prenatal care. Perinatal providers promote better practices when they adopt language, attitudes, and behaviors that reduce stigma and promote honest and open communication about perinatal substance use.” National Perinatal Association, Position Statement, *Perinatal Substance Use* (2017).

“The National Perinatal Association opposes any legal measures that involve the criminal justice system for drug use during pregnancy. Any statute which criminalizes substance use during pregnancy is inherently discriminatory in addition to being counterproductive to the goal of improving maternal and neonatal outcomes. Criminalization and incarceration are ineffective and harmful to the health of the pregnant person and their infant.” National Perinatal Association, Position Statement, *Perinatal Substance Use* (2017).

“As clinicians, mental health, and community care providers, it is imperative that we understand the nature of perinatal substance use disorders and provide interventions and care that preserve the parent-infant dyad, promote parenting potential, and support the baby’s health and development.” National Perinatal Association, Position Statement, *Perinatal Substance Use* (2017).

“The National Perinatal Association opposes legislation that defines personhood as beginning at or after viability...The NPA encourages its members to oppose any legislation defining fetal personhood at conception and encourages its members to support legislators in favor of leaving this discussion to the medical sphere.” National Perinatal Association, Position Statement, *Supporting the Legal Autonomy of Pregnant Women*(2013).

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“...The standard of care for treating pregnant women with substance use disorder is often medication-assisted treatment (MAT). Voluntary treatment leads to better pregnancy outcomes and shorter hospital stays for newborns. Pregnant women should not fear telling their health care providers about drug use, so they can best prepare for the treatment that will help both the mother and the newborn.” National Perinatal Association, Position Statement, *Perinatal Health Care Access and Disparities* (2019).

American Academy of Family Physicians

“[T]he AAFP supports public and individual education about the risks of any substance use and abuse during pregnancy. The AAFP opposes imprisonment or other criminal sanctions of pregnant woman solely for substance abuse during pregnancy, but encourages facilitated access to an established drug and alcohol rehabilitation program for such women.” American Academy of Family Physicians, Policy, Substance Abuse and Addiction, section entitled “Pregnant Women, Substance Use and Abuse by” (2003, 2019 COD).



American Society of Addiction Medicine

“It is inappropriate to reflexively move from the possibility to an alleged certainty of defective parenting or danger to the child simply because of evidence of substance use . . . Sanctions against parents under child protective services interventions should be made only when there is objective evidence of danger, not simply evidence of substance use.” American Society of Addiction Medicine, *Public Policy Statement on Substance Use, Misuse, and Use Disorders During and Following Pregnancy, with an Emphasis on Opioids* (2017).

“State and local governments should avoid any measures defining alcohol or other drug use during pregnancy as ‘child abuse or maltreatment,’ and should avoid prosecution, jail, or other punitive measures as a substitute for providing effective health care services for these women.” American Society of Addiction Medicine, *Public Policy Statement on Substance Use, Misuse, and Use Disorders During and Following Pregnancy, with an Emphasis on Opioids* (2017).

Obstetric care providers have an ethical responsibility to their pregnant and parenting patients with substance use disorder to discourage the separation of parents from their children solely based on substance use disorder, either suspected or confirmed.” American Society of Addiction Medicine, *Public Policy Statement on Opioid Use and Opioid Use Disorder in Pregnancy: A Joint Opinion of the American College of Obstetricians and Gynecologists; Committee on Obstetric Practice and the American Society of Addiction Medicine* (2017).

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American Public Health Association

“Any personhood initiative that allows the state or other actors to claim rights of the fetus as independent of pregnant women has the potential to deprive women of access to comprehensive reproductive health care—including abortion services, assisted reproductive technologies, and autonomy in pregnancy and childbirth decisions—as well as their rights to life, liberty, and privacy...[T]his policy urges federal and state legislatures, law enforcement and judiciary bodies, election commissions, and health care providers to renounce any and all personhood claims or misapplications of child welfare laws that recognize fetuses as persons and infringe on women’s reproductive, constitutional, and human rights...Extension of rights to a fetus through such personhood bills would affect not only women who seek to terminate a pregnancy but also women who wish to carry a pregnancy to term...[A]ny codified personhood effort would inexorably contribute to negative public health outcomes for women...” American Public Health Association, Policy Statement No. 20139, *Renouncing the Adoption or Misapplication of Laws to Recognize Fetuses as Independent of Pregnant Women*(2013).

American Nurses Association



“ANA opposes laws that may result in punitive legal actions and result in incarceration of pregnant women because of substance use disorder.” American Nurses Association, Position Statement, *Nonpunitive Treatment for Pregnant and Breast-feeding Women with Substance Use Disorders* (2017).

"ANA supports the fact that substance use disorders are diseases that require treatment, not incarceration." American Nurses Association, Position Statement, *Non-punitive Treatment for Pregnant and Breast-feeding Women with Substance Use Disorders* (2017).

"Criminalization of pregnant women with substance use disorder often results in more harm than good. The threat of criminal prosecution prevents many pregnant women from seeking prenatal care and treatment for their substance problems (Schempf & Strobino, 2009). Prisons are not prepared to provide for the specialized needs of pregnant women (Cardaci, 2013; Skerker, Dickey, Schonberg, Macdonald, & Venters, 2015)." American Nurses Association, Position Statement, *Non-punitive Treatment for Pregnant and Breast-feeding Women with Substance Use Disorders* (2017).

"Contrary to claims that prosecution and incarceration will deter pregnant women from substance use, the greater result is that fear of detection and punishment poses a significant barrier to treatment (Stone, 2015)." American Nurses Association, Position Statement, *Non-punitive Treatment for Pregnant and Breast-feeding Women with Substance Use Disorders* (2017).

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Association of Women’s Health, Obstetric and Neonatal Nurses

“The Association of Women’s Health, Obstetric and Neonatal Nurses (AWHONN) opposes laws and other reporting requirements that result in incarceration or other punitive legal actions against women because of a substance abuse disorder in pregnancy. . . . AWHONN does not support laws that single out pregnant women or that create penalties for them that differ from other individuals with substance use disorders. . . . [t]he threat of incarceration has been shown to be an ineffective strategy for reducing the incidence of substance abuse, while medication and behavioral therapies serve as important elements of an over-all therapeutic process.” Association of Women’s Health, Obstetric and Neonatal Nurses, *Criminalization of Pregnant Women with Substance Use Disorders* (2015).

“The Association of Women's Health, Obstetric and Neonatal Nurses (AWHONN) believes that any woman's reproductive health care decisions are best made by the informed woman in consultation with her health care provider. AWHONN believes these personal and private decisions are best made within a health care system whose providers respect the woman's right to make her own decisions according to her personal values and preferences and to do so confidentially. . . . Association of Women’s Health, Obstetric and Neonatal Nurses Position Statement, *Health Care Decision Making for Reproductive Care* (2016).



“Laws that criminalize drug use during pregnancy have the potential to deter women from seeking prenatal and maternity care that can provide access to appropriate counseling, referral, and monitoring. Seeking health care for marijuana use during pregnancy 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 (Association of Women’s Health, Obstetric and Neonatal Nurses, 2015).” Association of Women’s Health, Obstetric and Neonatal Nurses Position Statement, *Marijuana Use During Pregnancy* (2018).

“The Association of Women’s Health, Obstetric and Neonatal Nurses (AWHONN) opposes laws and other reporting requirements that result in incarceration or other punitive legal actions against women because of a substance use disorder (SUD) in pregnancy and the postpartum period.” Association of Women’s Health, Obstetric and Neonatal Nurses Position Statement, *Optimizing Outcomes for Women’s Health, Obstetric and Neonatal Nurses* (2019).

American College of Nurse Midwives

“ACNM supports a health care system in which individuals with SUD in pregnancy are treated with compassion, not punishment. Patients should not be deterred from seeking care during pregnancy due to fear of prosecution. Optimal care for patients with addiction occurs within a multidisciplinary environment in which holistic care is provided that considers the context of social environment and

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unique health risks. In the health policy and legislative arena, efforts should be directed toward comprehensive approaches to promoting addiction recovery.” American College of Nurse-Midwives Position Statement, *Substance Use Disorders in Pregnancy* (updated 2018).

“It is the position of the American College of Nurse-Midwives (ACNM) that: Physiologic vaginal birth is the optimal mode of birth for most women and babies. Cesarean birth is valued as a surgical procedure when there are maternal, fetal, or obstetric indications . . . Women have the right to accurate, balanced and complete information regarding the risks, benefits and potential harms of both vaginal and cesarean birth.” American College of Nurse Midwives Position Statement, *Elective Primary Cesarean Birth* (updated 2016).

“It is the position of the American College of Nurse-Midwives(ACNM) that: Women who have experienced cesarean births have the right to safe and accessible options for subsequent births. Women should receive evidence-based information to guide their decision making when they consider labor after cesarean versus elective repeat cesarean.” American College of Nurse Midwives Position Statement, *Vaginal Birth After Cesarean Delivery* (Revised and reapproved 2017).



American Academy of Pediatrics

“The American Academy of Pediatrics (AAP) first published recommendations on substance-exposed infants in 1990 and reaffirmed its position in 1995 that ‘punitive measures taken toward pregnant women, such as criminal prosecution and incarceration, have no proven benefits for infant health’ and argued that ‘the public must be assured of nonpunitive access to comprehensive care that meets the needs of the substance-abusing pregnant woman and her infant.’ . . . The AAP reaffirms its position that punitive measures taken toward pregnant women are not in the best interest of the health of the mother-infant dyad. . . The existing literature supports the position that punitive approaches to substance use in pregnancy are ineffective and may have detrimental effects on both maternal and child health . . . [T]he AAP supports an approach toward substance use in pregnancy that focuses on a public health approach of primary prevention, improving access to treatment, and promoting the provider-patient relationship rather than punitive measures through the criminal justice system.” American Academy of Pediatrics, Committee on Substance Use and Prevention, Policy Statement, *A Public Health Response to Opioid Use in Pregnancy* (2017).

March of Dimes

“The March of Dimes opposes policies and programs that impose punitive measures on pregnant women who use or abuse drugs. . . The March of Dimes believes that targeting women who used or abused drugs during pregnancy for criminal prosecution or forced treatment is inappropriate and

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will drive women away from treatment vital both for them and the child.” March of Dimes, Fact Sheet, *Policies and Programs to Address Drug-Exposed Newborns* (2014).

American Psychological Association

“Punitive approaches result in women being significantly less likely to seek substance use treatment and prenatal care due to fear of prosecution and fear of the removal of children from their custody (Faherty et al., 2019). This places both the mother and her children at greater risk of harm...Legislatures should decriminalize substance use during pregnancy and support more funding and programs that offer specialized substance use treatment to pregnant women and girls.” American Psychological Association, *Pregnant and Postpartum Adolescent Girls and Women with Substance-Related Disorders* (updated 2020).



“...[T]he American Psychological Association [a]ffirms its view that alcohol and drug abuse by pregnant women is a public health problem and that laws, regulations and policies that treat chemical dependency primarily as a criminal justice matter requiring punitive sanctions are inappropriate...[The APA] affirms the use of health care strategies to foster the welfare of chemically dependent women and their children by expanding access to prenatal care and to reproductive health care generally. . .” American Psychological Association, Policy, *Resolution on Substance Abuse by Pregnant Women* (1991).

American Psychiatric Association

“The use of the legal system to address perinatal alcohol, tobacco, and other substance use disorders is inappropriate. APA opposes civil charges and criminal prosecution of pregnant and postpartum women based on substance use during pregnancy. Substance use during pregnancy should not be considered child abuse or neglect leading to civil charges. Legislation that mandates reporting of substance use by pregnant or newly delivered women by healthcare providers must be repealed.” American Psychiatric Association, Position Statement, *Assuring the Appropriate Care of Pregnant and Newly-Delivered Women with Substance Use Disorders* (2019).

“Several state governments have prosecuted and incarcerated women for using substances during their pregnancy under the grounds of “prenatal child abuse.” This legal approach has no proven benefits for maternal or infant health. Furthermore, it likely confers additional harms to both women and their infants by interfering with their willingness to seek obstetric care and substance use treatment, increasing the rate of maternal-child separation, and broadly increasing stigma related to this issue. A public health response, rather than a punitive legal approach to substance use during pregnancy is critical. This should include universal evidence-based screening and voluntary maternal drug testing with informed consent, improved access to substance use treatment, and comprehensive care approaches that include behavioral therapy, appropriate social services, and

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evidence-based pharmacotherapy.” American Psychiatric Association, Position Statement, *Assuring the Appropriate Care of Pregnant and Newly-Delivered Women with Substance Use Disorders* (2019).

“The American Psychiatric Association opposes all constitutional amendments, legislation, and regulations curtailing family planning and abortion services to any segment of the population. The American Psychiatric Association (APA) supports the following: 1. Abortion is a medical procedure for which physicians should respect the patient’s right to freedom of choice.... 2.

Freedom to act to interrupt pregnancy must be considered a mental health imperative with major social and mental health implications.” American Psychiatric Association, Position Statement, *Abortion and Women’s Reproductive Health Care Rights* (2020).

The Society for Maternal-Fetal Medicine



“Abortion is one of the most regulated medical procedures in the United States. Restrictive regulations and legislation at both the state and federal levels have made access to reproductive health services increasingly difficult. When unnecessary policies and regulations are placed on abortion care and health care providers, there are adverse effects on those who need access to abortion services. These regulations and policies compromise the patient and health care provider relationship and interfere with individual reproductive decision-making, restricting access to medically accurate practices and procedures.” The Society for Maternal-Fetal Medicine, Position Statement, *Access to Abortion Services* (2020).

National Organization on Fetal Alcohol Syndrome

“NOFAS opposes any law or policy that would impose a criminal penalty on pregnant women for drinking alcohol. Alcohol use during pregnancy is a serious problem, yet criminalization is not a solution. Criminalizing alcohol use during pregnancy interferes with the private patient/doctor relationship and intrudes on the rights of women. Such laws could result in pregnant women choosing not to disclose their alcohol use to medical and allied health providers out of fear of criminal sanction. As a result, women with alcohol dependence or an alcohol use disorder could go unidentified and untreated. Alcoholism is a primary, chronic disease with genetic, psychosocial, and environmental factors and should be treated accordingly.” National Organization on Fetal Alcohol Syndrome, Position Statement, *NOFAS Opposes Criminalizing Alcohol Use by Pregnant Women* (2014).

“NOFAS opposes any law or policy that would impose a criminal penalty on a pregnant woman suffering with an addiction to alcohol or drugs. . . . Incarceration is not a solution to their underlying healthcare need. This so-called “crackdown” may result in pregnant women choosing not to discuss their alcohol or drug use, even with medical providers, out of fear of criminal sanction. As a result, women with an alcohol or substance use disorder could go unidentified and untreated. This

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could have the unintended result of *increasing* the exposure and severity of substance use by pregnant women.” National Organization on Fetal Alcohol Syndrome, Position Statement, *NOFAS Opposes New Policy to Prosecute Expectant Mothers for Using Alcohol or Drugs* (2018).

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