



**Testimony of National Advocates for Pregnant Women  
to the Senate Judiciary Committee of the Ohio Senate  
in Opposition to SB.216**

**February 7, 2022**

Thank you for the opportunity to address this Committee.

On behalf of National Advocates for Pregnant Women (NAPW), we respectfully submit this written testimony in opposition to a Senate Bill 216. We are a non-partisan legal advocacy organization dedicated to the welfare of pregnant people and their families. Our testimony draws on over 20 years of work on cases in which state actors intervened in a pregnant woman's medical decision-making or punished a pregnant or postpartum woman and her family on the basis of something she may have or may not have done while pregnant. This includes but is not limited to using substances while pregnant.

Knowing that someone uses drugs tells us nothing about that person's ability to parent. As reported by the Substance Abuse and Mental Health Services Administration (SAMHSA), in 2018, 164.8 million Americans ages 12 and older, or 60.2%, used tobacco, alcohol, or an illicit drug in the past month.<sup>1</sup> With substance use so widespread, there is no doubt that over the course of most people's lifetimes, they will engage in alcohol or drug use, perhaps regularly. Of these people, many of them are, or will become, parents. Today in Ohio, 31% of child removals are due to parent drug or alcohol use.<sup>2</sup> Contrary to misleading and medically-uninformed media coverage, systemic racist practices, and stigma surrounding drug use,<sup>3</sup> there is no support for the belief that a parent who uses drugs is more likely to abuse or neglect their child than one who does not.<sup>4</sup>

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<sup>1</sup> Substance Abuse and Mental Health Services Administration. (2019). Key substance use and mental health indicators in the United States: Results from the 2018 National Survey on Drug Use and Health (HHS Publication No. PEP19-5068, NSDUH Series H-54). Rockville, MD: Center for Behavioral Health Statistics and Quality, Substance Abuse and Mental Health Services Administration. Retrieved from <https://www.samhsa.gov/data/>

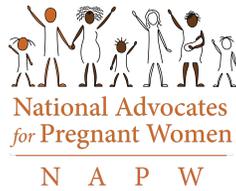
<sup>2</sup> Ohio Statewide(2019). Quarterly report of child welfare and court dependency docket data. Retrieved from: <https://www.supremecourt.ohio.gov/JCS/CFC/PDQ/2019/Q3.pdf>.

<sup>3</sup> The peer-reviewed research indicates that parents of infants who were substance-exposed in utero are no more likely to maltreat their children than other parents; the research indicating that those parents posed increased risk of maltreating their children improperly included subsequent substance-exposed-infant allegations, which accounted for almost all allegations against those parents. Brenda D. Smith et al., The risk of subsequent maltreatment allegations in families with substance-exposed infants, 26 Child Abuse & Neglect 97 (2002).

<sup>4</sup> *Id.* Also, the source most often cited for the claim that drug use increases the likelihood of abuse is a self-published report which was not subject to peer review: National Center on Addiction and Substance Abuse at Columbia University (CASA), No Safe Haven: Children of Substance-Abusing Parents (1999), available at <http://www.casacolumbia.org/articlefiles/379-No%20Safe%20Haven.pdf>. Its major publicized finding, that children whose parents abuse drugs and alcohol are three times more likely to be physically or sexually assaulted and more than four times more likely to be neglected than are children of parents who are not substance abusers, was based on what amounted to an opinion survey of people working in the child welfare field. *Id.* at ii. But not only did this survey fail to qualify as reliable scientific evidence, the report

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Separation of children and parents based on drug use is unnecessary and unjustified, and contrary to the purpose of the “child welfare system”—to protect children from serious harm or potential harm. Further, unnecessary and unjustified separation in fact immeasurably hurts the children and families the system should protect. The child welfare system exists to protect children from caregivers who are unable to provide a minimum degree of care to their children, not to dictate ideal parenting or punish families for parents’ undesirable behavior.

### **Senate Bill 216 Will Harm Ohio Families and Runs Contrary to the Recommendations of Every Leading Medical and Public Health Association**

Every leading medical group to address the issue of parenting people and drug use opposes punitive approaches as dangerous to maternal, fetal, and family health.<sup>5</sup> The American Medical Association,<sup>6</sup> American Nurses Association,<sup>7</sup> American Psychological Association,<sup>8</sup> American Psychiatric Association,<sup>9</sup> and the American Academy of Pediatrics<sup>10</sup> unanimously conclude that punitive responses to the issue of pregnancy and drug use are harmful to the health of women and children, and diminish families’ healthcare access.

The American College of Obstetricians and Gynecologists (“ACOG”) explains, “**a positive drug test should not be construed as child abuse or neglect**” and punitive responses pose “serious threats to people’s health ... [by] erod[ing]

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itself noted that those who were surveyed were the least qualified to draw conclusions about causation and associations because few had any training in issues concerning drug use and addiction. Id. at 5. Moreover, the appendix to the CASA Report acknowledged that it was not based on reliable data. Id. at 165. See also David J. Hanson, The Center on Addiction and Substance Abuse: A Center for Alcohol Statistics Abuse?, <http://alcoholfacts.org/CASAAlcoholStatisticsAbuse.html> (challenging the quality and value of research from the Center and noting its refusal to submit its work to peer review).

<sup>5</sup> National Advocates for Pregnant Women, Medical and Public Health Group Statements Opposing Prosecution and Punishment of Pregnant Women, June 2018, <https://mk0nationaladvoq87fj.kinstacdn.com/wp-content/uploads/2019/10/Medical20and20Public20Health20Group20Statements20revised20June202018.pdf>

<sup>6</sup> American Medical Association, Policy Statement H-420.962, *Perinatal Addiction -Issues in Care and Prevention* (last modified 2019) (“Transplacental drug transfer should not be subject to criminal sanctions or civil liability . . .”); American Medical Association, Policy Statement H-420.969, *Legal Interventions During Pregnancy* (last modified 2018) (“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.”).

<sup>7</sup> 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.”).

<sup>8</sup> American Psychological Association, *Pregnant and Postpartum Adolescent Girls and Women with Substance-Related Disorders* (updated: 2020) (“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. This places both the mother and her children at greater risk of harm.”).

<sup>9</sup> American Psychiatric Association, Position Statement, *Assuring the Appropriate Care of Pregnant and Newly-Delivered Women with Substance Use Disorders* (2019) (“A public health response, rather than a punitive legal approach to substance use during pregnancy is critical.”).

<sup>10</sup> American Academy of Pediatrics, Committee on Substance Use and Prevention, Policy Statement, *A Public Health Response to Opioid Use in Pregnancy* (2017) (“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.....”).

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trust in the medical system, making people less likely to seek help when they need it.”<sup>11</sup> For this reason the ACOG Committee on Health Care for Underserved Women has concluded that:

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.<sup>12</sup>

Penalizing parents through civil neglect petitions based on the pregnant person’s drug use makes medical care less accessible as pregnant people are more afraid to seek help for fear of state involvement, losing custody of their children, or losing their parental rights.<sup>13</sup> Simply put, punitive responses to drug use during pregnancy, either via the child welfare system or the criminal law system, generate negative health outcomes by deterring prenatal and postnatal care.<sup>14</sup>

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<sup>11</sup> ACOG, Opposition to Criminalization of Individuals During Pregnancy and Postpartum Period (2020), <https://www.acog.org/clinical-information/policy-and-position-statements/statements-of-policy/2020/opposition-criminalization-of-individuals-pregnancy-and-postpartum-period>.

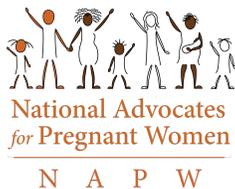
<sup>12</sup> ACOG, Committee on Health Care for Underserved Women, Committee Opinion No. 473 (Jan. 2011, affirmed 2014), <https://www.acog.org/clinical/clinical-guidance/committee-opinion/articles/2011/01/substance-abuse-reporting-and-pregnancy-the-role-of-the-obstetrician-gynecologist>.

<sup>13</sup> “Leading medical organizations agree that a positive drug test should not be construed as child abuse or neglect” and that policing on the basis of a positive drug test “poses serious threats to people’s health ... by eroding trust in the medical system, making people less likely to seek help when they need it.” American College of Obstetricians and Gynecologists, Opposition to Criminalization of Individuals During Pregnancy and Postpartum Period (2020), <https://www.acog.org/clinical-information/policy-and-position-statements/statements-of-policy/2020/opposition-criminalization-of-individuals-pregnancy-and-postpartum-period>. To the contrary, the current best practice for treating substance-exposed newborns is to keep the newborn and mother together because that improves medical outcomes, decreases length of hospital stay, and improves psychosocial outcomes. *See, e.g.,* Kathryn Dee L. MacMillan, MD, et al., *Association of Rooming-in With Outcomes for Neonatal Abstinence Syndrome, A Systematic Review and Meta-analysis*, JAMA Pediatr. 2018; doi: 10.1001/jamapediatrics.2017.515 available at <https://jamanetwork.com/journals/jamapediatrics/fullarticle/2672042>; Matthew R. Grossman, MD, et al., *An Initiative to Improve the Quality of Care of Infants with Neonatal Abstinence Syndrome*, Pediatrics May 2017, e20163360, available at <http://pediatrics.aappublications.org/content/early/2017/05/16/peds.2016-3360>; Ronald R. Abrahams, et al., *Rooming-in compared with standard care for newborns of mothers using methadone or heroin*, Can. Fam. Physician 2007 Oct.; 53(10): 1722-1730, available at <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC2231437/>. Furthermore, punitive action against these parents is counterproductive and in fact harms both the baby and the parents. *See, e.g.,* Laura J. Faherty, et al., *Association of Punitive and Reporting State Policies Related to Substance Use in Pregnancy with Rates of Neonatal Abstinence Syndrome*, JAMA Network Open, Nov. 2019, doi: [10.1001/jamanetworkopen.2019.14078](https://doi.org/10.1001/jamanetworkopen.2019.14078), [https://www.researchgate.net/publication/337238977\\_Association\\_of\\_Punitive\\_and\\_Reporting\\_State\\_Policies\\_Related\\_to\\_Substance\\_Use\\_in\\_Pregnancy\\_With\\_Rates\\_of\\_Neonatal\\_Abstinence\\_Syndrome](https://www.researchgate.net/publication/337238977_Association_of_Punitive_and_Reporting_State_Policies_Related_to_Substance_Use_in_Pregnancy_With_Rates_of_Neonatal_Abstinence_Syndrome); Daisy Goodman, DNP, MPH, et al., *It’s Time to Support, Rather Than Punish, Pregnant Women with Substance Use Disorder*, 2019, <https://jamanetwork.com/journals/jamanetworkopen/fullarticle/2755302>.

<sup>14</sup> *See supra* notes 6-10; *see also, e.g.,* Haffajee, et al., *Pregnant Women with Substance Use Disorders—The Harm Associated with Punitive Approaches*, N. ENGL. J. MED. (2021), doi: 10.1056/NEJMp2102051; Laura J. Faherty, et al., *Association of Punitive and Reporting State Policies Related to Substance Use in Pregnancy with Rates of Neonatal Abstinence Syndrome*, JAMA Network Open, Nov. 2019, doi: [10.1001/jamanetworkopen.2019.14078](https://doi.org/10.1001/jamanetworkopen.2019.14078)

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The fear of penalties also deters parents from bringing their children in for care, further undermining family health.<sup>15</sup> For example, in *California v. Brown*, Heather Rose Brown explicitly said she chose to give birth in a hotel and not to go to the hospital post-partum because she and her partner were afraid the baby would be taken from them.<sup>16</sup> In that case, that fear led to the worst possible result: the death of the infant and the criminal prosecution of both parents, rather than any support that would decrease the likelihood of that outcome a second time.

Further, the fear of penalties and separation from their children creates a disincentive for pregnant women with actual drug dependency problems from having an open and honest relationship with their prenatal health care providers.<sup>17</sup> That in turn undermines the ability of medical providers to mitigate the risks of any health problems for the pregnant person or the developing fetus. Common health contributors—poverty, poor nutrition, heart disease, nicotine use—can be addressed if the pregnant person is engaged in medical care.<sup>18</sup> While the risks of prenatal exposure to the main criminalized drugs have been grossly overblown,<sup>19</sup> those risks that do exist—low birth weight, preeclampsia, etc.—can be managed best with the assistance of a trusted medical provider who knows what exposures exist. Additionally, the risks of street drug use—clean needles, other substances mixed with the drug, nutrition, irregular doses—can be mitigated through supervised drug use or medication assisted treatment for opioid use.<sup>20</sup>

Punitive laws that drive a wedge between patients and their doctors have demonstrable negative impacts on fetal and neonatal health. Empirical research, using Tennessee’s fetal assault law as a case study, found that the state’s punitive approach to pregnancy and drug use increased the risk of harm to children, finding a statistically significant negative

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<sup>15</sup> *Id.*

<sup>16</sup> Heather Rose Brown, (didn’t go to hospital for birth or post-birth care because of fear that baby would be taken from them) <https://www.redding.com/story/news/local/2017/11/13/redding-woman-gets-life-prison-sentence-babys-death/858219001/>.

<sup>17</sup> *Id.*; see also Wakeman, et al., *When Reimagining Systems of Safety, Take a Closer Look at the Child Welfare System*, HEALTH AFFAIRS (Oct. 7, 2020), doi: 10.1377/hblog20201002.72121.

<sup>18</sup> Laura J. Faherty et al., *Association of Punitive and Reporting State Policies Related to Substance Use in Pregnancy with Rates of Neonatal Abstinence Syndrome*, 2 JAMA NETW. OPEN, e 1914078 (2019). See also, Haffajee, et al., *Pregnant Women with Substance Use Disorders—The Harm Associated with Punitive Approaches*, N. ENGL. J. MED. (2021), doi: 10.1056/NEJMp2102051; Roberts & Pies, *Complex Calculations: How Drug Use During Pregnancy Becomes a Barrier to Prenatal Care*, 15 MATERN. CHILD HEALTH J. 33 (2011), doi: 10.1007/s10995-010-0594-7.

<sup>19</sup> See, e.g., *Slandering the Unborn: How bad science and a moral panic, fueled in part by the news media, demonized mothers and defamed a generation*, <https://www.nytimes.com/interactive/2018/12/28/opinion/crack-babies-racism.html>

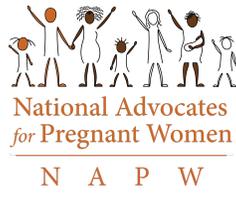
<sup>20</sup> Harm Reduction Coalition and Academy of Perinatal Harm Reduction, *Pregnancy and Substance Use Toolkit*, <https://www.perinatalharmreduction.org/toolkit-pregnancy-substance-use>.

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impact on fetal and child health.<sup>21</sup> Another empirical study found higher prevalence of neonatal abstinence syndrome (NAS) in states with punitive policies in effect.<sup>22</sup>

## **Increasing State Surveillance and Intervention Around Drug Use During Pregnancy Will Only Lead to Increased Criminalization For Pregnancy Outcomes that Are Beyond a Woman's Control**

NAPW has documented many cases involving mothers who were subjected to child welfare investigations that then led to criminalization and incarceration through the criminal justice system. Increased involvement by state authorities will inevitably lead to increased criminalization, which has devastating consequences for women, children, and families.

- In October of 2019, 19-year-old Breyona Reddick experienced a stillbirth in her college dorm room. After investigation, police found that the baby lived less than an hour based entirely on an out-dated and unreliable form of forensic evidence. They charged her with aggravated murder and “abuse of a corpse” for not seeking medical care during delivery.<sup>23</sup>
- In 2006, a pregnant Ohio woman pleaded guilty to child endangerment for taking drugs during her pregnancy, despite case law in Ohio holding that pregnant women who used drugs could not be held liable for any adverse birth outcomes.<sup>24</sup> This happened again and again in 2012, when the State of Ohio wrongly charged a number of women with felonious “corrupting another with drugs” and/or “child endangering” based on their drug use during pregnancy. After months of criminal litigation, the Appellate Court ultimately found that a pregnant woman could not be convicted “for actions taken during pregnancy which affected her unborn child,”<sup>25</sup> but that has not stopped a number of Ohio prosecutors from continuing to try.<sup>26</sup>

<sup>21</sup> Boone & McMichael, *State Created Fetal Harm*, 109 GEORGETOWN L. J. 3 (2021), e.g. at 501, 514; see also Bach, *Prosecuting Poverty, Criminalizing Care*, 60 WILLIAM & MARY L. REV. 3 (2019); SisterReach, et. al., *Tennessee's Fetal Assault Law: Understanding its impact on marginalized women* (Dec. 14, 2020), <https://www.nationaladvocatesforpregnantwomen.org/tennessees-fetal-assault-law-understanding-its-impact-on-marginalized-women/>.

<sup>22</sup> Laura J. Faherty et al., *Association of Punitive and Reporting State Policies Related to Substance Use in Pregnancy with Rates of Neonatal Abstinence Syndrome*, 2 JAMA NETW. OPEN, e 1914078 (2019). See also, Haffajee, et al., *Pregnant Women with Substance Use Disorders—The Harm Associated with Punitive Approaches*, N. ENGL. J. MED. (2021), doi: 10.1056/NEJMp2102051; Roberts & Pies, *Complex Calculations: How Drug Use During Pregnancy Becomes a Barrier to Prenatal Care*, 15 MATERN. CHILD HEALTH J. 33 (2011), doi: 10.1007/s10995-010-0594-7.

<sup>23</sup> Indictment, Case No. 2020-CR-0029, Portage County Ct of Common Pleas (Mar. 24, 2020); WKYC Staff, *Woman indicted for death of newborn found in Hiram College dormitory*, Associated Press (March 26, 2020 at 4:11 PM).

<sup>24</sup> State v. Hade, 6th Dist. Ottawa No. OT-07-037, 2008-Ohio-1859, &2

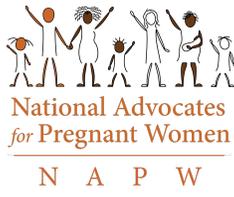
<sup>25</sup> Opinion, *Ohio v. Bales*, Court of Appeals Knox County, 5th Appellate District, Case No. 13CA5 (Oct. 31, 2013).

<sup>26</sup> See, e.g., *Clermont County pair sentenced for child endangering, meth charges*, WKRC (Dec. 12, 2016),

<https://local12.com/news/local/clermont-county-pair-sentenced-for-child-endangering-meth-charges>; Kathy Laird, *Galion woman gets prison sentence for parole violation*, Crawford County Now (April 20, 2020 5:30 pm),

<https://crawfordcountynow.com/local/galion-woman-gets-prison-sentence-for-parole-violation/>; *Woman found guilty of drug charge*, The Advisor Tribune (Nov 29, 2018 12:14 AM), <https://advertiser-tribune.com/news/192479/woman-found-guilty-of-drug-charge/>; David Malloy, *Pregnant woman sentenced on charges including heroin use*, The Herald-Dispatch (Nov 18, 2019),

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- In 2019, a 33-year-old New Middletown woman was charged with abuse of a corpse and tampering with evidence after she delivered a stillborn baby in her home and tried to preserve the remains. Investigators openly admitted that there was “no evidence [that] the baby was alive at the time of birth” but have continued to press charges anyway.<sup>27</sup>

In each of these cases, the pregnant person was subject to criminal investigation concurrently or after an investigation by the hospital or the Department of Children's Services. Engagement with the criminal system only exacerbates trauma and intergenerational trauma, further harming children and families.

### **Conclusion**

Drug tests tell us if a person used a drug at a certain point in time. They do not tell us about any dependency, addiction, or harm concerns, and should not be used as parenting tests. The harm of being entangled in the child welfare system and the threat of family separation are far more threatening and dangerous to a child than their parent's use of alcohol or drugs. If its goal is to protect the children of Ohio, the Senate should focus its time and energy on promoting adequate health care and services rather than vilifying pregnant and postpartum women as the source of its drug epidemic. We strongly oppose Senate Bill 216.

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[https://www.herald-dispatch.com/news/pregnant-woman-sentenced-on-charges-including-heroin-use/article\\_75ced4df-fbde-53e8-a9a2-7f32d3d75474.html](https://www.herald-dispatch.com/news/pregnant-woman-sentenced-on-charges-including-heroin-use/article_75ced4df-fbde-53e8-a9a2-7f32d3d75474.html).

<sup>27</sup> *Mom faces abuse of corpse charge*, The Vindicator (Feb. 22, 2020),

<https://www.vindy.com/news/local-news/2020/02/mom-faces-abuse-of-corpse-charge/>.

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