



Testimony of National Advocates for Pregnant Women
to the Senate Judiciary Committee of the Wyoming Senate in Opposition to HB0085

March 3, 2022

Thank you for the opportunity to submit this testimony to the Senate Judiciary Committee of the Wyoming Senate. National Advocates for Pregnant Women (NAPW) respectfully submits this written testimony in opposition to [HB0085](#). We are a non-partisan advocacy organization dedicated to the health and welfare of pregnant people and their families. Our testimony draws on over 20 years of experience studying and addressing state responses to such issues as pregnancy and drug use. While this law, if passed, would raise a host of constitutional issues and would undoubtedly be subjected to numerous legal challenges, our most important objection is based on the fact that responding to the health issues of pregnancy and drug use through new criminal legislation will be bad for babies.

HB0085 would create a new crime of felony child endangerment, specifically authorizing the arrest and prosecution of a person, who, while pregnant, “knowingly consumes methamphetamine or a controlled substance classified in Schedule I or II that is a narcotic drug, as defined in W.S.35-7-1002(a).” Every leading medical group to address this issue has opposed laws that create criminal penalties for being pregnant and using a controlled substance. This list includes the American Academy of Pediatrics, which first opposed such punitive criminal measures in 1990 and reaffirmed its position in 1995 and 2017, concluding “that ‘punitive measures taken toward pregnant women, such as criminal prosecution and incarceration, have no proven benefits for infant health.’”¹ Over a dozen medical organizations unanimously agree that laws such as HB0085 endanger the lives and health of mothers and children.² As the American College of Obstetricians and Gynecologists explains, “criminalization of pregnant people for actions allegedly aimed at harming their fetus poses serious threats to people’s health and the health system itself...Criminalization makes people less safe and harms

¹ American Academy of Pediatrics, *Committee on Substance Use and Prevention, Policy Statement, A Public Health Response to Opioid Use in Pregnancy* (2017).

² National Advocates for Pregnant Women, *Medical and Public Health Group Statements Opposing Prosecution and Punishment of Pregnant Women* (June 1, 2021), bit.ly/medicalgroupsstatements

the confidential patient–practitioner relationship by creating uncertainty as to whether law enforcement will become involved.”³

Indeed, experience in Tennessee, after it became the only state in the nation to pass a similar “fetal assault” law, showed that it was so clearly counterproductive to the health of babies that the state allowed the law to sunset after a mere two years. The law has now been studied, and empirical evidence shows that Tennessee’s law deterred pregnant women from accessing prenatal care and appropriate drug treatment and resulted in ***an increase in fetal and infant death***.⁴ For example, in 2015 alone, the year after the law went into effect, the law resulted in twenty more fetal deaths and sixty more infant deaths than would have otherwise occurred.⁵

The penalties under HB0085 create the impression that prosecutions and convictions will result, at least in the first instance, in a state-supervised addiction severity assessment and an American Society of Addiction Medicine (ASAM) placement evaluation followed by appropriate treatment. First, it is important to note that ASAM has consistently opposed the use of criminal law to respond to the issue of pregnancy and drug use, beginning with this statement: “Criminal prosecution of chemically dependent women will have the overall result of deterring such women from seeking both prenatal care and chemical dependency treatment, thereby increasing, rather than preventing, harm to children and to society as a whole.”⁶ Second, the Tennessee fetal assault law was similarly passed based on the illusion that arresting and prosecuting women because they were pregnant and used certain substances would somehow facilitate care. What actually happened was that the majority of women brought into the criminal system were neither offered nor received care. Instead, they were subject to incarceration, bail they could not raise, fines they could not pay, probation conditions they could not meet, and the ever-present threat of more punishment.⁷ It denied pregnant patients the confidentiality in the health care they needed and typically resulted in family separation, and family dissolution.

The negative impacts on fetal and infant health show that laws, such as HB0085, which criminalize becoming pregnant and using certain drugs, actively run counter to the state’s interest in protecting infant and fetal health.⁸ This law will cause no less harm because it includes the pretext that women will be provided with treatment. Arrest and prosecution in order to force women into treatment has never been proven to improve the health of women and babies. If Wyoming were to pass this law, it would stand alone in the country as the only state to take this grievous step, which has now been proven to increase fetal and infant death, and will funnel women into the criminal legal system, far from their healthcare providers, their community, and their families.

³ American College of Obstetricians and Gynecologists, *Statement of Policy: Opposition to Criminalization of Individuals During Pregnancy and the Postpartum Period* (2020).

⁴ Boone & McMichael, *State-Created Fetal Harm*, 109 GEO. L.J. 475, 501 (2021).

⁵ *Id.*

⁶ American Society of Addiction Medicine, *Public Policy Statement on Chemically Dependent Women and Pregnancy* (1989).

⁷ Wendy Bach, *Prosecuting Poverty, Criminalizing Care*, 60 WILL. AND MARY L. REV., 809 (2019).

⁸ Boone & McMichael *supra* n. 4.

