

Wisconsin’s “Unborn Children Protection Act” (Act 292)

This factsheet provides background information about Wisconsin’s Act 292, colloquially known as the “[Unborn Child Protection Act](#)” or the “Cocaine Mom Law.” We call it Act 292 because the Act harms both children and fetuses—it does not protect them—and the previously-used term “cocaine mom” elicits a [false](#), [slanderous](#), and [racist](#) trope about people who consumed cocaine during pregnancy, which we reject.

Since 1997, [Act 292](#) has permitted juvenile courts to take physical custody of an “unborn child”—and thereby physically detain a pregnant person—on the suspicion that a person is pregnant and has consumed or *may* consume alcohol or a controlled substance during their pregnancy. Act 292 was passed over the objections of the [medical community](#) and in spite of glaring constitutional violations well-recognized at the time. Despite these problems, it remains in effect today because neither Wisconsin’s Legislature nor its courts have repealed the law or effectively banned its enforcement.

In 2017, a challenge was brought in the courts. [Loertscher v. Anderson](#), 259 F. Supp.3d 902 (W.D. Wis. 2017). However, the 7th Circuit [vacated](#) that injunction after [Ms. Loertscher](#) moved out of state. Nonetheless, the substance of the decision was neither [addressed nor overturned](#).

In 2014, Tammy Loertscher had a medical problem that caused depression if left untreated. After losing her job and consequently her health insurance, Tammy started to use methamphetamine at times to manage her depression. Tammy made sure her drug use did not negatively affect other aspects of her life. As soon as Tammy realized she was pregnant, she stopped using methamphetamine. However, pursuant to Act 292, Tammy was ordered into drug treatment that she did not need. When she refused, she was incarcerated in Taylor County’s jail for 20 days for refusing that treatment, threatened with a taser, refused access to a lawyer, and denied access to her previously-scheduled prenatal care.

Notwithstanding this ruling, the Act is still being enforced throughout the state, and its enforcement is causing great harm. According to statistics published by Wisconsin’s Department of Children & Families, each year for the past 5 years, approximately 460 Wisconsin women are put in jail, forced into medical treatment, or put on house arrest due to a suspicion that they are pregnant and have consumed or may consume alcohol or a controlled substance during their pregnancy.

Approximately 1,200 women each year are investigated and threatened with complete interference in their personal and medical lives. (See [Child Abuse and Neglect Reports](#), Appendix B.) Throughout these proceedings, the fetus or embryo is guaranteed a lawyer, but the pregnant person is not, and many women subjected to these proceedings are locked up in jails, mental hospitals, or their homes, or subjected to forced treatment, without access to counsel. The cases of [Rachael Lowe](#), [Alicia Beltran](#), and [Tammy Loertscher](#) garnered public attention and illustrate why this punitive law must not be enforced.

Setting aside the fact that the Act is unconstitutional, the Act undermines rather than advances health in Wisconsin, putting at risk the well-being of children, pregnant women, and developing pregnancies. [Every leading medical](#) group to have considered Wisconsin's law (and punitive approaches in other states) has declared as much. In fact, [research](#) commissioned by the State of Wisconsin and carried out by the independent Pew Charitable Trusts in 2018 concluded that Wisconsin's law *deterred* women from seeking and obtaining appropriate drug treatment. See [Report](#), p. 39. The medical community in Wisconsin and around the country speaks with a singular voice about how laws like Wisconsin's Unborn Child Protection Act cause rather than prevent harm: the best ways to protect babies and grow healthy children is to provide confidential, non-threatening health care that keeps mothers engaged in treatment, if they need it, and mothers and babies together.

Act 292 denies pregnant people their freedom and individual liberty while harming mothers and babies, and without promoting health in any way.

What you can do:

1. If you are pregnant or know someone who is pregnant and facing this type of intervention, contact Pregnancy Justice or your local public defenders' office and request legal assistance. For further information about your rights and the steps you can take to protect them, download our [Know Your Rights resource](#).
2. Healthcare providers: you are **not** mandated to report drug use during pregnancy to your local DCF enforcement agency. Rather, you should continue to provide your patient with nonjudgmental, supportive, and confidential care. After your patient gives birth, consider whether toxicology screens are necessary. While a positive toxicology alone is **not** sufficient to mandate a report, it can lead someone to make a report and create new, unnecessary

challenges in your patient's life. If you don't have concerns about this person's ability to parent and already know what substances may be present and how to treat the infant, consider avoiding a toxicology screen, as it is invasive, unnecessary, and possibly harmful if it leads to unnecessary state intervention in the family and possible separation of the parent and infant:

- You are **NOT** mandated to report a positive toxicology.
 - Work to reduce the harm to your patient. Take into consideration implicit bias, systemic racism, and social determinants of health, which you can affect.
 - Educate yourself about what happens after a call is made to DCF so you can weigh the benefits and harms of calling DCF.
 - If you decide a toxicology screen is medically indicated, ask your patient for permission and explain the possible ramifications of a positive toxicology, both medically and in terms of your reporting requirements. They have the right to make an informed decision about what is best for them and their families. *If you do not seek their informed consent and conduct a toxicology screen without it, that may be an illegal search of your patient.*
3. Policy makers, DCF workers, and other law enforcement agents: consider actions to end enforcement of this harmful law and seek its repeal, whether through DCF, the Attorney General's office, the Legislature, or local enforcement agencies. Enforcement of this law deters people from obtaining medical care for themselves during their pregnancies and for their families, including existing children. By promoting confidential supportive healthcare divorced from law enforcement and DCF intervention, you can promote the health of mothers, children, and developing pregnancies.