Maryland Informed Consent Testimony - Final.pdf
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Testimony of National Advocates for Pregnant Women, the Drug Policy Alliance, Movement for Family Power, JMacForFamilies, the Informed Consent Campaign-New York State, Dr. Mishka Terplan, and Dr. Carolyn Sufrin to the Maryland Senate in Support of SB 843, Perinatal Care - Drug and Alcohol Testing and Screening - Consent

National Advocates for Pregnant Women (NAPW)[1] the Drug Policy Alliance (DPA),[2] Movement for Family Power,[3] JMacForFamilies,[4] the Informed Consent Campaign-New York State,[5] Dr. Mishka Terplan,[6] and Dr. Carolyn Sufrin[7] respectfully submit this written testimony in support of SB 843, a bill that would require prior written informed consent by a pregnant or perinatal person for drug testing of themselves or their newborn. NAPW is a non-partisan legal advocacy organization dedicated to the welfare of pregnant people and their families. Our testimony draws on over 20 years of experience on cases in which state actors intervened in a pregnant woman's medical decision making or punished a pregnant or postpartum woman on the basis of something she may have or may not have done while pregnant. This includes but is not

[1] NAPW is a non-partisan legal advocacy organization dedicated to the welfare of pregnant people and their families. Our testimony draws on over 20 years of experience on cases in which state actors intervened in a pregnant woman's medical decision making or punished a pregnant or postpartum woman 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.
[2] DPA is the nation's leading organization working to advance policies and attitudes that best reduce the harms of both drug use and drug prohibition and to promote the sovereignty of individuals over their minds and bodies.
[3] Movement for Family Power works to end the Foster System's policing and punishment of families and to create a world where the dignity and integrity of all families is valued and supported.
[4] JMacForFamilies works to abolish the current punitive child welfare system and to strengthen the systems of supports that keep families and communities together.
[5] The Informed Consent Campaign-New York State is a coalition of organizations and individuals that is raising awareness of and fighting back against drug testing of pregnant people and new mothers at birth and reporting to child protective services in New York State.
[6] Dr. Mishka Terplan is the Associate Medical Director of Friends Research Institute. Dr. Terplan is board certified in both Obstetrics and Gynecology and Addiction Medicine. His primary clinical, research and advocacy interests lie along the intersections of reproductive and behavioral health. Dr. Terplan is nationally recognized as an expert in the care of pregnant and parenting people with substance use disorder. He has been central to guidance document development at the American Congress of Obstetrician Gynecologists (ACOG), the American Society of Addiction Medicine (ASAM) and the Substance Abuse and Mental Health Services Administration (SAMHSA) and has participated in expert panels at Center for Disease Control, Office of the National Drug Control Policy, Office of Women's Health, US Food and Drug Administration and the National Institutes of Health primarily on issues related to gender and addiction. Dr. Terplan has active grant funding and has published over 100 peer-reviewed articles with emphasis on addiction medicine, drug use in pregnancy, health disparities, stigma, and access to treatment.
[7] Carolyn Sufrin, M.D., Ph.D., is an associate professor of gynecology and obstetrics at the Johns Hopkins University School of Medicine and of health, behavior, and society at the Johns Hopkins Bloomberg School of Public Health. As a board-certified obstetrician and gynecologist, her areas of clinical expertise include family planning, general obstetrics and gynecologic care. Dr. Sufrin's research focuses on reproductive health care for incarcerated women.

limited to using substances while pregnant. DPA is the leading organization in the U.S. promoting alternatives to the war on drugs.

SB 843 would provide long-overdue protections for pregnant and postpartum patients whose rights, privacy, and wellbeing are far too often discarded by the hospitals in which they give birth. Hospitals routinely drug test pregnant and postpartum patients without their knowledge or informed consent and in the absence of any medical justification for the test. Hospitals proceed to report the results of these tests to child welfare authorities, thereby exposing new families to traumatizing investigations and in some cases, family separation.[8] This practice—commonly known as "test and report"—has a negative impact on both maternal and neonatal health.

Drug testing perinatal patients without a specific medical concern and without their informed consent is widely opposed by leading medical organizations. For instance, the American College of Obstetricians and Gynecologists (ACOG) provides that drug testing "should be performed only with the patient's consent" and that "[p]regnant women should be informed of the potential ramifications of a positive test result, including any mandatory reporting requirements."[9] ACOG has also stated, "[T]esting and reporting puts the therapeutic relationship between the obstetrician–gynecologist and the patient at risk, potentially placing the physician in an adversarial relationship with the patient."[10] In addition to eroding patient-provider trust, ACOG recognizes that testing and "reporting during pregnancy may dissuade women from seeking prenatal care and may unjustly single out the most vulnerable, particularly women with low incomes and women of color."[11] ACOG concludes that "[d]rug enforcement policies that deter women from seeking prenatal care are contrary to the welfare of the mother and fetus."[12]

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[8] Lisa Sangoi, *"Whatever they do, I'm her comfort, I'm her protector." How the Foster System Has Become Ground Zero for The U.S. Drug War*, Movement for Family Power (June 2020).

[9] American College of Obstetricians and Gynecologists, *ACOG Committee Opinion: Opioid Use and Opioid Use Disorder in Pregnancy* (reaffirmed Oct. 2021), https://www.acog.org/clinical/clinical-guidance/committee-opinion/articles/2017/08/opioid-use-and-opioid-use-disorder-in-pregnancy; American College of Obstetricians and Gynecologists, *Opposition to Criminalization of Individuals During Pregnancy and the Postpartum Period* (Dec. 2020) ("Before performing any test on the pregnant individual or neonate, including screening for the presence of illicit substances, informed consent should be obtained from the pregnant person or parent."), https://www.acog.org/clinical-information/policy-and-position-statements/statements-of-policy/2020/opposition-criminalization-of-individuals-pregnancy-and-postpartum-period.

[10] American College of Obstetricians and Gynecologists, *ACOG Committee Opinion: Substance Abuse Reporting and Pregnancy: The Role of the Obstetrician–Gynecologist* (reaffirmed June, 2019), https://www.acog.org/clinical/clinical-guidance/committee-opinion/articles/2011/01/substance-abuse-reporting-and-pregnancy-the-role-of-the-obstetrician-gynecologist.

[11] *Id.*

[12] *Id.*; *see also* American College of Obstetricians and Gynecologists, *Opposition to Criminalization of Individuals During Pregnancy and the Postpartum Period* (Dec. 2020) ("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

Similarly, the National Perinatal Association (NPA) warns that treating perinatal substance use "as 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."[13] As NPA recognizes, the "threats of discrimination, incarceration, loss of parental rights, and loss of personal autonomy are powerful deterrents to seeking appropriate prenatal care."[14] Accordingly, NPA advises: "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."[15] Informed consent is a critical component of building trusting relationships between pregnant patients and their medical providers, which in turn is essential to advancing maternal and neonatal health.

The establishment of testing and reporting practices dates back to President Nixon's declaration of a "war on drugs" in the 1970s as well as media outlets' perpetuation of racist and scientifically-unsupported myths regarding "crack babies" in the 1980s and 1990s. The New York Times has since recognized that that these sensationalized reports were based on "equal parts bad science and racist stereotypes."[16] Indeed, scientific evidence has compellingly refuted beliefs that such substances cause fetal harm or pregnancy loss, and establishes that associated risks are no greater or less than those for other non-scheduled substances.[17] Yet the moral panic led to the creation of draconian social welfare policies, criminal laws, and hospital practices that continue to vest pregnant women of basic rights—including the right to informed consent—and tear apart families.

To this day, Black and brown families disproportionately experience the punitive effects of these systems. Studies show that hospitals disproportionately subject women who do not fit the white, middle-class stereotype of the "good" American mother to drug testing and reporting.[18] Indeed, in one study in which urine toxicology tests were collected over a 6-month period, it was found that despite similar rates of substance use among Black patients and white patients in the study, Black women were reported to social services at approximately 10 times the rate for white

help when they need it."), https://www.acog.org/clinical-information/policy-and-position-statements/statements-of-policy/2020/opposition-criminalization-of-individuals-pregnancy-and-postpartum-period.

[13] National Perinatal Association, Position Statement, Perinatal Substance Use (2017).

[14] *Id*.

[15] *Id*.

[16] New York Times Editorial Board, *Slandering the Unborn: How Bad Science and a Moral Panic, Fueled in Part by the News Media, Demonized Mothers and Defamed a Generation*, New York Times (Dec. 28, 2018), https://www.nytimes.com/interactive/2018/12/28/opinion/crack-babies-racism.html.

[17] *See* Terplan et al., *The Effects of Cocaine and Amphetamine Use During Pregnancy on the Newborn: Myth versus Reality*, 30 J. Add. Dis. 1 (2011); *see also* NAPW, *Drug Use and Pregnancy* (Sept. 2021), bit.ly/pregnancyandruguse.

[18] Max Jordan Nguemeni Tiako & Lena Sweeney, *The Government's Involvement in Prenatal Drug Testing May Be Toxic*, Maternal and Child Health Journal (Dec. 7, 2020).

women.[19] Peer-reviewed research also establishes that Black women disproportionately face criminal prosecutions and other punitive state actions tied to their pregnancies.[20]

Safeguards on drug testing and reporting are essential in light of the punitive outcomes that pregnant and postpartum patients face as a result of the test and report system. NAPW has documented more than 1,600 instances since 1973 in which women were arrested, prosecuted, convicted, detained, or forced to undergo medical interventions that would not have occurred but for their status as pregnant persons whose rights state actors assumed could be denied in the interest of fetal protection.[21] Those assumptions are wrong and violate pregnant women's constitutional and civil rights. A significant number of the arrests and prosecutions identified involved allegations of the use of controlled substances, even though the vast majority of state criminal laws do not make using drugs—as opposed to possessing drugs—illegal. Accordingly, these prosecutions sought to transform drug use or dependency by one group of people—pregnant women—into criminal "child abuse," "chemical endangerment" or "drug distribution."[22] Moreover, a significant number of these cases originated from reports from health care providers or hospital social workers, indicating that the prosecutions would never have been brought were it not for test and report practices.[23]

Maryland is not exempt from these disturbing national trends regarding the criminalization of pregnancy. The Maryland Court of Appeals unanimously reversed the convictions of two mothers, Kelly Lynn Cruz and Regina Kilmon, whose newborns were drug tested without their consent.[24] Both mothers were prosecuted for and convicted of reckless endangerment on the basis of positive drug tests. On appeal, the American Academy of Addiction Psychiatry and fifty-two other medical, public health, and advocacy organizations and experts filed an amicus brief in support of the mothers warning of the dangerous adverse maternal and neonatal health consequences of such prosecutions. In reversing the convictions, the Maryland Court of Appeals held that the legislature did not intend the reckless endangerment statute to apply to pregnant women in relationship to the fetuses they carry because the legislature chose to treat drug use and pregnancy as a public health matter rather than criminal justice matter. The court recognized that the prosecution's interpretation could lead to judicial scrutiny of every aspect of a pregnant woman's life—from "smoking, to not maintaining a proper and sufficient diet, to avoiding proper

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[19] Ira J. Chasnoff et al., *The Prevalence of Illicit-Drug or Alcohol Use during Pregnancy and Discrepancies in Mandatory Reporting in Pinellas County, Florida*, NEW ENGLAND JOURNAL OF MEDICINE (Oct. 11, 1990), https://www.nejm.org/doi/full/10.1056/NEJM199004263221706.

[20] Lynn M. Paltrow & Jeanne Flavin, *Arrests of and Forced Interventions on Pregnant Women in the United States, 1973–2005: Implications for Women's Legal Status and Public Health*, 38 J. HEALTH POLITICS, POL. & L. 299, 310-11. (2013)

[21] NAPW, *Arrests and Deprivations of Liberty of Pregnant Women, 1973-2020* (Sept. 2021), bit.ly/arrests1973to2020.

[22] Paltrow & Flavin, *supra* note 20 at 323.

[23] *Id*. at 311.

[24] *Kilmon v. State*, 905 A.2d 306 (Md. 2006).

and available prenatal medical care, to failing to wear a seat belt while driving," among many other examples.[25] Although the *Kilmon* decision provides critical protections for Maryland women against criminal charges based on pregnancy and substance use, it does not prevent hospitals from engaging in nonconsensual test and report practices in the first instance or prevent families from facing traumatizing child welfare investigations and potential family separation.

Test and report practices also fail to account for the fact that a positive toxicology test does not, and cannot, distinguish between a single instance of substance use versus a substance use disorder. The latter is a medical condition that meets diagnostic criteria in the Diagnostic Statistic Manual (DSM), and—like other medical and behavioral health conditions—is best addressed through supportive healthcare approaches rather than punitive responses. Moreover, a positive toxicology test does not provide any indication of parenting ability.[26] 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%, reported using tobacco, alcohol, or an illicit drug in the past month.[27] 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. Many of these people are, or will become, parents. Contrary to misleading media coverage, systemic racist practices, and stigma surrounding drug use, 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.

Moreover, nonconsensual testing and reporting practices often violate patients' constitutional rights. The Supreme Court has held that the nonconsensual testing and reporting of pregnant women to state authorities involves a "substantial" invasion of privacy, as the "reasonable expectation of privacy enjoyed by the typical patient undergoing diagnostic tests in a hospital is that the results of those tests will not be shared with nonmedical personnel without her consent." *Ferguson v. City of Charleston*, 532 U.S. 67, 78, 80 (2001). Despite this holding more than twenty years ago, the nonconsensual testing and reporting of pregnant patients remains commonplace. Many hospitals remain unaware of the *Ferguson* decision, and in any event, its constitutional holding only applies to public hospitals. State informed consent legislation like SB 843 thus remains critical for protecting perinatal patients' rights and safeguarding the wellbeing of new families.

Finally, despite common misconceptions, no federal law requires testing or reporting. Hospital officials often cite the federal Child Abuse Prevention and Treatment Act (CAPTA) as a

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[25] *Id*. at 311.
[26] *See* Sangoi, *supra* note 8.
[27] Substance Abuse and Mental Health Services Administration, *Key Substance Use and Mental Health Indicators in the United States: Results from the 2018 National Survey on Drug Use and Health* (2019), https://www.samhsa.gov/data/sites/default/files/cbhsq-reports/NSDUHNationalFindingsReport2018/NSDUHNationalFindingsReport2018.pdf.

putative justification for their test and report practices.[28] These hospitals wrongly assume that CAPTA requires them to drug test perinatal patients and/or newborns and to report all substance-exposed newborns to child welfare agencies as being abused or neglected.[29] In fact, CAPTA requires no such thing.[30] Only recently have states begun to correct hospitals' common misunderstanding regarding CAPTA to ensure that families are not needlessly subjected to traumatizing child welfare investigations. For instance, the New York State Department of Health released guidance specifying that CAPTA does not require hospitals to drug test pregnant women *or* file abuse or neglect reports against parents of drug-exposed newborns.[31] That guidance also emphasized that "[t]oxicology testing should only be performed when medically indicated" and directed each hospital to "develop policies and procedures for obtaining informed consent prior to substance use assessment."[32]

We urge Maryland to act as a national a leader in protecting perinatal patient's right to make informed decisions about their medical care, including the right to written informed consent prior to toxicology testing or screening of themselves or their newborn. We strongly support SB 843 as a significant step forward in recognizing the rights and wellbeing of pregnant patients and families.

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[28] 42 U.S.C. § 5106a.
[29] Movement for Family Power, Drug Policy Alliance, JMacForFamilies, & The Bronx Defenders, *Family Separation in the Medical Setting: The Need for Informed Consent* (Nov. 24. 2019), https://bit.ly/39NYnjd ("[S]tudies confirm that that doctors frequently misunderstand their responsibility under [the Child Abuse Prevention and Treatment Act], and States have widely expanded the scope of this law further consecrating a practice of drug testing and reporting in hospital settings that is not legally required, and further that risks the wellbeing of parents and their newborns.") (citing Lloyd, et al., *The Policy to Practice Gap: Factors Associated with Practitioner Knowledge of CAPTA 2010 Mandates for Identifying and Intervening in Cases of Prenatal Alcohol and Drug Exposure*, 99(3) J. CONTEMP. SOC. SERVS., 232-243 (2018) https://doi.org/10.1177/1044389418785326).
[30] NAPW, *Understanding CAPTA and State Obligations* (Oct. 2020), https://www.nationaladvocatesforpregnantwomen.org/wp-content/uploads/2020/11/2020-revision-CAPTA-requirements-for-states-10-29-20-1-1.pdf.
[31] New York Dep't of Health, *NYS CAPTA CARA Information & Resources*, https://health.ny.gov/prevention/captacara/index.htm.
[32] *Id.*

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SB 843 - Perinatal Care – Drug and Alcohol Testing

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Position: FAV

Women's Law Center of Maryland
JUSTICE FAIRNESS EQUALITY
305 West Chesapeake Avenue, Suite 201 Towson, MD 21204
phone 410 321-8761 fax 410 321-0462 www.wlcmd.org

BILL NO:	Senate Bill 843
TITLE:	Perinatal Care – Drug and Alcohol Testing and Screening – Consent
COMMITTEE:	Finance
HEARING DATE:	March 15, 2022
POSITION:	**FAVORABLE**

The Women's Law Center of Maryland is a non-profit legal services and advocacy organization dedicated to ensuring the physical safety, economic security, and bodily autonomy of women in Maryland. Our advocacy is in support of gender justice as a whole, because all women are entitled to access to justice, equality, and autonomy. We recognize that all the issues we fight for are interconnected. Women cannot have bodily autonomy unless they have physical safety. They cannot have physical safety without economic security. And they cannot have economic security without bodily autonomy.

SB 843 would ensure that pregnant women are informed and aware and give consent to any drug or alcohol testing before it is performed on them. We understand that many hospitals have policies to test pregnant women as a matter of course without affirmatively confirming the woman knows she is being tested. Drug testing, without specific informed consent, is used as an excuse to intrude into people's lives with grave consequences, including criminal proceedings and family separation[1]. The NAPW (National Association for Pregnant Women) also reports these tests can be inaccurate[2]. This is patriarchal behavior and does not respect a woman's right to bodily autonomy. It disproportionately effects Black and Brown women.

Major medical and public health associations, including the American Medical Association, the American College of Obstetricians and Gynecologists, the American Academy of Pediatrics, and the American Society of Addiction Medicine oppose prosecution of pregnant women based on drug use[3].

No one should be tested for something without their knowledge. It negatively impacts the doctor-patient relationship. If pregnant women were aware they might be tested, it may have a chilling effect on pregnant people seeking prenatal care. Prenatal care is vitally important for the health of both the woman and the fetus.

For these reasons, the Women's Law Center urges a favorable report on Senate Bill 843.

The Women's Law Center of Maryland is a private, non-profit, legal services organization that serves as a leading voice for justice and fairness for women. It advocates for the rights of women through legal assistance to individuals and strategic initiatives to achieve systemic change, working to ensure physical safety, economic security, and bodily autonomy for women in Maryland.

[1] Moeller et al., Urine Drug Screening: Practical Guide for Clinicians, 45 Mayo Clinic Proceedings 66, 66 (2008) ("misinterpretation of drug tests can have serious consequences, such as unjust termination from a job, risk of prison sentence, . . . and possibly inappropriate medical treatment in emergencies."); Nina Martin, Take a Valium, Lose Your Kid, Go to Jail, https://www.propublica.org/article/when-the-womb-is-a-crime-scene; Erin Cloud, Rebecca Oyama & Lauren Teichner, Family Defense in the Age of Black Lives Matter, 20 CUNY L. Rev. (2016), available at: https://academicworks.cuny.edu/clr/vol20/iss1/14.

[2] www.advocatesforpregnantwomen.org, last viewed March 8, 2022.

[3] Medical and Public Health Group Statements Opposing Prosecution and Punishment of Pregnant Women, National Advocates for Pregnant Women (June 2018), available at http://advocatesforpregnantwomen.org/Medical%20and%20Public%20Health%20Group%20Statements%20revised%20June%202018.pdf.

Written Testimony on Informed Consent SB0843.pdf
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Position: FAV

MARYLAND OFFICE OF THE PUBLIC DEFENDER

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POSITION ON PROPOSED LEGISLATION

BILL: Senate Bill 0843- Perinatal Care - Drug and Alcohol Testing and Screening - Consent

FROM: Maryland Office of the Public Defender

POSITION: Favorable

DATE: 03/14/2022

The Maryland Office of the Public Defender respectfully requests this Committee issue a favorable report on SB 0843.

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Many women belonging to marginalized groups are unknowingly subject to drug and alcohol testing when they deliver their new born babies. Often times their babies are also tested. If a woman test positive she is reported to the Department of Social Services. She is often times forced to enter drug treatment at the threat that her new born baby will be taken from her. And often, newborn babies who have been exposed to drugs in utero are taken from their parents and placed in foster care. Aside from the positive drug screen, there is generally no proof that the mother has a substance use disorder and there is no proof that she is unable to parent her child. Yet and still, positive toxicology screens at birth are the basis for many newborns being ripped away from their parents and placed in the care and custody of the Department of Social Services.

We all have a basic human right to privacy, especially where our bodies are concerned. But for hundreds of mother's that basic privacy right is violated at birth when these women are drug and alcohol tested without their knowledge or consent.

When a mother or infant test positive for substances at the birth, this results in a report to Child Protective Services, which in turn places the infant at high risk of being removed from their parent, an act that we now know traumatizes children and families more than the harm done by substance use alone. Child Protective Services workers often determine that the existence of a positive drug test means that the mother has a substance use disorder (SUD)[1]. Mothers who test

[1] Substance Use Disorder is defined as Substance use disorders (SUDs) are characterized by recurrent use of alcohol or drugs (or both) that results in problems such as being unable to control use of the substance; failing to meet obligations at work, home, or school; having poor health; and spending an increased amount of time getting,

positive for substances, if they do not commit to treatment can be adjudicated as having neglected their child with no nexus between a positive drug test and actual harm to the child. Often, barriers to treatment like employment, education or things needed to provide for a family's basic needs are not taken into consideration when mothers are being required to attend treatment or be separated from their child(ren).

A positive drug test is not dispositive proof of a mother's inability to give her child proper care and attention. However, infants are often removed from their mother's care on the basis of their mother testing positive for substances without being given the opportunity to show their ability to properly care for their child out of utero. Furthermore, additional trauma is inflicted on families when these mother's (and father's) rights are terminated within months, if they continue to test positive for drugs despite what other efforts may be made to improve their overall condition. These practices are devastating and don't support the legislature's commitment to keeping families together.

Drug testing of pregnant and perinatal persons is a matter of human rights as it is a practice that is rooted in discriminatory practices against poor and women of color[2]. It has been widely established that hospitals that service predominantly poor women and black and brown women (primarily state and county hospitals) routinely drug test their pregnant patients and their infants without consent at a rate that far outpaces hospitals that service white wealthier women. Further, in a recent study it was seen that Hospitals that serve predominantly white and/ or upper class patients have stricter policies on drug testing in which informed consent has to be obtained. As such, this practice perpetuates the racist structure of the child welfare system that continues to remove black and brown children from their homes at a disproportionate rate than their white counterparts[3].

Testing pregnant and perinatal women without their consent is a privacy violation. In addressing a similar issue where pregnant women and their babies were being drug tested without their consent and results were being turned over to the police, the Supreme Court stated:

> "In each of those cases, we employed a balancing test that weighed the intrusion on the individual's interest in privacy against the "special needs" that supported the program. As an initial matter, we note that the invasion of privacy in this case is far more substantial than in those cases. In the previous four cases, there was no misunderstanding about the purpose of the test or the potential use of the test results, and there were protections against the dissemination of the results to third parties.[12] The use of an adverse test result to disqualify one from eligibility for a particular benefit, such as a promotion or an opportunity to participate in an extracurricular activity, involves a less serious intrusion on privacy than the unauthorized dissemination of such results to third parties. The reasonable

using, or recovering from the effects of using the substance. Lipari, R and Van Horn, s. (n.d.) Children living with parents with substance use disorders. Substance Use and Mental Health Services Administration.

[2] Fitzgerald, M. (November 2020) New York City to investigate hospital drug test for black and latino mothers, which can prompt foster care removals. *The Imprint Youth and Family News*.

[3] "In 2018 black children represented 14% of the population but 23% of all children in foster care." Annie E. Casey Foundation (April 13, 2020) Black Children Continue to Be Overrepresented in Foster Care. Kids Count Data.

> expectation of privacy enjoyed by the typical patient undergoing diagnostic tests in a hospital is that the results of those tests will not be shared with nonmedical personnel without her consent. See Brief for American Medical Association et al. as *Amici Curiae* 11; Brief for American Public Health Association as *Amicus Curiae* 6, 17–19.[13] In none **1289 of our prior cases was there any intrusion upon that kind of expectation.[14]"

Ferguson v. City of Charleston, 532 U.S. 67, 78, 121 S. Ct. 1281, 1288–89, 149 L. Ed. 2d 205 (2001)

In order to receive proper health care treatment for themselves and their babies, pregnant mothers will often have to disclose private and personal information. They rightfully expect that what information they provide and what treatment they receive will be kept confidential. The fact that drug test are done without a woman's knowledge or consent and then reported to the Department of Social Services is a violation of that woman's right to privacy.

Additionally, this has become a public health issue as many vulnerable women, understanding the risk that is imposed on their ability to parent their child if they do test positive for substances will forego prenatal and/ or medical treatment for fear that children will be taken.

The practice of drug testing pregnant and perinatal women and their infants is not about the best interest or safety of the child. It if were, there would not be any discrepancy between what population of women are required to provide consent for drug testing and which women are not. Drug testing a woman and her newborn child without consent is a violation of her privacy right and is often times a discriminatory practice. Further it sets in motion a series of events that could permanently displace a child from their natural families, and does not provide any guarantee that the mother or the child will be better off because of it.

I propose that we create a statute that require mother's to be informed and consent to drug and alcohol testing and screening of themselves and their infants during their pregnancy and at birth.

For these reasons, the Maryland Office of the Public Defender urges this Committee to issue a favorable report on SB 0843.

Submitted by: Government Relations Division of the Maryland Office of the Public Defender.

Authored by: Natasha Khalfani, Esq. Assistant Public Defender**,** (301) 580-3786**, Natasha.Khalfani@maryland.gov**

SB843_Perinatal Care Consent_BHRC.pdf
Uploaded by: Rajani Gudlavalleti
Position: FAV

March 15, 2022

The Honorable Delores Kelley
Chairman, Senate Finance Committee
3 East Miller Senate Office Building
Annapolis, MD 21401

Senate Bill 843 - Perinatal Care - Drug and Alcohol Testing and Screening - Consent - FAVORABLE

Dear Chair Kelley and Senate Finance Committee members,

Baltimore Harm Reduction Coalition (BHRC) is an advocacy organization that mobilizes community members for the health, dignity, and safety of people targeted by the war on drugs and anti- sex worker policies. As a certified Overdose Response Program, naloxone distributor, and syringe service program, we have provided essential health care services across the state for years. To supplement the life-saving, respectful services provided by us and dozens of harm reduction programs across the state, BHRC supports Senate Bill 843 Perinatal Care - Drug and Alcohol Testing and Screening - Consent.

SB843 will prevent any healthcare provider from administering a drug or alcohol screening to a pregnant patient unless two criteria are met: 1) the healthcare provider obtains written consent from the patient, and 2) the screening is within the scope of perinatal care being provided to the patient. Additionally, SB843 will prevent any healthcare provider from administering a drug or alcohol screening to a newborn infant unless the provider obtains written consent from the infant's parent or assigned legal guardian. This proposed legislation mandates that the written consent form for such drug or alcohol screenings describe the potential medical, legal, and collateral consequences of a positive drug or alcohol screening in relation to the pregnant patient or newborn infant.

Due to over 145 years of criminalizing drug use, pregnant and parenting people who use drugs are severely stigmatized and understandably untrusting of healthcare providers. Experience with bias, judgment, and scrutiny – especially from healthcare workers, loved ones, family, and friends – can isolate people and make it harder to seek prenatal care, mental health counseling, social services, and community support.[1] Widespread stigma creates significant barriers to accessing what people need to survive and thrive, such as care, housing, income and social services.

BHRC supports SB843 for prioritizing autonomy, respect and dignity, which are essential elements of life-saving harm reduction practices. The time leading up to and immediately after birth is a vulnerable period for a parent. This stress can easily be exacerbated by fear of State involvement in the family, including the use of drug or alcohol screening tools to surveill or punish

[1] National Harm Reduction Coalition and The Academy of Perinatal Harm Reduction. (2020). *Pregnancy & Substance Use - A Harm Reduction Toolkit.* https://harmreduction.org/wp-content/uploads/2020/10/09.17.20_Pregnancy-and-Substance-Use-2.pdf

parents. SB843 would institute a protocol to ensure the birthing parent, or infant's parent or guardian is able to make an informed decision regarding their body. The discussion around consent would increase opportunity for the parent to build trust with the healthcare provider. Trust enhances communication between a healthcare provider and patient, improving family health and well-being.[2]

To improve the access and quality of perinatal care in Maryland, we ask that the Senate Finance Committee give SB843 a favorable report.

For more information about Baltimore Harm Reduction Coalition or our position, please contact our Director of Mobilization, Rajani Gudlavalleti at rajani@baltimoreharmreduction.org

[2] Préau M, Leport C, Salmon-Ceron D, Carrieri P, Portier H, Chene G, et al. Health-related quality of life and patient-provider relationships in HIV-infected patients during the first three years after starting PI-containing antiretroviral treatment. AIDS Care. 2004;16(5):649–61. https://doi.org/10.1080/09540120410001716441

SB 0843 Testimony - The Bloom Collective (1).pdf
Uploaded by: Tanay Harris
Position: FAV

Testimony of The Bloom Collective in Support of SB 0843, Perinatal Care - Drug and Alcohol Testing and Screening - Consent

My name is Tanay Lynn Harris, and I am the Director and co-Founder of The Bloom Collective, and we respectfully submit this written testimony in support of SB 0843, a bill that would require prior written informed consent by a pregnant or perinatal person for drug testing of themselves or their newborn. The Bloom Collective is a Black women led community based organization situated in Baltimore City, where we provide holistic care to mamas and birthing persons along the preconception, pregnancy and postpartum period.

SB 0843 would provide critical protections for pregnant and postpartum patients whose rights, privacy, and wellbeing are far too often disregarded by the hospitals in which they give birth. Hospitals routinely drug test perinatal patients without their knowledge or informed consent and are absent of any medical justification for the test. This practice is commonly known as "test and report" and has a negative impact on both maternal and infant health.

Test and report practices cause the unnecessary separation of mothers from their newborns, which causes incredible harm to families and children. We know that mothers/parents are a treatment and health care for their children. Furthermore, keeping children with parents can prevent trauma that might lead to chaotic substance use. Supporting pregnant and parenting people with their substance use is better for families than separating mothers from their children. These punitive practices disproportionately affect Black and Brown women and families, and Black women more often face prosecution for their pregnancies.[1]

I was drug tested without my consent when giving birth to my son in 2015. I was completely unaware about the drug testing being done on me until I did my first Covid-19 test at the Baltimore Convention Center, in 2020. Upon receiving my results, I saw an extensive list of drug testing done on me during my time of giving birth. Although the unconstitutionality of drug testing wasn't new to me and the stories I have heard from clients and community members - It was new information for me to process, and a retraumatization about my birthing experience. I thought to myself, what would my life be like if for a moment I decided to partake in substance or drink a glass of wine. Perinatal mood and anxiety disorders were a very real part of my pregnancy and postpartum journey, and I could easily have looked for an escapism.

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[1] Lynn M. Paltrow & Jeanne Flavin, *Arrests of and Forced Interventions on Pregnant Women in the United States, 1973–2005: Implications for Women's Legal Status and Public Health*, 38 J. HEALTH POLITICS, POL. & L. 299, 310-11. (2013)

Our clients and people in my community have growing concerns about the quality of their care in the hospital setting, and the blatant disregard for their humanity because of racism and bias from providers. Such oversight and deficit based mother blame narratives are a deterrent from mothers getting the perinatal care and support they need, deserve and desire because they are frightened. Rather than looking at the systems and structures that have created hard outcomes, our society has deemed people as unworthy because of how they respond to harm, oppression and trauma that is historically and institutionally embedded in our society. This disregard further increases maternal and neonatal health challenges and breaks down familial, social and communal ties for mother and baby. What if we rather ensured they had all they needed to live their most joyful and fulfilled lives?

Giving families the opportunity to have meaningful and informed consent prior to drug testing them, can offer them the opportunities to seek support. It also starts to repair the broken bonds between pregnant people and the medical system.

Obtaining informed consent can help build a world where the dignity and integrity of all families is valued and supported. We must end racial inequity in the surveillance and criminalization of drug use and stop the womb to foster care pipeline. We must invest in our communities, not drug war tactics.

- **Between 2004 and 2014**, foster systems spent between $29 billion and $32 billion every year in federal, state, and local dollars on child welfare surveillance and control.[2]
- In the drug war waged by the foster system, the federal government poured unprecedented federal funds into reimbursing states for the costs of removing children (mostly Black, Latinx, American Indian, and impoverished white children) from their parents' care.
- During this same period, funds for basic necessities for families such as drug treatment and associated healthcare, housing, child care, and so on remained constant and a fraction of what was available for removing children from their homes.
- These funds and corresponding regulations, often consolidated the relationship between medical care providers and policing agents like child services creating more infrastructure for reporting services than community support.
- The impact of funding reporting and the foster care system over supports for families has been disastrous.
- According to a recent report, by the Center for the Study of Social Policy[3]:
    - families of color are more likely to become involved in child protective services and they experience worse outcomes once they become involved.
    - a staggering 53 percent of Black children—and by extension their parents and families—will be investigated by child protective services, compared to 32 percent of Hispanic children, 28 percent of White children, 23 percent of Native American children, and 10 percent of Asian/Pacific Islander children.
    - Once investigated, children of color are more likely to be removed from their families.

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[2] Lisa Sangoi, *"Whatever they do, I'm her comfort, I'm her protector." How the Foster System Has Become Ground Zero for The U.S. Drug War*, Movement for Family Power (June 2020).

[3] Minoff, Elisa and Alexandra Citrin. "Systemically Neglected: How Racism Structures Public Systems to Produce Child Neglect." Center for the Study of Social Policy, March 2022.

- Once placed in foster care, Black and Indigenous children spend longer in foster care than White children, are less likely to reunify with their families, and are more likely to age out of care without a permanent connection to a loving adult.
- This is problematic, because when children are removed from their families, they lose important bonds and connections— whether it is to parents, siblings, aunts, uncles, grandparents, or more extended or fictive kin. Not only that, we know that foster care itself can at times be a site of harm and abuse.

Test and Reporting practices are a pipeline to a system that does more to prepare our children for incarceration than protection. Families need to be informed of the potential risks and benefits of drug tests. We believe that birthing people can, and do make good choices for the safety of their children. Moreover, we have the power to reimagine family safety and wellbeing, and ensuring that all birthing people have the right to informed consent is the first step.

Our families need support, not surveillance and separation. Supporting pregnant and parenting people with their substance use is better for families than separating mothers from their children. We support Senate Bill Number 0843 and ask that you support this Bill favorably, as it is an important step in honoring the rights and wellbeing of pregnant patients and families.

Tanay Lynn Harris, Director & Co-Founder
The Bloom Collective
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SB 843- Perinatal Care - Drug and Alcohol Testing

Uploaded by: Jane Krienke

Position: FWA

Maryland
Hospital Association

Senate Bill 843 - Perinatal Care - Drug and Alcohol Testing and Screening - Consent

Position: ***Support with Amendments***
March 15, 2022
Senate Finance Committee

MHA Position

On behalf of the Maryland Hospital Association's (MHA) 60 member hospitals and health systems, we appreciate the opportunity to comment on SB 843.

Improving maternal health outcomes and reducing the disparity between Black Non-Hispanic and White mothers are priorities for the state and Maryland hospitals. According to the Maryland Maternal Mortality Review 2020 Annual Report, unintentional overdose and substance use was the leading cause of nonpregnancy related maternal deaths.

The majority of Maryland's birthing hospitals include consent for drug and alcohol screening upon admission to labor and delivery. The patient always has the right to decline testing. **SB 843 presents several concerns that could impact the safety and well-being of the mother and newborn.**

Safety and well-being of the mother.
The bill does not recognize the distinction between screening and testing. Since all hospitals universally screen, there is concern that requiring a separate consent for screening could be burdensome and potentially make it harder to identify pregnant patients who could benefit from interventions and support services. The Maryland Substance Exposed Newborn Toolkit recommends screening for substance use throughout pregnancy.

The Department of Health launched a five-year Maternal Opioid Misuse model in 2020 to reduce fragmentation in the care of pregnant and post-partum Medicaid beneficiaries who are diagnosed with opioid use disorder. As one of 10 states receiving federal funding through this program, the Medicaid program is partnering to improve case management and support services offered to pregnant and post-partum women with opioid use disorder. A component of referral is having providers use evidence-based screening tools to identify eligible patients who elect to participate in the program.

Safety and well-being of the newborn.
By singling out drug and alcohol screening and testing, we are concerned this could serve as a barrier and lead more mothers to refuse screening and testing, which could result in no screening and testing for the newborn. When a patient declines this test, usually the hospital asks the patient to sign a declaration form stating they are declining. The form allows the patient to consent to test the newborn. Since newborns are tested if the mother's test is positive and only

with consent, there is concern newborns with neonatal abstinence syndrome, who may not exhibit symptoms in the hospital, could be sent home without the proper treatment.

If the mother tests positive, this alone does not meet the state's definition of a substance exposed newborn. The test result alone also does not trigger screening criteria for a substance exposed newborn risk of harm service case.[1] Maryland defines a substance exposed newborn as "a child under the age of 30 days who:

- Displays a positive toxicology screen for a controlled substance as evidenced by any appropriate test after birth;
- Displays the effects of controlled drug use or symptoms of withdrawal resulting from prenatal controlled drug exposure as determined by medical personnel; or
- Displays the effects of Fetal Alcohol Spectrum Disorder."

Risk for increased provider bias.
The decision to screen universally aligns with the American College of Obstetricians & Gynecologists' recommendations and helps reduce provider bias and potential missed cases.[2] We are concerned SB 843 could unintentionally reintroduce bias into this process and inhibit mothers and babies from receiving the care and support they need.

We recommend amending SB 843 to remove the requirement that the Department of Health create a separate consent form for screening and testing. We also recommend removing the requirement that the screening be within the scope of the perinatal care provided to the patient since this could be open to interpretation and not align with ACOG's recommendation to universally screen. Additionally, instead of the Department of Health consent form, we recommend the creation of informational materials in partnership with the Department of Human Services and the Social Services Administration to complement the work already underway to support substance exposed newborns and their families.

Maryland hospitals are committed to improving maternal and child health outcomes. In 2021, the Center for Medicare and Medicaid Innovation approved Maryland's State Integrated Health Improvement Strategy (SIHIS), which is "a fundamental component of the Maryland Total Cost of Care Model."[3] SIHIS includes total population health goals specifically addressing maternal and child health.[4] The state committed to lower the severe maternal morbidity (SMM) rate by 19% by 2026, focusing on closing the racial gap by reducing the Black Non-Hispanic rate by

[1] Maryland Department of Human Services, Social Services Administration and Maryland Department of Health, Behavioral Health Administration. (Feb. 6, 2020). "Maryland Substance Exposed Newborn Tool Kit."
[2] The American College of Obstetricians & Gynecologists. (August, 2017). "Opioid Use and Opioid Use Disorder in Pregnancy,".
[3] Center for Medicare and Medicaid Innovation. (March 17, 2021). "Statewide Integrated Health Improvement Strategy Proposal,".
[4] Maryland Health Services Cost Review Commission. (May, 2021). "Final Recommendation on Use of Maternal and Child Health Funding."

20%.[5,6] SMM events include complications such as heart attack, eclampsia, and sepsis that are "unintended outcomes of the process of labor and delivery that result in significant short-term or long-term consequences to a woman's health." [7]

Removing barriers that could inhibit mothers and babies from receiving appropriate care and treatment is paramount. We ask for the Committee's consideration of our recommended amendments and look forward to working with the sponsors on this important issue.

For more information, please contact:
Jane Krienke, Legislative Analyst, Government Affairs
Jkrienke@mhaonline.org

[5] Kaiser Family Foundation. (n.d.). "State Facts: Births Financed by Medicaid".
[6] Maryland Health Services Cost Review Commission. (December 14, 2020). "Statewide Integrated Health Improvement Strategy Proposal".
[7] The American College of Obstetricians and Gynecologists. (September, 2016). "Severe Maternal Morbidity: Screening and Review".

NCADD-MD - SB 843 FWA - Informed Consent.pdf
Uploaded by: Nancy Rosen-Cohen
Position: FWA

Senate Finance Committee
March 15, 2022

Senate Bill 843
Perinatal Care - Drug and Alcohol Testing and Screening - Consent

Support with Amendment

The Maryland Affiliate of the National Council on Alcoholism and Drug Dependence (NCADD-Maryland) supports, with amendments, House Bill 843 which requires informed consent before a pregnant person can be tested for drugs or alcohol. To be clear, we fully support efforts to ensure that children's well-being is protected and believe that there is a legitimate and important role for the State to intervene when there is a threat to a child's safety. We also believe that when a person has a substance use disorder, a health intervention should be the response.

There remains a strong bias against people using medications such as methadone when they have an opioid use disorder. This stigma exists for pregnant people as well, despite years of research that demonstrate medication in addiction treatment is safe and effective. This stigma exists among health care professionals in hospital and other care settings, as well as among those in local departments of social services.

We know that when a person with an opioid use disorder becomes pregnant, the fear of having their child taken away can either lead them to seek addiction treatment, or specifically avoid any interaction with the health care system, including prenatal care. The fear of giving birth in a hospital where staff may not understand or support the use of methadone by pregnant people with opioid use disorders, can deter people from going to the hospital when in labor.

Over the years, there has been an effort to increase the knowledge that all involved have about the disease of addiction, the efficacy of treatment, and the legitimate role of child welfare services with regard to the safety of children. Informed consent prior to drug or alcohol testing would mean that people would be aware not just the consequences of a positive test, but what support services could be made available to the family.

NCADD-Maryland would seek an amendment to take out of the bill the need for informed consent for an alcohol or drug screen. Screening tools are an important part of routine health care and consent requirements may deter clinicians from asking simple questions that can be effective in identifying when someone may need additional support or services.

We ask the Maryland General Assembly to continue supporting policies that address substance use disorders with proven public health policies and continue to move away from punitive approaches to address this disease.

National Council on Alcoholism & Drug Dependence – Maryland Chapter
28 E. Ostend Street, Suite 303, Baltimore, MD 21230 · 410-625-6482 · fax 410-625-6484
www.ncaddmaryland.org

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Uploaded by: State of Maryland (MD)
Position: FWA

Maryland
Board of Nursing
Larry Hogan, Governor · Boyd K. Rutherford, Lt. Governor · Dennis R. Schrader, Secretary
Gary Hicks - President | Karen Evans - Executive Director
4140 Patterson Avenue, Baltimore, Maryland, 21215-2254

March 15, 2022

The Honorable Delores G. Kelley
Chair, Senate Finance Operations
3 East Miller Senate Office Building
Annapolis, MD 21401-1991

RE: SB 843 – Perinatal Care – Drug and Alcohol Testing and Screening – Consent – Letter of Support with Amendments

Dear Chair Kelley and Committee Members:

The Maryland Board of Nursing (the Board) respectfully submits this letter of support with amendments for Senate Bill (SB) 843 – Perinatal Care – Drug and Alcohol Testing and Screening – Consent. This bill prohibits health care providers from administering a drug or alcohol test or screen to pregnant and perinatal patients and newborn infants, except under certain circumstances; and requires that a certain form be provided by the Maryland Department of Health that describes medical, legal, and collateral consequences of a positive drug or alcohol test or screen result.

The Board strongly supports codifying best practices for informed consent as it relates to perinatal drug and alcohol testing and screening within the Maryland Health General Article. It is a nurse's ethical responsibility to openly communicate with and obtain consent from a patient prior to administering a service. Nurses must inform the patient of the diagnosis, the rationale for recommended interventions, and any burdens, risks, and benefits of treatment options. Nurses must subsequently assess the patient's ability to understand relevant medical information and the implications of treatment alternatives.

The Board, however, respectfully submits the following amendment to narrow the language for individuals that may administer a drug or alcohol test or screen within a health care setting. The term "hospital personnel" remains vague as it could include individuals that may never administer care to a patient; for example, environmental services personnel or legal counsel.

Section 20-120. On page 2. Lines 1 – 3.

(A) (1) A PHYSICIAN, A NURSE PRACTITIONER, A SOCIAL WORKER, HOSPITAL PERSONNEL, OR ANY OTHER HEALTH CARE PROVIDER LICENSED OR CERTIFIED UNDER THE HEALTH OCCUPATIONS ARTICLE MAY NOT ADMINISTER A DRUG….

Section 20-120. On page 2. Lines 11 – 13.

(2) A PHYSICIAN, A NURSE PRACTITIONER, A SOCIAL WORKER, HOSPITAL PERSONNEL, OR ANY OTHER HEALTH CARE PROVIDER LICENSED OR CERTIFIED UNDER THE HEALTH OCCUPATIONS ARTICLE MAY NOT ADMINISTER A DRUG….

For the reasons discussed above, the Maryland Board of Nursing respectfully submits this letter of support with amendments for SB 843.

I hope this information is useful. For more information, please contact Iman Farid, Health Policy Analyst, at (410) 585 – 1536 or iman.farid@maryland.gov or Rhonda Scott, Deputy Director, at (410) 585 – 1953 or rhonda.scott2@maryland.gov.

Sincerely,

Gary N. Hicks
Board President

The opinion of the Board expressed in this document does not necessarily reflect that of the Department of Health or the Administration.

SB0843 testimony.pdf
Uploaded by: Deborah Brocato
Position: UNF

SB0843
OPPOSED
Deborah Brocato
Harford County Respect Life Coordinators
3206 Glouchester Drive
Fallston, MD 21047

Dear Senators,

As a nurse, I know that the best way to promote a positive outcome for a patient is to have all of the pertinent medical data available. This would most certainly include whether or not an individual has been using drugs, legal or otherwise.

While working in the ICU at Sinai Hospital, I cared for a man with an alcohol drip. He was in the hospital for abdominal surgery but needed to be in the intensive care unit for monitoring with the alcohol drip. Part of his treatment plan included the fact that he was an alcoholic and how much alcohol was in his system. We needed to prevent the life-threatening condition of Delirium Tremens, also known as DT's, brought on by alcohol withdrawal. I've taken care of patients brought in experiencing DT's. It is a medical emergency requiring a team of people starting IV's, monitoring the vital signs, administering meds, etc. It's not something you want anyone to endure.

Likewise, during my clinical rotation for labor and delivery at Union Memorial Hospital, I regularly saw women in preterm labor due to "speedballing" which was the use of heroine and cocaine together. In order to properly care for these women and their babies, it was necessary to know what drugs they used and what levels were in their systems.

Forehand knowledge and preparation whenever possible are key to providing positive outcomes for patients. Postpartum care plans would be most effective if the medical team knows the woman might experience drug withdrawal. Medical personnel would be alert to signs and symptoms and prepared for medicines needed to treat the woman. Likewise for her baby. In addition, discharge planning would include planning for drug counseling and services.

Just as the medical team would want to know if a woman is diabetic for proper treatment, the same is true in the case of the woman using drugs. Knowing a patient's weight is another pertinent fact for prescribing correct dosages. Asking about weight, medical history and drug history is not about judgement. All of that information is within scope of care and it is about applying appropriate interventions. A separate question is not necessary or helpful.

Healthcare professionals are in the business of helping people recover. This bill seems to put obstacles in the way of providing appropriate care for women and their babies. Putting the question of drug use separate from the general intake is a hindrance to the care of the woman. A separate question would serve only to highlight the drug behavior over any other information and that would make the woman feel more uncomfortable, being a pregnant woman, and inclined to not be entirely truthful. Usually, in medical situations, time is of the essence and the sooner information is known, the better for proper intervention.

I urge you to not create obstacles in healthcare and vote in opposition of Senate Bill 0843.

Thank you.

UNFAVORABLE.SB843.MDRTL.L.Bogley.pdf
Uploaded by: Laura Bogley
Position: UNF

Unfavorable SB843
Perinatal Care-Drug and Alcohol Testing and Screening – Consent

Laura Bogley, JD
Director of Legislation, Maryland Right to Life

On behalf of the Board of Directors of Maryland Right to Life, I respectfully oppose House Bill 1335-Perinatal Care-Drug and Alcohol Testing and Screening – Consent. This bill will unnecessarily increase the risk of infant injury and death as a result of being born to a drug-addicted mother.

Maryland Right to Life agrees that mothers suffering from drug addiction deserve immediate medical assistance to save the lives of both mother and child. Baseline medical screening of both mother and infant, including the presence of drug toxicity levels in blood, is ***medically necessary*** and essential for providers to render appropriate diagnosis and urgent lifesaving treatment for both mother and child. State policy to enable medical providers to provide that urgent care for the child is in the best interest of both child and mother.

However, this bill creates additional layers of administrative bureaucracy that will create *unnecessary delay* and prevent urgent medical intervention necessary to save the life of infants suffering drug intoxication. Administrative processes intended to protect patient rights **should not be made so onerous as to become an impediment** to the administration of urgent medical care.

These proposed regulations are more stringent than existing federal HIPAA requirements. The Health Insurance Portability and Accountability Act of 1996 (HIPAA) is a federal law that required the creation of national standards to protect sensitive patient health information from being disclosed without the patient's consent or knowledge.

Under current Maryland law, medical providers are mandatory reporters of suspected child abuse and neglect. But the primary purpose of this law is not to penalize mothers, but *to protect child welfare*. Under current law, the state must act *in loco parentis*, or in place of the drug-addicted parent, to protect the welfare of the child. This is a widely accepted policy under both state and federal law.

For these reasons, we respectfully urge you to vote against this bill and to <u>support existing state law</u> and regulations that allow medical providers to provide lifesaving medical interventions to both patients. Thank you.

SB0843_UNF_MedChi, MDAAP, MDACOG_Perinatal Care -

Uploaded by: Pam Kasemeyer

Position: UNF

The Maryland State Medical Society
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TO: The Honorable Delores G. Kelley, Chair
Members, Senate Finance Committee
The Honorable Charles E. Sydnor, III

FROM: Pamela Metz Kasemeyer
J. Steven Wise
Danna L. Kauffman
Christine Krone

DATE: March 15, 2022

RE: **OPPOSE** – Senate Bill 843 – *Perinatal Care – Drug and Alcohol Testing and Screening – Consent*

On behalf of the Maryland State Medical Society, the Maryland Chapter of the American Academy of Pediatrics, and the Maryland Section of the American College of Obstetricians and Gynecologists, we submit this letter of **opposition** for Senate Bill 843.

Senate Bill 843 would prohibit health care providers from administering a drug or alcohol test or screen to pregnant and perinatal patients and newborn infants unless the provider receives consent utilizing a specific consent form to be developed by the Maryland Department of Health (MDH). The consent form is required to describe the potential medical, legal, and collateral consequences of a positive drug or alcohol test or screen result in relation to the patient or newborn infant.

While the above-named organizations understand that the sponsor's intent is to ensure that pregnant and perinatal patients clearly understand the issues related to drug and alcohol testing and screening, the provisions of this bill could create unintended consequences and dramatically undermine the apparent objectives of this legislation. First, creating a separate consent form could actually increase stigma for these women as opposed to decreasing stigma. Failure to consent may dramatically escalate the assumption that there is a significant drug or alcohol problem. Further, the information that the bill requires to be included in a separate consent form cannot be accomplished. It is not possible to include all medical implications that could be associated with a pregnancy that are related to drug and alcohol testing nor are collateral consequences able to be adequately defined.

In addition, this bill applies to not only testing but also to screening. Newborn screening is the standard of care and essential to ensuring positive health outcomes. Similarly, health outcomes for a pregnant woman are also impacted by knowledge of underlying health issues and challenges, such as drug and alcohol use. This is not to say that pregnant women should not have the right to consent and/or decline testing but creating a separate consent form specific to this particular component of comprehensive

medical care will undermine the ability to appropriately serve the health care needs of pregnant women and their newborns.

If there is a desire to better educate pregnant women about the issues relative to drug and alcohol testing, then it would be better to focus on the creation of educational materials that could be provided to the pregnant women regarding drug and alcohol testing and interventions that may occur depending on the results of those tests. Maryland has been a leader in establishing specialized treatment and support frameworks for pregnant women and their newborns who may have substance abuse issues, such as the MD MOM initiative. Enhancing those initiatives and providing better outreach and education is a preferable approach and will not further enhance the stigmatization of these women that would result from the passage of Senate Bill 843. For the reasons stated, an unfavorable report is requested.

For more information call:
Pamela Metz Kasemeyer
J. Steven Wise
Danna L. Kauffman
Christine Krone
410-244-7000

SB843_DHS_LOI.pdf
Uploaded by: Lauren Graziano
Position: INFO

Date: March 15, 2022

Bill number: SB 843

Committee: Finance

Bill title: Perinatal Care - Drug and Alcohol Testing and Screening - Consent

DHS Position: Letter of Information

The Department of Human Services (the Department) respectfully submits this letter of information regarding Senate Bill 843 (SB 843). SB 843 prohibits health care providers from administering a drug or alcohol test or screening to pregnant patients, perinatal patients, and newborn infants without written consent.

The Comprehensive Addiction and Recovery Act of 2016, the Child Abuse Prevention and Treatment Act (CAPTA), Maryland's Family Law § 5-704.2 , and COMAR 07.02.08 requires healthcare providers involved in the delivery or care of a newborn to notify DHS if a newborn is born substance exposed. A newborn is considered substance exposed if the newborn either (1) displays a positive toxicology screen for a controlled substance as evidenced by any appropriate test after birth (2) displays the effects of controlled drug use or symptoms of withdrawal resulting from prenatal controlled drug exposure as determined by medical personnel; or (3) displays effects of fetal alcohol spectrum disorder.

Under current law, when DHS receives a report of a Substance Exposed Newborn (SEN), the Department is required to (1) see the newborn in person (2) consult with a health care practitioner with knowledge of the newborn's condition and the effects of any prenatal alcohol or drug exposure; and (3) attempt to interview the newborn's mother and any other individual responsible for care of the newborn. The Department must also conduct a safety risk assessment for the newborn to determine whether further intervention is needed.

If this bill passes, notification to DHS may not occur if written consent from the pregnant, perinatal patient, or an individual who is the parent or legal guardian of the newborn is not obtained. This would impact the agency, and the safety of children. Furthermore, this may place the agency out of compliance with CAPTA which may jeopardize $1.6 million in federal funds awarded to the agency.

The Department appreciates the opportunity to share the aforementioned information with the Committee, and asks that it be taken into consideration during deliberations.