



**Testimony for the Senate Judicial Proceedings Committee
March 28, 2018**

**HB 1744 - Child Abuse and Neglect – Substance-Exposed Newborns –
Reporting**

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OPPOSE

The American Civil Liberties Union of Maryland (ACLU) opposes HB 1744, which would expand the existing requirement that healthcare providers report substance-exposed newborns to local social services departments to include, even as amended, newborns whose mothers' substance use was consistent with a medication prescribed or dispensed to her by her health care provider. This bill could have severely negative consequences.

Amendments Do Not Remove HB 1744's Infirmities

Under the amended version of HB 1744, a health care practitioner is still required to make a report to the local department if the mother was using a controlled substance that was given to her by her provider.

Under the amended version of the bill, a health care practitioner is required to make a report if the newborn displays "the effects of withdrawal from controlled substance exposure." Under this scenario, if a pregnant woman is in treatment and using methadone or buprenorphine,¹ the newborn will be in withdrawal, and will trigger a report. The woman is reported even though the methadone or buprenorphine is given to her by her medical provider. This bill will prevent women who take provider-prescribed medications, no less drug-dependent pregnant women, from obtaining prenatal care and delivering their babies in hospitals, thus leading to worse outcomes for infants.

Further, the language "the newborn is not affected by substance abuse" on pg. 3, line 20 is vague, which increases the risk of doctors reporting everyone on the suspicion of "substance abuse."

Public Health Concerns

In order to be effective, policies addressing pregnant women and substance use, including prescription medications such as opioid-treatment, must include consideration of the medical, social, and economic factors that influence such use, as well as access to effective treatment for it.² This bill takes none of these factors into account.

Such a policy can likely result in denying pregnant women access to appropriate treatment for pain, creating barriers to medically approved and federally recommended treatment, and increasing punitive and counterproductive child

¹ Buprenorphine is an opioid medication used to treat opioid addiction in the privacy of a physician's office. See <https://www.samhsa.gov/medication-assisted-treatment/treatment/buprenorphine>.

² American College of Obstetricians and Gynecologists, *Committee Report* (2011), available at https://www.acog.org/Clinical-Guidance-and-Publications/Committee_Opinions/Committee_on_Health_Care_for_Underserved_Women/Substance_Abuse_Reporting_and_Pregnancy_The_Role_of-the-Obstetrician-Gynecologist.

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welfare interventions that undermine, rather than protect, children and families in Maryland.

The law already requires providers to report, and departments to investigate, all reports of child abuse and neglect, so this bill is unnecessary to help the health of newborn babies. Instead, by reporting pregnant women who use controlled substances, it is likely to lead to worse outcomes for women and infants because it will deter pregnant women from seeking prenatal care, taking their legally prescribed medications, entering drug treatment, candidly discussing drug use with their doctors, and delivering babies in hospitals.

Finally, even if a mother is determined to be suffering from substance use disorder, mandatory reporting perpetuates stigmatization and is likely to discourage pregnant women from seeking treatment or other services that would benefit their child, such as pre-natal care and hospital delivery.

Constitutional Concerns

HB 1744 raises constitutional concerns because it punishes women who take medications recommended by their health care providers who choose to carry their babies to term by reporting their legal drug use to government agencies.

This bill imposes a burden on women's fundamental right to procreate and discriminates against women. The constitutional guarantee of procreative privacy specifically protects women from measures that burden or penalize the decision to carry a pregnancy to term. The consequences under this bill of being reported to another agency, thus putting a mother into the government system for doing nothing wrong or illegal, is sufficiently punitive to deter women struggling with drug dependency or abiding by their provider's orders, to continue their pregnancy.³

This bill also violates women's right to equal protection because the state has no comparable punishment on men who use drugs. When the state places additional restrictions on women to which men are not subject "in rel[iance] on invalid gender stereotypes," this constitutes potentially unconstitutional "gender discrimination" and "warrant[s] heightened scrutiny."⁴ The fact that acts, omissions, or medical conditions experienced by a pregnant woman affects embryonic or fetal health, subjecting women to punitive measures for behavior while pregnant that *may* affect their newborns would subject women's liberty to scrutiny by government agencies.

While the problem of drug-affected newborns is a serious one, HB 1744 is not the answer. It will result in worse outcomes for infants and mothers and compromise the constitutional rights of pregnant women.

For these reasons, we urge you to issue an unfavorable report for HB 1744.

³ *Planned Parenthood of Se. Pennsylvania v. Casey*, 505 U.S. 833, 859 (1992).

⁴ *Nevada Dept. of Human Resources v. Hibbs*, 538 U.S. 721, 730 (2003).