



Testimony for the House Judiciary Committee
March 14, 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 newborns whose mothers' substance use was consistent with a current prescription or prescribed medical treatment plan. This bill could have severely negative consequences.

Public Health Concerns

Under HB 1744, a health care practitioner is now required to make a report to the local department if the mother was using a controlled substance that was *prescribed* for her by her provider. This can have devastating consequences.

Pain does not disappear when a woman becomes pregnant, and for women who are living with severe and chronic pain, opioid and other painkillers have been relied upon as the safest alternative. Denying pregnant women adequate pain treatment would not only be inhumane,¹ but untreated pain during pregnancy would certainly present as a major stressor for pregnant women and their fetuses. 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.

In order to be effective, policies addressing pregnant women and substance use, including prescription medications such as opioids or methadone, 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 have a 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 welfare interventions that undermine, rather than protect, children and families in Maryland.

¹Juan E. Méndez, *Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment* (2013), available at http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session22/A.HRC.22.53_English.pdf.

²American 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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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.

Constitutional Issues

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 women 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 respectfully request an unfavorable report on 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).