

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29  
30  
31  
32  
33  
34  
35  
36  
37  
38  
39  
40  
41  
42  
43  
44  
45  
46  
47  
48  
49  
50  
51  
52  
53

Title: Substance Use During Pregnancy  
Introduced by: Charles J. Barone II, MD, for the Wayne County Delegation  
Original Author: Tabitha Moses  
Referred to: Reference Committee D  
House Action: **APPROVED AS AMENDED**

---

Whereas, a 2012 national survey found that 5.9 percent of pregnant women used illicit drugs, 8.5 percent consumed alcohol and 15.9 percent smoked cigarettes and a 2018 report ranked Michigan as fourth in states with the worst substance use problems<sup>1,2</sup>, and

Whereas, in 2014, the prevalence of opioid use disorder in pregnant women was 6.5 per 1,000 births and the prevalence of neonatal abstinence syndrome (NAS) has tripled in 10 years due to increasing opiate using among pregnant women in Michigan and nationally<sup>3,4,5,6</sup>, and

Whereas, substance use during pregnancy is considered to be child abuse in 23 states and cases have been documented where women have been arrested despite voluntarily participating in substance use treatment programs, which is contrary to the American Medical Association’s (AMA) stance on the issue (H-420.950)<sup>7,8,9</sup>, and

Whereas, Michigan Compiled Law 722.623a requires individuals with reason to suspect that a newborn infant has any amount of alcohol or controlled substance in their body to report this to law enforcement and women in Michigan have previously been prosecuted, although not convicted, for prenatal drug use<sup>8,10</sup>, and

Whereas, during the 2017-2018 Legislative Session, legislation (House Bill 4877) was introduced but not adopted that sought to expand Michigan child abuse statute by adding harm to a fetus due to the mother’s prenatal drug use<sup>11</sup>, and

Whereas, AMA policy H-420.969 currently states that “criminal sanctions or civil liability for harmful behavior by the pregnant woman toward her fetus are inappropriate,” and

Whereas, the American Academy of Pediatrics affirms that “punitive measures taken toward pregnant women such as criminal prosecution and incarceration, have no proven benefits for infant health,” a position that was reaffirmed in 2017<sup>12,13</sup>, and

Whereas, African American women and children have been shown to be disproportionately targeted and tested 1.5 times more often than non-black women and children for substance use, indicating that policies aimed at maternal substance use are being applied in a racially biased manner<sup>7,14</sup>, and

Whereas, the Supreme Court has found that involuntary drug testing of pregnant women is a violation of the Fourth Amendment<sup>15,16,17,18</sup>, and

Whereas, the Committee Opinion from the American College of Obstetricians and Gynecologists encourages physicians to “retract legislation that punishes women for substance abuse during pregnancy” and that legally mandated testing and reporting threatens the physician-patient relationship, leading to disengagement from prenatal care<sup>15,19</sup>, and

54           Whereas, the AMA opposes the criminalization of maternal drug addiction, acknowledges that  
55 punishment is not an effective way to cure drug dependency or prevent future abuse, and recommends  
56 treatment and education as the most effective method for reducing maternal and fetal harm (H-420.970)<sup>20</sup>,  
57 and  
58

59           Whereas, punitive legislation and physician bias are major barriers to accessing substance abuse  
60 treatment and prenatal care for pregnant women, resulting in negative maternal and fetal outcomes<sup>21</sup>, and  
61

62           Whereas, children who are removed from homes due to parental substance use are more likely to  
63 remain in foster care for longer, are moved between more placements, and are less likely to be reunited with  
64 their family, resulting in significant trauma<sup>22,23</sup>, and  
65

66           Whereas, although there are no current statistics on the scope of the problem today, anecdotal  
67 evidence of infant separation for positive drug tests has created enough fear in pregnant women that some  
68 avoid pre-natal care and even avoid visiting the hospital for childbirth<sup>24,25</sup>; therefore be it  
69

70           RESOLVED: That MSMS amend policy: Substance Abuse During Pregnancy (Board-July96) by  
71 insertion and deletion as follows:  
72

73           MSMS opposes making the use of controlled substances during pregnancy a felony. MSMS  
74 encourages routine drug screening of pregnant women. **MSMS opposes the removal of a**  
75 **child from its mother during the hospital stay solely due to evidence from a single**  
76 **positive drug test without an evaluation from a social worker;** and be it further  
77

78           RESOLVED: That the Michigan Delegation to the American Medical Association (AMA) ask our AMA  
79 to amend policy H-420.950 (Substance Use Disorders During Pregnancy) by insertion and deletion as follows:  
80

81           Our AMA will: (1) oppose any efforts to imply that the diagnosis of substance abuse disorder  
82 during pregnancy represents child abuse; ~~and~~ (2) support legislative and other appropriate  
83 efforts for the expansion and improved access to evidence-based treatment for substance  
84 use disorders during pregnancy; and **(3) oppose the removal of infants from their**  
85 **mothers solely based on a single positive prenatal drug screen without an evaluation**  
86 **from a social worker.**  
87

---

88  
89           WAYS AND MEANS COMMITTEE FISCAL NOTE: \$1,000 or more for costs related to the adoption of new or  
90 revised MSMS or AMA policy.

**Relevant MSMS Policy:**

Substance Abuse During Pregnancy

MSMS opposes making the use of controlled substances during pregnancy a felony. MSMS encourages routine drug screening of pregnant women. (Board-July96)

Alcohol, Tobacco and Other Drugs (ATOD) Screening of Pregnant Women by Primary Physicians

MSMS encourages physicians to conduct alcohol, tobacco and other drug (ATOD) assessment of pregnant women as a health initiative in Michigan. (Res101-97A)

**Relevant AMA Policy:**

Substance Use Disorders During Pregnancy H-420.950

Our AMA will: (1) oppose any efforts to imply that the diagnosis of substance abuse disorder during pregnancy represents child abuse; and (2) support legislative and other appropriate efforts for the expansion and improved access to evidence-based treatment for substance use disorders during pregnancy.

#### Legal Interventions During Pregnancy H-420.969

Court Ordered Medical Treatments And Legal Penalties For Potentially Harmful Behavior By Pregnant Women: (1) Judicial intervention is inappropriate when a woman has made an informed refusal of a medical treatment designed to benefit her fetus. If an exceptional circumstance could be found in which a medical treatment poses an insignificant or no health risk to the woman, entails a minimal invasion of her bodily integrity, and would clearly prevent substantial and irreversible harm to her fetus, it might be appropriate for a physician to seek judicial intervention. However, the fundamental principle against compelled medical procedures should control in all cases which do not present such exceptional circumstances. (2) The physician's duty is to provide appropriate information, such that the pregnant woman may make an informed and thoughtful decision, not to dictate the woman's decision. (3) A physician should not be liable for honoring a pregnant woman's informed refusal of medical treatment designed to benefit the fetus. (4) Criminal sanctions or civil liability for harmful behavior by the pregnant woman toward her fetus are inappropriate. (5) Pregnant substance abusers should be provided with rehabilitative treatment appropriate to their specific physiological and psychological needs. (6) To minimize the risk of legal action by a pregnant patient or an injured fetus, the physician should document medical recommendations made including the consequences of failure to comply with the physician's recommendation.

#### Treatment Versus Criminalization - Physician Role in Drug Addiction During Pregnancy H-420.970

It is the policy of the AMA (1) to reconfirm its position that drug addiction is a disease amenable to treatment rather than a criminal activity; (2) to forewarn the U.S. government and the public at large that there are extremely serious implications of drug addiction during pregnancy and there is a pressing need for adequate maternal drug treatment and family supportive child protective services; (3) to oppose legislation which criminalizes maternal drug addiction or requires physicians to function as agents of law enforcement - gathering evidence for prosecution rather than provider of treatment; and (4) to provide concentrated lobbying efforts to encourage legislature funding for maternal drug addiction treatment rather than prosecution, and to encourage state and specialty medical societies to do the same.

#### Perinatal Addiction - Issues in Care and Prevention H-420.962

Our AMA: (1) adopts the following statement: Transplacental drug transfer should not be subject to criminal sanctions or civil liability; (2) encourages the federal government to expand the proportion of funds allocated to drug treatment, prevention, and education. In particular, support is crucial for establishing and making broadly available specialized treatment programs for drug-addicted pregnant and breastfeeding women wherever possible; (3) urges the federal government to fund additional research to further knowledge about and effective treatment programs for drug-addicted pregnant and breastfeeding women, encourages also the support of research that provides long-term follow-up data on the developmental consequences of perinatal drug exposure, and identifies appropriate methodologies for early intervention with perinatally exposed children; (4) reaffirms the following statement: Pregnant and breastfeeding patients with substance use disorders should be provided with physician-led, team-based care that is evidence-based and offers the ancillary and supportive services that are necessary to support rehabilitation; and (5) through its communication vehicles, encourages all physicians to increase their knowledge regarding the effects of drug and alcohol use during pregnancy and breastfeeding and to routinely inquire about alcohol and drug use in the course of providing prenatal care.

#### Drug Abuse in the United States - the Next Generation H-95.976

Our AMA is committed to efforts that can help prevent this national problem from becoming a chronic burden. The AMA pledges its continuing involvement in programs to alert physicians and the public to the dimensions of the problem and the most promising solutions. The AMA, therefore: (1) supports cooperation in activities of organizations such as the National Association for Perinatal Addiction Research and Education (NAPARE) in fostering education, research, prevention, and treatment of substance abuse; (2) encourages the development of model substance abuse treatment programs, complete with an evaluation component that is designed to meet the special needs of pregnant women and women with infant children through a comprehensive array of essential services; (3) urges physicians to routinely provide, at a minimum, a historical screen for all pregnant women, and those of childbearing age for substance abuse and to follow up positive screens with appropriate counseling, interventions and referrals; (4) supports pursuing the development of educational materials for physicians, physicians in training, other health care providers, and the public on prevention, diagnosis, and treatment of perinatal addiction. In this regard, the AMA encourages further collaboration with the Partnership for a Drug-Free America in delivering appropriate messages to health professionals and the public on the risks and ramifications of perinatal drug and alcohol use; (5) urges the National Institute on Drug Abuse, the National Institute on Alcohol Abuse and Alcoholism, and the Federal Office for Substance Abuse Prevention to continue to support research and demonstration projects around effective prevention and intervention strategies; (6) urges that public policy be predicated on the understanding that alcoholism and drug dependence, including tobacco dependence as indicated by the Surgeon General's report, are diseases characterized

by compulsive use in the face of adverse consequences; (7) affirms the concept that substance abuse is a disease and supports developing model legislation to appropriately address perinatal addiction as a disease, bearing in mind physicians' concern for the health of the mother, the fetus and resultant offspring; and (8) calls for better coordination of research, prevention, and intervention services for women and infants at risk for both HIV infection and perinatal addiction.

- 
- <sup>1</sup> United States Department of Health and Human Services. Substance Abuse and Mental Health Services Administration. Center for Behavioral Health Statistics and Quality. National Survey on Drug Use and Health. Ann Arbor, MI; 2012. doi:<https://doi.org/10.3886/ICPSR34933.v3>
- <sup>2</sup> Kiernan JS. Drug Use by State: 2018's Problem Areas. Wallet Hub. <https://wallethub.com/edu/drug-use-by-state/35150/>. Published 2018. Accessed January 10, 2019.
- <sup>3</sup> Haight SC, Ko JY, Tong VT, Bohm MK, Callaghan WM. Opioid Use Disorder Documented at Delivery Hospitalization - United States, 1999-2014. *MMWR Morb Mortal Wkly Rep.* 2018;67(31):845-849. doi:10.15585/mmwr.mm6731a1
- <sup>4</sup> Ko JY, Patrick SW, Tong VT, Patel R, Lind JN, Barfield WD. Incidence of Neonatal Abstinence Syndrome - 28 States, 1999-2013. *MMWR Morb Mortal Wkly Rep.* 2016;65(31):799-802. doi:10.15585/mmwr.mm6531a2
- <sup>5</sup> Michigan Department of Health and Human Services. Alcohol/Substance Abuse Epidemiology Program.; 2019. [https://www.michigan.gov/mdhhs/0,5885,7-339-71548\\_54783\\_54784\\_57850--,00.html](https://www.michigan.gov/mdhhs/0,5885,7-339-71548_54783_54784_57850--,00.html). Accessed January 10, 2019.
- <sup>6</sup> Michigan Department of Health and Human Services. Neonatal Drug Withdrawal among Michigan Infants.; 2013. [https://www.michigan.gov/documents/mdch/NWS\\_FactSheet\\_final\\_6.25.13\\_431275\\_7.pdf](https://www.michigan.gov/documents/mdch/NWS_FactSheet_final_6.25.13_431275_7.pdf). Accessed January 10, 2019.
- <sup>7</sup> Paltrow LM, Flavin J. Arrests of and Forced Interventions on Pregnant Women in the United States, 1973-2005: Implications for Women's Legal Status and Public Health. *J Health Polit Policy Law.* 2013;38(2):299-343. doi:10.1215/03616878-1966324
- <sup>8</sup> Guttmacher Institute. Substance Use During Pregnancy.; 2019. <https://www.guttmacher.org/state-policy/explore/substance-use-during-pregnancy>. Accessed January 10, 2019.
- <sup>9</sup> Miranda L, Dixon V, Reyes C. How States Handle Drug Use During Pregnancy.; 2015. <https://projects.propublica.org/graphics/maternity-drug-policies-by-state>. Accessed January 10, 2019.
- <sup>10</sup> Legislative Council S of M. Child Protection Law Act 238 of 1975.; 1996. [http://www.legislature.mi.gov/\(S\(11lxhyfl2madi4d1rhflxero\)\)/mileg.aspx?page=GetObject&objectname=mcl-722-623a](http://www.legislature.mi.gov/(S(11lxhyfl2madi4d1rhflxero))/mileg.aspx?page=GetObject&objectname=mcl-722-623a). Accessed January 10, 2019.
- <sup>11</sup> Michigan House Republicans. Representative Garcia Legislation Protects Fetus, Expectant Mothers.; 2018. <http://gophouse.org/rep-garcia-legislation-protects-fetus-expectant-mothers/>. Accessed January 10, 2019.
- <sup>12</sup> Committee on Substance Abuse. Drug-Exposed Infants.; 1995. [www.aappublications.org/news](http://www.aappublications.org/news). Accessed January 10, 2019.
- <sup>13</sup> T Hart BA. Reverse translation of failed treatments can help improving the validity of preclinical animal models. *Eur J Pharmacol.* 2015;759:14-18. doi:10.1016/j.ejphar.2015.03.030
- <sup>14</sup> Kunins HV, Bellin E, Chazotte C, Du E, Arnsten JH. The effect of race on provider decisions to test for illicit drug use in the peripartum setting. *J Womens Health (Larchmt).* 2007;16(2):245-255. doi:10.1089/jwh.2006.0070
- <sup>15</sup> Cohen, Laura B. Informing Consent: Medical Malpractice and the Criminalization of Pregnancy. *Mich Law Rev.* 2018;116(7):1296-1316. [http://michiganlawreview.org/wp-content/uploads/2018/05/116MichLRev1297\\_Cohen.pdf](http://michiganlawreview.org/wp-content/uploads/2018/05/116MichLRev1297_Cohen.pdf). Accessed September 1, 2018.
- <sup>16</sup> Gottlieb S. Pregnant women cannot be tested for drugs without consent. *BMJ.* 2001;322(7289):753. <http://www.ncbi.nlm.nih.gov/pubmed/11282855>.
- <sup>17</sup> 532 US 57. *Ferguson v. City of Charleston*.; 2001. <https://www.oyez.org/cases/2000/99-936>. Accessed January 10, 2019.
- <sup>18</sup> Gostin LO. At Law: The Rights of Pregnant Women: The Supreme Court and Drug Testing. *Hastings Cent Rep.* 2001;31(5):8. doi:10.2307/3527697
- <sup>19</sup> American College of Obstetricians and Gynecologists Committee on Health Care for Underserved Women. AGOG Committee Opinion No. 473: substance abuse reporting and pregnancy: the role of the obstetrician-gynecologist. *Obstet Gynecol.* 2011;117(1):200-201. doi:10.1097/AOG.0b013e31820a6216
- <sup>20</sup> Legal Interventions During Pregnancy: Court-Ordered Medical Treatments and Legal Penalties for Potentially Harmful Behavior by Pregnant Women. *JAMA.* 1990;264(20):2663. doi:10.1001/jama.1990.03450200071034
- <sup>21</sup> Sutter MB, Gopman S, Leeman L. Patient-centered Care to Address Barriers for Pregnant Women with Opioid Dependence. *Obstet Gynecol Clin North Am.* 2017;44(1):95-107. doi:10.1016/j.ogc.2016.11.004
- <sup>22</sup> Akin BA, Brook J, Lloyd MH. Examining the role of methamphetamine in permanency: A competing risks analysis of reunification, guardianship, and adoption. *Am J Orthopsychiatry.* 2015;85(2):119-130. doi:10.1037/ort0000052
- <sup>23</sup> Marsh JC, Smith BD. Integrated Substance Abuse and Child Welfare Services for Women: A Progress Review. *Child Youth Serv Rev.* 2011;33(3):466-472. doi:10.1016/j.childyouth.2010.06.017
- <sup>24</sup> Stone R. Pregnant women and substance use: fear, stigma, and barriers to care. *Heal Justice.* 2015;3(1):2. doi:10.1186/s40352-015-0015-5
- <sup>25</sup> Khazan O. States Are Jailing Mothers for Drug Addiction and Taking Their Children Away.; 2015. <https://www.theatlantic.com/health/archive/2015/05/into-the-body-of-another/392522/>. Accessed September 21, 2018.