

March 30, 2015

Senator Jeremy Hutchinson, Chair
Senate Judiciary Committee
Arkansas Senate
State Capitol
500 Woodlane St. Ste 320
Little Rock, AR 72201-1090

Re: HB 1376

Dear Senator Hutchinson and Members of the Committee:

National Advocates for Pregnant Women (NAPW) is a non-profit public interest organization that works to protect the health and civil and human rights of pregnant women and their families. Since 2000, NAPW has served as legal counsel and as *amicus curiae* in cases throughout the United States in which pregnant women have been prosecuted, punished, or forced to undergo unwanted medical procedures under the guise of protecting fetal health.



Dr. Janet Cathey is a retired obstetrician gynecologist, who established Little Rock Gynecology & Obstetrics, LLC, and provided obstetrical care to hundreds of Arkansas women through that practice until her retirement.

We write today, on behalf of Dr. Cathey and our organization, to strongly urge you to oppose House Bill 1376. This bill would take a law intended to protect people from rapists who give their unwitting victims drugs in order to facilitate sexual assault, and apply it to women who become pregnant, carry their babies to term, and have used or are addicted to certain drugs. If passed, HB 1376 will undermine public health and will encourage women who want to carry their babies to term to have abortions for fear of spending decades in jail.

HB 1376 is bad for public health

HB 1376 has been proposed in reaction to the prosecution of Melissa McCann-Arms, who was convicted of delivering a controlled substance to a minor through her umbilical cord at the moment of her child's birth. Ms. McCann-Arms became pregnant, continued that pregnancy to term, and gave birth to a baby who is alive and well. Ms. McCann-Arms, however was sentenced to 20 years in prison under this novel and constitutionally flawed interpretation of the state's criminal code. Knowing they could face decades in

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prison will not help pregnant women who need drug treatment or other health care, but it will drive them away from prenatal care, and sends the message that they should terminate their pregnancies, rather than carry them to term.

This is not speculation: this is a known consequence of punitive sanctions for drug use by women who become pregnant and who fear that something they did or didn't do while pregnant can be the basis for arrest, prosecution, and incarceration.¹ Prenatal care has been shown to improve maternal and child health whether or not women continue to use drugs or have other health problems during pregnancy. For these reasons, every major medical association in the United States, including the American Medical Association and the American College of Obstetricians and Gynecologists, opposes laws like HB 1376. By enacting a law like this, the Arkansas Legislature will undermine the health of mothers and babies.

HB 1376 will send the message to Arkansas women who struggle with addiction that they should terminate their pregnancies

NAPW supports women's civil and human rights to self-determination, including the right to decide whether or not to carry a pregnancy to term. Laws that essentially coerce abortion violate these fundamental rights. By shifting a law designed to address rape to one that subjects pregnant women with health problems to the possibility of decades in prison, Arkansas sends the clear message that women who cannot stop their drug use or overcome an addiction problem in the short length of a pregnancy should terminate their pregnancies.



The House's amendment will not cure HB 1376's dangerous effects

The Arkansas House has added a statement of legislative purpose that appears to be a partial response to the dangerous consequences this bill is likely to have. This statement urges prosecutors and judges to "prefer" drug treatment over criminal sanctions for pregnant women. But that statement of purpose will have no legal effect, and it will do nothing to remove the fear of prosecution that will drive women away from prenatal care and what little drug treatment may be available to them during their pregnancies. The only way to ensure that pregnant women are encouraged to seek treatment is to ensure that when they do, they will be provided health care, not punishment. This proposed bill does the opposite.

The 2007 study of the effect of Garrett's Law shows that treatment is still lacking in Arkansas for pregnant women who need it

In 2005, this Legislature passed a bill known as "Garrett's Law," that provides for child welfare intervention when women or babies have a positive drug test at birth. The law was intended to encourage the provision of services, including treatment, for women and babies. A 2007 state-sponsored study indicates that while the majority of pregnant women and their babies who were investigated between 2005 and 2006 did not need

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treatment, when drug treatment for women was actually indicated (what the report refers to as “true Garrett’s Law referrals”), only 20% of the women received services, and not all of them received drug treatment. For all of the cases, the majority of women who got any services at all received only drug screening (i.e., drug testing). Drug screening is not, of course, the same as drug treatment. But given the lack of drug treatment options for pregnant women in Arkansas, this is, unfortunately, not surprising.

Drug treatment options are limited in Arkansas and HB 1376 will not help

According to the federal Substance Abuse and Mental Health Services Administration, only 7 of Arkansas’ 61 drug treatment programs (both public and private) accept pregnant women. Increasing access to drug treatment for pregnant women, ensuring their confidentiality in health care, and reducing stress (not increasing it through threats of arrest and incarceration) are far more effective approaches to addressing substance addiction and pregnancy. This bill will do nothing to address that, and will only deter women from accessing these limited treatment options.

In short, HB 1376 would undermine Arkansas’ efforts to improve maternal and fetal health. NAPW believes that every family deserves the support and health care they need to thrive, and supports solutions that expand drug treatment options for pregnant women who need it. NAPW would be glad to offer this Committee testimony, a list of medical experts who could testify, and answer questions about the relative risks of harms from various legal and criminalized substances and the negative impact of laws like these on pregnant women and their families. The public health consequences of HB 1376 are severe and well understood. Please reject HB 1376.

Sincerely,



Sara L. Ainsworth, J.D.
Director of Legal Advocacy

cc: Representative Nate Bell, Sponsor of HB 1376

¹ Helen Cole, for the American Medical Association Board of Trustees, *Legal Interventions During Pregnancy*, 264 JAMA 2663 (1990); American College of Obstetricians and Gynecologists, Comm. on Ethics, *Maternal Decision Making, Ethics, and the Law*, 106 *Obstetrics & Gynecology* 1127 (2005); American Nurses Association, Position Statement, *Non-punitive Alcohol and Drug Treatment for Pregnant and Breast-feeding Women and their Exposed Children* (Dec. 9, 2011); American Academy of Pediatrics, Comm. on Substance Abuse, *Drug Exposed Infants*, 86 *Pediatrics* 639 (1990); M.L. Poland et al., *Punishing pregnant drug users: Enhancing the flight from care*, 31 *DRUG ALCOHOL DEPEND* 199 (1993).