

The Daily News of Los Angeles

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VALLEY EDITION

TODDLER, NEWBORN WRONGLY TORN FROM FAMILY IN STEPPED-UP
SCREENING OF PREGNANT WOMEN

BYLINE: By Troy Anderson Staff Writer

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Awakened by late-night pounding and his doorbell ringing, Palmdale resident Jesus Bejarano found a social worker and two sheriff's deputies demanding he turn over his 20-month-old daughter, Kelly.

The social worker said Bejarano's 29-year-old wife, Cheila Herrera, had tested positive for amphetamines and PCP at Antelope Valley Hospital after giving birth to the couple's son a week earlier.

Their son, Jesse, who was born prematurely and was still at the hospital, had already been placed in protective custody.

"It was terrible," Herrera said of the Feb. 14 ordeal. "It was pretty shocking to us. We didn't know what to do or say. We called my mom, saying, 'They are taking our baby away.'

"We started calling friends, but no one we know has gone through something like this. We were crying. We thought, oh my God, they took our baby."

Last month, the couple sued Los Angeles County government for unspecified damages, saying Herrera had never used drugs and the social worker ignored a battery of expensive tests that proved the initial drug-test results were wrong.

Experts say the case highlights widespread problems with California's system of drug-testing pregnant mothers, using urine-screening tests that produce false-positives up to 70 percent of the time, and inconsistent compliance by hospitals with a state law designed to regulate the process.

"The system sounds problematic ... because they are doing urine-only screens, and if they are not doing confirmation tests, they are going to have a lot of false positives," said Dr. Barry Lester, a national expert on drug-exposed babies and a professor of pediatrics and psychiatry at Brown University in Providence, R.I.

The Palmdale case comes two decades after concerns about "crack babies" swept tens of thousands of children into child-protective systems across the nation. Today, many medical experts say those concerns were overblown, with children showing no consistent birth defects or brain damage after being born to mothers who tested positive for crack use.

But experts say that in recent years a similar sweep has focused on "meth babies." Up to 80 percent of mothers in Los Angeles County whose babies are taken tested positive for methamphetamine, a drug that experts say produces very high rates of false positives.

Removing the child

In Los Angeles County, the number of infants removed from mothers who tested positive for drugs at hospitals nearly tripled from 209 in 2003 to 568 last year, according to county data. California officials said they do not track similar figures statewide.

"Nine times out of 10, they remove the child," said Martha Molina Aviles, deputy to Supervisor Gloria Molina. "So we have been asking the (Department of Children and Family Services) a lot more questions about substance-abuse issues.

"How do they test? Are they randomly testing? What kind of tests are they doing? We certainly would support, whenever possible, to do confirmatory tests."

Under California legislation passed in 1990, it is against the law for a children's services agency to take a baby from a mother based solely on a single, positive drug test.

The law says there also must be proof the baby is at risk of abuse or neglect. And the law requires hospitals to conduct an assessment of the mother to determine if the baby is at risk before calling children's services authorities.

Known as the Presley Bill, the legislation came after a sudden increase in hospital reports to child welfare authorities of perinatal substance abuse.

But in a 1994 analysis on behalf of the state Department of Alcohol and Drug Programs, reviewers found widespread misunderstanding of the law, no mechanism to monitor implementation and a lack of funding for training or technical assistance for counties and hospitals.

"It's like the wild, wild West out here," said Beverly Hills attorney L. Wallace Pate, who is representing the Palmdale couple in their suit against the county.

"Nobody is following the law. The judges seem to be handling these positive toxicology screens like a drug war on women.

“They are telling moms, ‘You tested positive for drugs, you are a bad mom, and we are going to take your kids away.’ But under the law, the mom has to be abusive or negligent in the care of the baby.”

Principal Deputy County Counsel Rosemarie Belda said she couldn't comment on the Palmdale couple's lawsuit because it involves pending litigation.

But officials at the Department of Children and Family Services and the Interagency Council on Child Abuse and Neglect said that, despite the state legislation, hospitals are not consistently filling out the required assessment forms.

“Some hospitals are not submitting these protocol forms at all,” ICAN Executive Director Deanne Tilton Durfee said.

Issue of liability

DCFS and hospital officials say physicians have discretion whether to request a second screening test for pregnant mothers who test positive for drugs.

But James Lott, executive vice president of the Hospital Association of Southern California, said most hospitals in the county are not performing the assessments before calling the DCFS because, if something adverse happens to the baby or the assessment is inadequate, the hospital could be held legally liable.

“Hospitals don't like being put in this position, and so many hospitals will consider the positive toxicology test all the screening they have to do,” Lott said.

“And that will be, can be and often is the sole determinant in regard to referrals (to DCFS), and then they let the (child welfare) investigators sort the rest of it out.

“The hospitals are erring on the side of safety for the child. And they could be faulted for the screening process. The only objective, fact-based criteria the hospital has is the toxicology test. Screening can be determined to be subjective.”

Lott also said he doesn't believe hospitals are violating the law.

“The law does not say you cannot make a referral without having done the screening,” Lott said. “It says you should do the screening if you are going to make a referral.

“I know that sounds twisted, but anyone can make a referral without a screening, and it's up to the investigators to decide (whether to detain the baby).”

Lott also said many hospitals don't always have the laboratory expertise to conduct confirmatory tests. And while dependency court attorneys say they have been requesting more confirmatory tests recently, they acknowledge the practice is still relatively rare.

Dr. Charles Sophy, medical director of DCFS, said his agency is concerned that many hospitals aren't following the law or performing confirmatory drug tests.

“I think oftentimes hospitals want to err on the side of caution, and as mandated reporters they call us immediately,” Sophy said. “And somewhere in the process either the confirmation doesn't get done or they never get to the next step (of assessing the risk of child mistreatment).

“But the more awareness we can raise, the better off we are in terms of keeping families together.”

He also noted his agency is caught in a tough situation: It must decide whether to detain a baby at the hospital, but can't order confirmatory tests at that time because the mother is still under the care of her doctor.

“We can suggest they do a confirmatory test, but they don't always do it,” Sophy said. “We don't want to inappropriately take children from their families. The disruption is not worth it. So we try to confirm as much as we can.”

If the agency decides to take a baby into custody, after the mother is discharged from the hospital she often is required to undergo weekly drug testing that serves as a confirmatory process, Sophy said.

“I'm concerned there are false positives sometimes, but usually there are more false negatives because of the games people play,” Sophy said.

“Unless the test is actually witnessed at the hospital, certain games can be played to alter the tests. There are all kinds of ways people can change the results.”

But child welfare experts, advocates for pregnant women and attorneys who handle such cases say problems with the system and testing methods are resulting in the unnecessary removal of babies from mothers across the nation.

“Thousands, if not hundreds of thousands, of families have been undermined by unnecessary child welfare investigations based on nothing more than a single, unconfirmed drug test,” said Lynn M. Paltrow, executive director of National Advocates for Pregnant Women in New York City.

And Richard Wexler, executive director of the National Coalition for Child Protection Reform in Alexandria, Va., said similar systemic problems are found across the nation.

“While it may be harmful for a pregnant mother to use marijuana or other drugs, it is far more harmful to that child to have to endure the trauma of foster care,” Wexler said.

“This doesn't mean you simply leave a baby with an addict. But it does mean that drug treatment for the mother should be the first choice, instead of foster care for the child. And those are cases where there really is a problem.”

Maternal drug use

In Los Angeles County, Sophy attributed the near tripling in the number of detained babies to increased drug use by pregnant mothers and a campaign to encourage hospitals to report positive toxicology results.

Sophy said 70 to 80 percent of the cases have involved mothers who tested positive for methamphetamine use, and he said about 40 percent of the mothers are placed in substance-abuse treatment programs.

“About 40 to 60 percent of them end up back as intact families,” Sophy said. “We work really hard to get these parents connected to services because we want to reunify them.”

ICAN's Durfee said maternal drug abuse in Los Angeles County was the leading cause of accidental death in 2006 among babies and children younger than 5. There were 25 deaths, up from 15 the previous year. Twelve of the deaths were associated with methamphetamine and 12 with cocaine.

But Wexler and Lewis said researchers also have found it difficult for medical examiners to determine whether the deaths resulted directly from substance abuse or from conditions associated with poverty and lack of care before and after birth.

“I'm not saying maternal drug use is harmless,” Lewis said. “It can have an influence on fetal growth, birth weight and neurological function.

“But we are saying there are other influences on fetal growth that may be more costly, in terms of their damaging effects, than drug use.”

Lisa Fisher, spokeswoman for the California Department of Alcohol and Drug Programs, said most medical and addiction experts now say fears have been overblown about the long-term effects of drug exposure on babies.

“I think a lot of people would agree with (Lester),” Fisher said.

For Bejarano and Herrera, the research is little consolation.

The day after placing the couple's children in agency custody, Pate said a social worker received results of a background check showing the parents had no criminal or child-abuse history.

The social worker also received test results showing Herrera had no drugs in her system, she said.

Still, instead of returning the children to the couple, Pate said the social worker told the parents Kelly could stay with a relative while they participated in a voluntary family reunification plan.

Pate wrote in the lawsuit that, after the couple refused to take part in the reunification program, social workers filed a detention report with the court alleging Herrera had used drugs while pregnant.

The suit alleges DCFS filed a fabricated court petition to illegally detain their children based on a false-positive drug test.

In February, a judge found the grounds for detaining the children were not met and ordered their immediate release from foster care.

In late March, the judge threw the case out of court.

Herrera said she is relieved the ordeal is over, but her daughter still has nightmares and wakes up in the middle of the night screaming.

“Is she thinking of when she was in the DCFS car, and the door closed, and she was driven away from us to be placed in a home with a whole bunch of strangers?” Herrera said.

“Now, even if we are right here at the house and hear the doorbell, we jump. Is it a visitor, or is it someone else?”

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AT ISSUE

Excerpts from California law regarding hospital drug-testing of pregnant mothers and assessment of risk to children:

California Penal Code 11165.13.

A positive toxicology screen at the time of the delivery of an infant is not in and of itself a sufficient basis for reporting child abuse or neglect.

However, any indication of maternal substance abuse shall lead to an assessment of the needs of the mother and child pursuant to Section 123605 of the Health and Safety Code. If other factors are present that indicate risk to a child, then a report shall be made.

However, a report based on risk to a child which relates solely to the inability of the parent to provide the child with regular care due to the parent's substance abuse shall be made only to a county welfare or probation department, and not to a law enforcement agency.

California Health and Safety Code 123605.

(a) Each county shall establish protocols between county health departments, county welfare departments, and all public and private hospitals in the county, regarding the application and use of an assessment of the needs of, and a referral for, a substance exposed infant to a county welfare department pursuant to Section 11165.13 of the Penal Code.

(b) The assessment of the needs shall be performed by a health practitioner, as defined in Section 11165.8 of the Penal Code, or a medical social worker. The needs assessment shall be performed before the infant is released from the hospital.

(c) The purpose of the assessment of the needs is to do all of the following:

(1) Identify needed services for the mother, child, or family, including, where applicable, services to assist the mother caring for her child and services to assist maintaining children in their homes.

(2) Determine the level of risk to the newborn upon release to the home and the corresponding level of services and intervention, if any, necessary to protect the newborn's health and safety, including a referral to the county welfare department for child welfare services.

(3) Gather data for information and planning purposes.

SOURCE: www.leginfo.ca.gov/calaw.html

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SEIZED BABY DIES IN FOSTER CARE;
NEWBORN: MOTHER ACCUSED OF USING COCAINE, MARIJUANA.

BYLINE: By Troy Anderson Staff Writer

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Growing up in Los Angeles County's foster care system, Elizabeth Espinoza is sure of one thing: A baby needs its mother.

Espinoza, who was separated from her own mother when she was young because of neglect, also had her newborn baby taken by the foster-care system when she tested positive for marijuana and cocaine at the hospital after giving birth.

Just three months later, the baby, Gerardo, died when his foster mother strapped him into a car seat, took him to a neighbor's home and left him in the car seat on a bed, according to a lawsuit filed against the county's Department of Children and Family Services seeking unspecified damages.

The autopsy listed the cause of Gerardo's death as unknown, but noted that "airway compromise" could not be ruled out and that a car seat is not "a proper sleep environment for an infant."

"The last time I saw him I hugged him," said Espinoza, 21, of Los Angeles. "I felt something different. I felt like he was trying to catch his breath. I think he missed his mother.

"A lot of people say it, and I believe it myself: A baby should not be taken away from their mother."

Principal Deputy County Counsel Rosemarie Belda said the county had not been served with the lawsuit yet and could not comment on pending litigation.

The case began two years ago when DCFS took 1-year-old Alexis R. Martinez and her newborn baby brother, Gerardo, from Espinoza after the positive drug test, according to Beverly Hills attorney L. Wallace Pate, who is representing Espinoza.

The suit alleges DCFS took Espinoza's children based on false and perjured allegations that she was incapable of caring for her children because of the positive drug test.

Espinoza says a county social worker took her children despite her insistence she didn't take drugs. Gerardo had tested negative for drugs and had no signs of withdrawals, according to the lawsuit.

Espinoza enrolled in a drug treatment program and had monitored visits with her children until Gerardo's death two months later on Aug. 2, 2006.

“(DCFS) didn't even pay for the funeral service,” Espinoza said. “They wouldn't even pay for the headstone. I was getting welfare, and people had to help me bury my son.

“I got the cheapest headstone I could find. It says, ‘Rest in Peace Gerardo Martinez,’ has little angel wings on the side and the dates he was born and passed away.”

Several weeks after the baby's death, the social worker returned Alexis to her mother under DCFS supervision. In May 2007, the social worker told the court Alexis was safe and doing well at home, Pate wrote in the suit.

The next month, the social worker asked Espinoza to take a drug test and Espinoza tested positive for marijuana, according to the suit.

The positive test, in and of itself, is not grounds for detaining a child, Pate wrote.

“It wasn't confirmed,” said Espinoza, who denied smoking marijuana.

The social worker visited her home and found the apartment was clean and there was no evidence Alexis was in imminent danger, Pate wrote.

The social worker told Espinoza to attend a team decision-making meeting in August, but the day of the meeting Espinoza called to say she had taken the wrong freeway and missed the appointment.

The next day, the social worker came to her home, took Alexis and put her in a foster home, according to the suit.

In September, a judge granted a motion by Espinoza's attorney to dismiss the case and ordered the girl returned to her mother.

While Espinoza has her daughter back, she misses her son nearly two years after his death.

The day she buried him, she said, she bought 12 white doves and released them after the service.

“They say when you let them go it's like their soul is released,” Espinoza said.

``And they say when one of the doves stays, that means the person's spirit stays there.

``One dove stayed there. It flew to the top of his casket and just stared at everybody. I felt it was Gerardo's soul saying goodbye."

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RACE TILT IN FOSTER CARE HIT;
HOSPITAL STAFF MORE LIKELY TO SCREEN MINORITY MOTHERS

BYLINE: By Troy Anderson Staff Writer

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Nearly 90 percent of all children in Los Angeles County's foster-care system are minorities, drawing growing concern that hospitals and child welfare agencies are performing the vast majority of drug screening tests on low-income, minority pregnant women who seek public health care.

While only 10 percent of the county's general population is African- American, African-American children make up nearly 36 percent of all children in the county's foster-care system.

The county trend mirrors state and national figures that show children of ethnic minorities in foster care -- especially African-Americans, Latinos and American Indians -- outpace the number in the general population.

Statewide, 75 percent of foster children are minorities, including 27 percent who are black while African-Americans make up just 7 percent of the state's population.

Nationwide, 58 percent of the 513,000 kids in foster care are children of color, although they represent only 42 percent of the child population in the United States.

``There is very strong evidence that hospital staff are more likely to suspect drug use on the part of black mothers and these mothers are more likely to have their children removed and put in foster care," said Dorothy Roberts, the Kirkland & Ellis professor at the Northwestern University School of Law in Chicago and author of ``Shattered Bonds: The Color of Child Welfare."

Local, state and national child welfare officials agree that a disproportionate percentage of minority children -- especially blacks and American Indians -- are in foster care. But they say maternal drug testing is just one of the factors.

``(Hospital drug testing is) one aspect we'll be looking at to see why there are these disparities, but it seems the problem is multifold," Department of Children and Family Services Director Trish Ploehn said.

“The numbers indicate we bring in a large proportion of African-American children, including infants and older children. Whether it's connected directly to substance-abusing moms, I don't know if we have that information. But it's something we need to look at.”

Race as a factor

While abuse and neglect rates are actually lower among African-American families than in white families, studies have found race to be an important factor in reports to child protective service hotlines, according to a recent Casey Family Programs report.

Additionally, many public and private hospitals have overreported abuse and neglect among blacks while they underreport maltreatment among Caucasians, according to the Casey report.

A study published in the Journal of Women's Health found black women and their newborns were 1.5 times more likely to be tested for illicit drugs as others.

“There is a strong stereotype that black mothers are irresponsible,” Roberts said. “And the entire image of the ‘crack baby’ is that of a black child. So people who have to identify substance-abusing mothers and make decisions about it are influenced by these stereotypes.”

In two recent lawsuits against Los Angeles County, Beverly Hills attorney L. Wallace Pate alleges social workers took children from two Latino couples without confirming results of initial tests.

“This is an attempt to start a social movement and raise public awareness about the fraud being perpetrated by the county,” Pate said.

“It's just another way of profiling minorities and ensuring their kids end up in foster care and are on the fast track to jail, prison and devastated lives.”

The cases come as a special California panel focusing on the role of courts in child welfare capped a two-year investigation and released recommendations to help courts improve foster care outcomes.

Among the recommendations is for the courts and child welfare agencies to examine and address why a disproportionate percentage of minorities are in the child protective system.

Ploehn and Juvenile Court Presiding Judge Michael Nash are chairing a group examining the issue. And Casey Family Programs is assisting counties in the research.

“It's an issue that's becoming extremely visible and is taking on a life of its own as far as child welfare professionals focusing on this, starting to do research and craft solutions,” Ploehn said.

DCFS Medical Director Dr. Charles Sophy said he believes drug testing of pregnant women is a factor in the disproportionate percentage of minorities in foster care.

“I think that drugs have played a significant role in the phenomena of disproportionality,” Sophy said. “I continually remind my staff that they have to have an open mind and it's not a race or culturally oriented issue.”

Medical experts recommend hospitals conduct more expensive confirmatory tests to ensure the results are accurate, but officials admit hospitals in the county often don't perform these tests unless requested.

Hospital officials have discretion in deciding who to test, a factor child welfare experts believe plays a role in the disproportionate percentage of minorities in foster care.

“Drug testing isn't automatic,” said Dr. Barry Lester, a professor of pediatrics and psychiatry at Brown University in Providence, R.I., who has attempted to convince lawmakers to develop a national policy on the issue.

“Hospitals have different rules on how they decide who to drug test. Sometimes the rules are medically based But a lot of times the decision is based on clinical suspicion. And guess what? Who do we get the most suspicious about? Poor people and people of color.

“There is a tremendous imbalance of poor people and minorities who end up getting tested.”

Sherman Oaks attorney Ken Sherman, who has handled dependency court cases for decades, said mothers who have a regular doctor or are more affluent rarely get tested for drugs at hospitals.

“I think there is an element of discrimination in that regard,” Sherman said. “But the thing that really bothers me is the fact that (DCFS) has a policy on how they should assess whether a person's substance abuse affects their ability to care for their kids, but I don't think social workers ever look at that policy.”

And when an initial urine screen is positive for drugs, poor and minority mothers are often unaware of or unable to afford the more expensive confirmatory tests, experts say.

Under reforms made in recent years, Ploehn said the department now is focusing on trying to keep babies with their mothers.

``We really are focusing on trying to keep them at home whenever possible," Ploehn said.
``If we can bring services to the family -- whether it's providing child care, drug education or whatever it takes -- then the baby will stay with the mom."

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OFFICIALS CALL FOR SYSTEM OVERHAUL

BYLINE: By Troy Anderson Staff Writer

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Concerned about a disproportionate percentage of minorities in foster care, California judges, attorneys and child advocates are calling for changes in the system.

And they say a variety of steps need to be taken to address problems created by a toothless maternal substance-abuse law and an overreaction in the 1980s and 1990s to a ``crack baby" epidemic.

``From the mid-1980s to the mid-90s, our system was primarily impacted by the crack cocaine epidemic, and I think far too many children were probably taken away from their families without enough consideration given to determining family supports and the willingness of people to work with the system," Juvenile Court Presiding Judge Michael Nash said.

Beverly Hills attorney L. Wallace Pate, who has filed lawsuits on behalf of parents whose children were placed in foster care after drug testing at hospitals, has called on state Assembly Speaker Karen Bass to investigate why not all hospitals and child protective agencies appear to be complying with a 1990 law covering maternal drug testing.

The law requires hospitals to conduct an assessment of a mother who tests positive for drugs to determine if her baby is at risk before calling children's services.

But Los Angeles County and hospital officials admit many hospitals are not consistently taking those steps.

And even though a 1994 survey found hospitals in only a third of the state's counties were complying with the law, state Department of Alcohol and Drug Programs officials admit they have not monitored compliance because the law does not require it.

Pate said she plans to request an amendment to the law that would require hospitals to conduct the assessments and send the results to the state.

Under the amendment, Pate said the state would review the forms and conduct periodic audits to ensure hospital compliance. Those noncompliant would be subject to fines, Pate said.

“A large number of children of color have been targeted and wrongfully removed from their parents,” Pate said. “Why is there no oversight of these hospitals?”

Attorneys and child advocates also say officials need to do a better job training hospital employees to perform the assessments and fill out the required forms before calling children's services.

Dr. Brian Johnston, an emergency physician at White Memorial Medical Center in East Los Angeles and a board trustee for the California Medical Association, said his hospital conducts the assessments and performs confirmatory drug tests.

But he said some hospitals with large numbers of Medi-Cal patients don't have social workers to conduct the assessments. And some hospitals have high turnover rates, making it difficult to maintain staff trained in conducting the assessments.

Nash and Johnston also said there are not enough substance abuse treatment programs in the county to help parents overcome addictions.

“If we are concerned about this problem, we need to have adequate resources to do the assessments and steer the substance abusers into healthier lifestyles,” Johnston said. “But we have systemically starved those resources in this county and state for years.”

Experts also say child welfare officials and dependency court lawyers need to request confirmation tests to ensure the initial urine screenings performed at hospitals are accurate.

Pate said she plans to ask the Legislature to amend the law to require hospitals to conduct confirmatory tests before conducting the assessments and reporting positive drug tests to child welfare officials.

“Drug testing is a tool that when used properly can get people into treatment,” said Dr. Barry Lester, a professor of pediatrics and psychiatry at Brown University in Providence, R.I.

DCFS Medical Director Dr. Charles Sophy said he'd like to see better collaboration with the hospitals to ensure protocols are followed.

“There needs to be more upfront investigation and confirmatory testing before they call DCFS,” Sophy said.

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