

MEDICAL AND PUBLIC HEALTH STATEMENTS ADDRESSING PROSECUTION AND PUNISHMENT OF PREGNANT WOMEN

AMERICAN MEDICAL ASSOCIATION

“Pregnant women will be likely to avoid seeking prenatal or open medical care for fear that their physician's knowledge of substance abuse or other potentially harmful behavior could result in a jail sentence rather than proper medical treatment.” Report of American Medical Association Board of Trustees, *Legal Interventions During Pregnancy*, 264 JAMA 2663, 267 (1990). See also American Medical Association, *Treatment Versus Criminalization: Physician Role in Drug Addiction During Pregnancy*, Resolution 131 (1990) (“therefore be it . . . resolved that the AMA oppose legislation which criminalizes maternal drug addiction.”).

AMERICAN ACADEMY OF PEDIATRICS

“The [Academy] is concerned that [arresting drug addicted women who become pregnant] may discourage mothers and their infants from receiving the very medical care and social support systems that are crucial to their treatment.” American Academy of Pediatrics, Committee on Substance Abuse, *Drug Exposed Infants*, 86 PEDIATRICS 639, 641 (1990).

AMERICAN COLLEGE OF OBSTETRICIANS AND GYNECOLOGISTS

“Seeking obstetric–gynecologic care should not expose a woman to criminal or civil penalties, such as incarceration, involuntary commitment, loss of custody of her children, or loss of housing. These approaches treat addiction as a moral failing. Addiction is a chronic, relapsing biological and behavioral disorder with genetic components. The disease of substance addiction is subject to medical and behavioral management in the same fashion as hypertension and diabetes.” American College of Obstetricians and Gynecologists, Committee on Ethics, *Committee Opinion 473 Substance Abuse Reporting and Pregnancy: The Role of the Obstetrician-Gynecologist*, 117 OBSTETRICS & GYNECOLOGY 200 (2011).

“Pregnant women should not be punished for adverse perinatal outcomes. The relationship between maternal behavior and perinatal outcome is not fully understood, and punitive approaches threaten to dissuade pregnant women from seeking health care and ultimately undermine the health of pregnant women and their fetuses.” American College of Obstetricians and Gynecologists, Committee on Ethics, *Committee Opinion 321 Maternal Decision Making, Ethics and the Law*, 106 OBSTETRICS & GYNECOLOGY 1127 (2005).

AMERICAN PUBLIC HEALTH ASSOCIATION

“Recognizing that pregnant drug-dependent women have been the object of criminal prosecution in several states, and that women who might want medical care for themselves and their babies may not feel free to seek treatment because of fear of criminal prosecution related to illicit drug use . . . [the

Association] recommends that no punitive measures be taken against pregnant women who are users of illicit drugs when no other illegal acts, including drug-related offenses, have been committed.” American Public Health Association, *Illicit Drug Use by Pregnant Women*, Policy Statement No. 9020, 8 AM. J. PUB. HEALTH 240 (1990).

AMERICAN NURSES ASSOCIATION

“The American Nurses Association recognizes alcohol and other drug problems as treatable illnesses. The threat of criminal prosecution is counterproductive in that it prevents many women from seeking prenatal care and treatment for their alcohol and other drug problems.” American Nurses Association, *Position Statement on Opposition to Criminal Prosecution of Women for Use of Drugs While Pregnant and Support for Treatment Services for Alcohol and Drug Dependent Women of Childbearing Age*. (Apr. 5, 1991).

AMERICAN SOCIETY OF ADDICTION MEDICINE

“Criminal prosecution of chemically dependent women will have the overall result of deterring such women from seeking both prenatal care and chemical dependency treatment, thereby increasing, rather than preventing harm to children and to society as a whole.” American Society of Addiction Medicine, *Policy Statement on Chemically Dependent Women and Pregnancy*, A.S.A.M. 49 (Sept. 1989).

MARCH OF DIMES

“Punitive approaches to drug addiction may be harmful to pregnant women because they interfere with access to appropriate health care. Fear of punishment may cause women most in need of prenatal services to avoid health care professionals.” March of Dimes, *Statement on Maternal Drug Abuse I* (1990).

AMERICAN PSYCHIATRIC ASSOCIATION

The APA states, “policies of prosecuting pregnant and/or postpartum women who have used either alcohol or illegal substances during pregnancy, on grounds of ‘prenatal child abuse’ [and their] subsequent incarceration, either in jails, prisons or in locked psychiatric unit both deprives the mother of her liberty and seriously disrupts the incipient or nascent maternal-infant bond . . . Such policies are likely to deter pregnant addicts from seeking wither prenatal care or addiction treatment, because of fear of prosecution and/or civil commitment.” American Psychiatric Association, *Care of Pregnant and Newly Delivered Women Addicts*, Position Statement, APA Document Reference No. 200101, (Mar. 2001).

AMERICAN PSYCHOLOGICAL ASSOCIATION

Resolves that the APA “[a]ffirms its view that alcohol and drug abuse by pregnant women is a public health problem and that laws, regulations and policies that treat chemical dependency primarily as a

criminal justice matter requiring punitive sanctions are inappropriate.” Further “[a]ffirms the use of health care strategies to foster the welfare of chemically dependent women and their children by expanding access to prenatal care and to reproductive health care generally.” American Psychological Association, *Resolution on Substance Abuse by Pregnant Women*, (Aug. 1991).

NATIONAL PERINATAL ASSOCIATION

“The NPA opposes criminal prosecution of women solely because they are pregnant when they used alcohol or drugs . . . No evidence exists to show that [prosecution] either prevents prenatal drug or alcohol exposure or improves the infant’s health . . . It undermines the relationship between the health care providers and their patients and may keep women from giving accurate and essential information vital to their care.” National Perinatal Association, *Substance Abuse Among Women*, Position Statement (updated as of Mar. 23, 2010).

NATIONAL ASSOCIATION FOR PERINATAL ADDICTION RESEARCH AND EDUCATION

“From a health-care perspective, it appears likely that criminalization of prenatal drug use will be counterproductive. It will deter women who use drugs during pregnancy from seeking the prenatal care which is important for the delivery of a healthy baby . . . The threat of criminal prosecution alone will not deter women in most instances from using drugs during pregnancy. These women are addicts who become pregnant, not pregnant women who decide to use drugs and become addicts.” National Association for Perinatal Addiction Research and Education. *Criminalization of Prenatal Drug Use: Punitive Measures Will Be Counterproductive* (1990).

NATIONAL COUNCIL ON ALCOHOLISM AND DRUG DEPENDENCE

“[A] punitive approach is fundamentally unfair to women suffering from addictive diseases and serves to drive them away from seeking both prenatal care and treatment for their alcoholism and other drug addictions. It thus works against the best interests of infants and children by involving the sanctions of the criminal law in the case of a health and medical problem.” National Council on Alcoholism and Drug Dependence, *Policy Statement: Women, Alcohol, Other Drugs and Pregnancy* (1990).

ASSOCIATION OF MATERNAL AND CHILD HEALTH PROGRAMS

“The threat of criminal prosecution prevents many women from seeking prenatal care and early intervention for their alcohol or drug dependence, undermines the relationship between health and social service workers and their clients, and dissuades women from providing accurate and essential information to health care providers. The consequence is increased risk to the health and development of their children and themselves.” Association of Maternal and Child Health Programs Law and Policy Committee, *Statement Submitted to the Senate Finance Committee Concerning Victims of Drug Abuse: Resolution on Prosecution* (1990).

COALITION ON ALCOHOL AND DRUG DEPENDENT WOMEN AND THEIR CHILDREN

“The criminal prosecution of addicted women solely because they are pregnant is both inappropriate and counterproductive. There is no evidence that a policy of criminal prosecution will either prevent prenatal drug exposure or improve children's health. Rather, prosecution of alcoholic and drug dependent women will very likely deter them from seeking both prenatal care and treatment for their addiction, resulting in increased risks to the health and well-being of women and their children.” Coalition on Alcohol and Drug Dependent Women and their Children, *Statement Opposing Prosecution* (1990).

NATIONAL ORGANIZATION ON FETAL ALCOHOL SYNDROME

“At NOFAS, we believe that a legal approach will only deter women with an alcohol problem from seeking prenatal care” “NOFAS supports increased access to treatment services for pregnant women. Pregnant women who are alcohol dependent seldom receive the proper treatment and therapy they need.” National Organization on Fetal Alcohol Syndrome, *Pregnant Women Who Drink Alcohol Need Treatment, Not Prison*, Policy Statements (Mar. 2004).

CENTER FOR THE FUTURE OF CHILDREN

“A woman who uses illegal drugs during pregnancy should not be subject to special criminal prosecution on the basis of allegations that her illegal drug use harms the fetus.” “[W]e believe that requiring health providers to report pregnant women to law enforcement for prosecution will reduce the likelihood that these women will seek medical care during pregnancy”. Center for the Future of Children, *Recommendations*, The Future of Children No. 1 at 9, 15 (1991).

SOUTHERN LEGISLATIVE SUMMIT ON HEALTHY INFANTS AND FAMILIES

“[S]tates should adopt, as preferred methods, prevention, intervention, and treatment alternatives rather than punitive actions to ameliorate the problems related to perinatal exposure to drugs and alcohol.” Southern Legislative Summit on Healthy Infants and Families, *Policy Statement 8* (Oct. 1990).

ASSOCIATION OF FAMILY AND CONCILIATION COURTS

“[C]riminalization of maternal substance abuse is not in the best interests of the child.” Association of Family and Conciliation Courts, *Maternal Substance Abuse Policy Recommendations* (1992).

NATIONAL ASSOCIATION OF PUBLIC CHILD WELFARE ADMINISTRATORS

The National Association of Public Child Welfare Administrators has stated that “laws, regulations, or policies that respond to addiction in a primarily punitive nature, requiring human service workers and physicians to function as law enforcement agents are inappropriate.” National Association of Public Child Welfare Administrators, *Guiding Principles for Working With Substance-Abusing Families and Drug-Exposed Children: The Child Welfare Response 3* (1991).