

Criminalization/Legal Implications of Substance Use During Pregnancy



April 26, 2018



Welcome and agenda

Welcoming Remarks

Dawn Levinson, Division of Healthy Start and Perinatal Services (DHSPS)

Expert Presentation

National Advocates for Pregnant Women (NAPW)

Q/A and Discussion

NAPW and Healthy Start EPIC Center



Pretest

- Newborn babies exposed to opioids or the medication for opioid use disorder should not breastfeed. True or false? (False)
- Must you (without a court order) turn over your patients' confidential medical records to child protective services when they ask? (No)
- Can women who used drugs during pregnancy ever be prosecuted for crimes related to their drug use? (yes)

Welcoming Remarks from the Division of Healthy Start and Perinatal Services

**Your expert presenters today:
National Advocates for Pregnant Women**



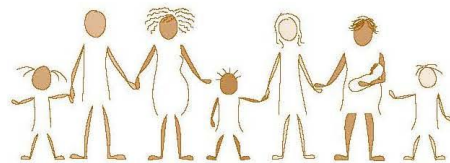
Amber Khan, JD



Aarin Michele Williams, JD



Indra Wood Lusero, JD



National Advocates
for Pregnant Women

Mission: Securing the human and civil rights, health, and welfare of pregnant and parenting people and their families.

Healthy Start "Criminalizing Pregnancy" Webinar

Amber Khan, Senior Staff Attorney; Aarin Williams, Senior Staff Attorney; Indra Lusero, Staff Attorney;

www.advocatesforpregnantwomen.org



Amber Khan

CRIMINALIZATION & PUNISHMENT

- Pregnancy loss
- Allegations of drug use
- Abortion
- Other actions or inactions during pregnancy
- Criminal and civil child abuse/neglect charges

THE CRACK BABY MYTH

The Epidemic That Wasn't



The New York Times

- *“Many recall that ‘crack babies,’ or babies born to mothers who used crack cocaine while pregnant, were at one time written off by many as a lost generation . . . It was later found that this was a gross exaggeration.”*
- -Nat'l Institute on Drug Abuse, Research Report, Cocaine: Abuse and Addiction 6 (May 2009)
- As the U.S. Sentencing Commission concluded, “[t]he negative effects of prenatal cocaine exposure are significantly less severe than previously believed” and those negative effects “do not differ from the effects of prenatal exposure to other drugs, both legal and illegal.”
- -U.S. Sentencing Comm’n, Report to Congress: Cocaine and Sentencing Commission Policy 21 (2002)

ONLY. . .

The New York Times

The Epidemic That Wasn't

By SUSAN OKIE JAN. 26, 2009

POPULAR SCIENCE

SCIENCE

HOW SCIENCE GOT THE 'CRACK BABY' EPIDEMIC SO WRONG

CBS NEWS

"Crack babies" study finds little proof of long-term health woes

JAMA

The Journal of the
American Medical Association

Cocaine and Pregnancy—Time to Look at the Evidence

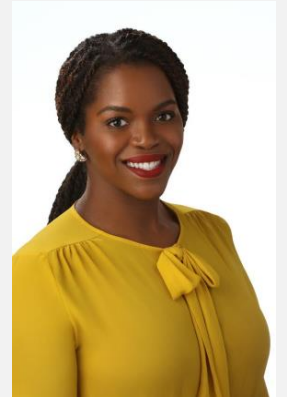
Wendy Chavkin, MD, MPH

“NAS”

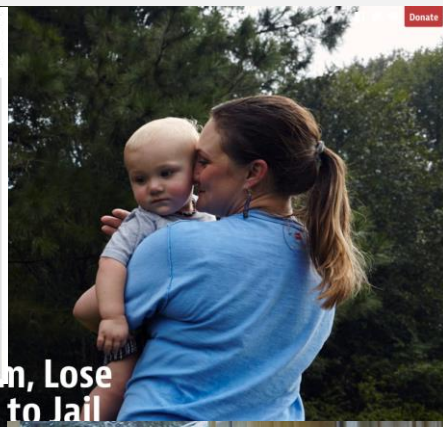
- Neonatal Abstinence Syndrome
- “Mothers receiving methadone or buprenorphine . . . should be encouraged to breastfeed.”
 - Substance Abuse and Mental Health Services Administration (“SAMHSA”), U.S. Dept. of Health & Human Services, *A Collaborative Approach to the Treatment of Pregnant Women with Opioid Use Disorders: Practice and Policy Considerations for Child Welfare, Collaborating Medical, and Service Providers II* (2016).
- “[P]romoting maternal-newborn contact, rooming-in, and breastfeeding may help to decrease the severity of NAS and the need for pharmacological treatment of NAS.”
 - Alice Ordean, *Obstetrical and Neonatal Outcomes of Methadone-Maintained Pregnant Women: A Canadian Multistate Cohort Study*, 37 J. Obstet. Gynaecol. Can. 252 (2015).

TYPES OF CHARGES OFTEN USED IN HEALTHCARE SETTINGS

- Murder
- Manslaughter
- Feticide
- Criminal child endangerment
- Abuse of a corpse
- “Unborn child abuse”
- Fetal assault
- Distribution of a controlled dangerous substance to a child
- Civil child abuse or child neglect
- Unconsented medical interventions
- Civil commitment/detention
- Criminally negligent homicide
- Battery of an unborn child
- Vehicular homicide



Aarin Michele Williams



CBS NEWS / June 28, 2017, 8:12 PM

Pa. woman faces charges after OD forces doctors to deliver baby early, police say



Medical records show Kasey Dishman, 30, who was 7 months pregnant, tested positive for opioids and alcohol. / BUTLER EAGLE VIA CBS PITTSBURGH

32 Comments / Share / Tweet / Stumble / Email

BUTLER, Pa. -- A western Pennsylvania woman who was seven months pregnant is facing charges after she allegedly **overdosed** on heroin, forcing doctors



East Idaho to child by JACQUE WELLS



Maria Jane Brown, 28, is charged with felony injury to a child and faces up to 15 years in prison if convicted. Because the baby was born a month early and is struggling with methamphetamine withdrawal, it may not survive, nurses said.



MARLEY -- A Butte man has been charged after she prematurely delivered a baby boy who tested positive for methamphetamine. Because the baby was born a month early and is struggling with methamphetamine withdrawal, it may not survive, nurses said.





Mark Wilson/Getty Images

The Rise of DIY Abortions

An Idaho woman could change the course of American abortion law.

BY ADA CALHOUN | December 21, 2012

SundayReview | CONTRIBUTING OP-ED WRITER

The Return of the D.I.Y. Abortion



Seth Stephens-Davidowitz | MARCH 5, 2016

The Rise of the DIY Abortion in Texas



A pill that revolutionized reproductive rights in Latin America is now gaining ground on the black market in South Texas.

The New York Times Magazine

Magazine

The Dawn of the Post-Clinic Abortion

By EMILY BAZELON | AUG. 28, 2014



GLAMOUR

NEWS & CULTURE

The Rise of the DIY Abortion

BY PHOEBE ZERWICK | MAY 31, 2016 9:00 AM

PLAN C

Did you know there is a safe, private option for an at-home abortion?
It's called a medication abortion, or the "abortion pill."

WHERE CAN I GET PILLS? HOW DO I USE THEM?

Plan C: A Safe Abortion With Pills

Intro
Background
Plan C
Information
Who we are

What is "abortion with pills"?

Is it safe? What are the risks?

Where can I get abortion pills?

Where can I get instructions?

Can I get in trouble for using abortion pills?

<http://plancpills.org/>

WHW
women help women

about · resources · support us · contact Search English ▾

resources · using abortion pills in the USA

Using Abortion Pills for Safe Abortion in the USA. Self-Managed Abortion; Safe and Supported (SASS).

Misoprostol alone, or in combination with mifepristone, is a safe and effective way to end a pregnancy in the first 12 weeks. It is approved by the World Health Organization as a safe abortion method when used by women themselves to 9 weeks and has been used successfully by millions of women* around the world, without a clinician.

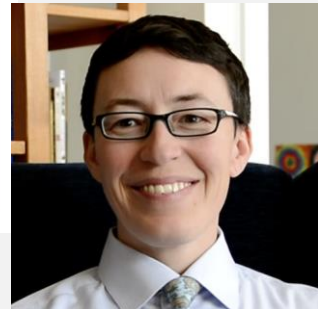
Please read all of the following information carefully. This information is based on protocols developed by the World Health Organization.

For any questions use the secure contact form below - trained counselors will answer you within a few hours.

<https://consult.womenhelp.org/en/using-abortion-pills-for-safe-abortion-usa>

POST STILLBIRTH OR MISCARRIAGE

- Approximately 25,000 stillbirths occur annually in the US.
- Miscarriages and stillbirths occur in 15-20% of pregnancies.
- Causes of stillbirth and miscarriage are unknown.
- There exists **no** affirmative scientific or medical proof that drug-use is the direct cause of a stillbirth or miscarriage
- Social determinants affect at least 50% of health outcomes.



Indra Wood Lusero

Seventh Circuit Takes Up Wisconsin's 'Cocaine Mom' Law

LORRAINE BAILEY October 26, 2017



CHICAGO (CN) – The Seventh Circuit emphasized its concern Thursday for the protection of unborn children from “uncooperative mothers” in a case challenging the constitutionality of a Wisconsin law that allows the arrest of pregnant women suspected of drug or alcohol abuse.



Those who oppose Act 292

Those who support Act 292

Illustration by Bethany Williams for National Advocates for Pregnant Women

FEAR OF CPS IS A BARRIER



SUBSTANCE USE IN PREGNANCY

STATES THAT HAVE A SPECIFIC LAW SAYING DRUG USE DURING PREGNANCY IS CHILD ABUSE

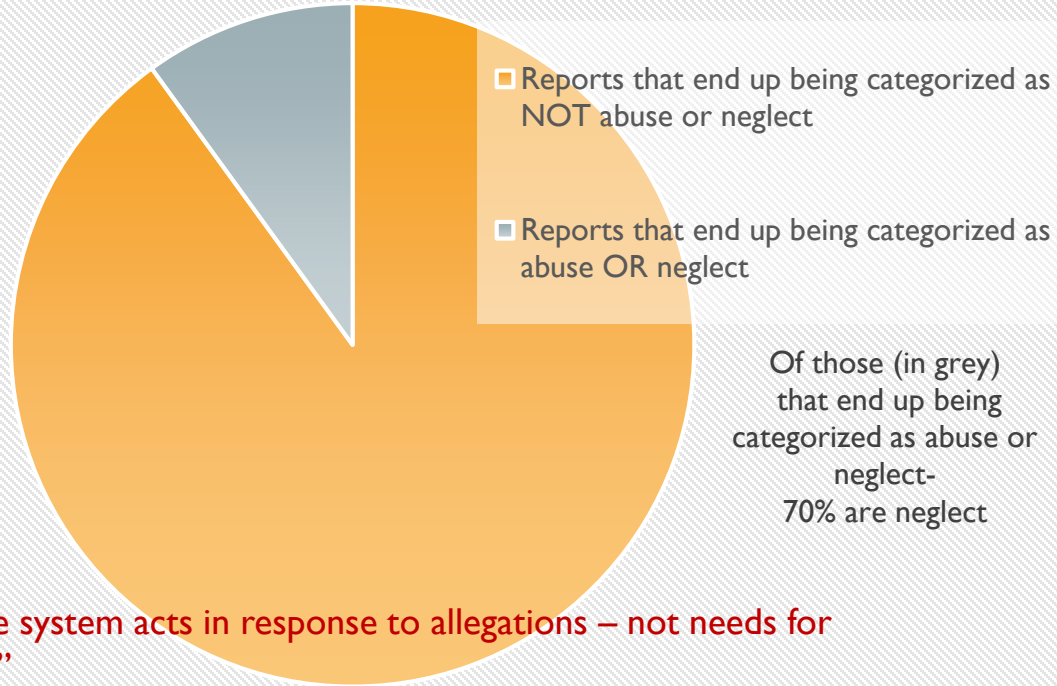
Alabama, Arkansas, Colorado, Florida, Illinois, Indiana, Iowa, Louisiana, Minnesota, Nevada, Oklahoma, Rhode Island, South Carolina, South Dakota, Tennessee, Texas, Virginia, Wisconsin.

For more:
<https://projects.propublica.org/graphics/maternity-drug-policies-by-state>

STATES WHERE DRUG USE DURING PREGNANCY CAN LEAD TO A DETERMINATION OF CHILD ABUSE

All fifty states.

REPORTING



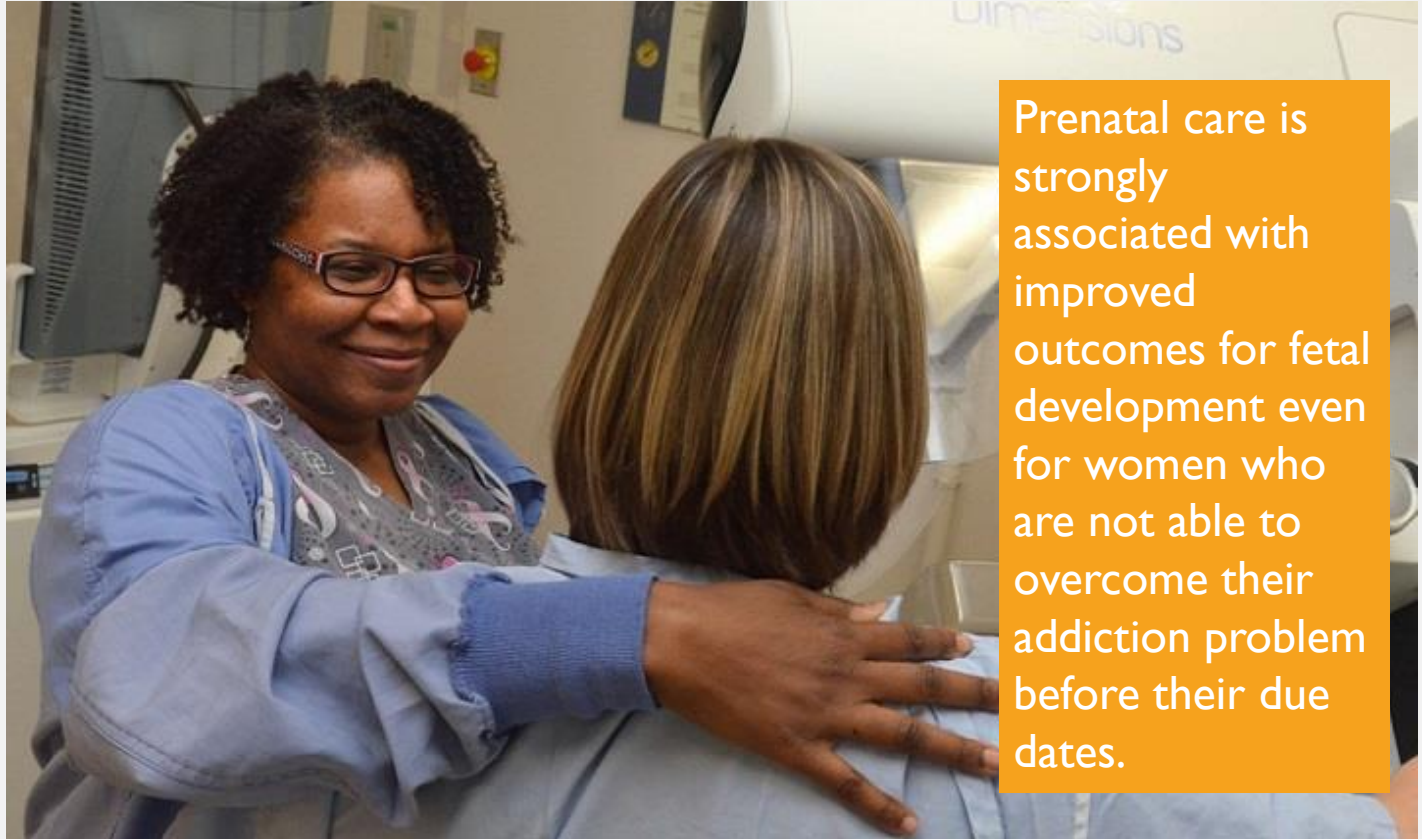
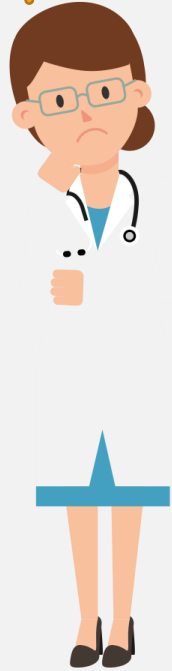
“The system acts in response to allegations – not needs for help.”

MANDATORY REPORTING



- NOT abuse or neglect
- Processed as abuse or neglect

WHEN IN DOUBT DON'T



Prenatal care is strongly associated with improved outcomes for fetal development even for women who are not able to overcome their addiction problem before their due dates.

THANK
YOU!



National Advocates *for* Pregnant Women

www.advocatesforpregnantwomen.org



Posttest

- Newborn babies exposed to opioids or the medication for opioid use disorder should not breastfeed. True or false? (False)
- Must you (without a court order) turn over your patients' confidential medical records to child protective services when they ask? (No)
- Can women who used drugs during pregnancy ever be prosecuted for crimes related to their drug use? (yes)

Wrap Up and Reminders

Upcoming Webinars:

May 17, 2018 – 1-2:30pm ET: Conversations with the Division

May 31, 2018 – 3-4pm ET: Building your Referral Network

EPIC Center website: <http://www.healthystartepic.org>

Includes all recorded webinars, transcripts, and slide presentations

[AStEPP Resources](#)