

MEMORANDUM IN SUPPORT
S.320-B/A.109-B

The Schuyler Center for Analysis and Advocacy urges the Legislature to pass S.320-B/A.109-B, the Informed Consent Act, to require medical providers to obtain oral and written consent from pregnant and perinatal people before drug testing them or their newborns.

The Schuyler Center for Analysis and Advocacy is a 152-year-old statewide, nonprofit organization dedicated to policy analysis and advocacy in support of public systems that meet the needs of disenfranchised populations and people living in poverty.

Non-consensually drug testing pregnant people, new parents,¹ and their newborns violates individual bodily integrity, undermines maternal-fetal health, and unnecessarily exposes families to the risk of traumatic family separation. New York Public Health Law and Civil Rights Laws set forth general informed consent requirements in the health care setting, yet pregnant people, new parents, and newborns are drug tested without notice or informed consent. There is often no explanation given as to the medical necessity of the test, and in many circumstances, no treatment provided in response to a positive drug test.

New York, and the whole country, is grappling with the racial disparities rife in our health care system.² We are seeing a collective reexamination of how certain practices erode patients' trust in the very system tasked with providing care and support. Studies reveal Black moms and babies are significantly more likely to receive drug testing, irrespective of risk factors.³ Following testing, disproportionately of Black and Latine⁴ people, it is not unusual for there to be a report to Child Protection Services (CPS), leading to stressful investigations and too often to family separations.

Family separations, even short ones, cause long lasting damage.⁵ Impacted communities report that this "test and report practice" makes pregnant people fearful of engaging in critical prenatal care. Positive drug tests often do not lead to any medical intervention, yet hospitals routinely report positive drug tests to CPS. This is despite New York law being clear that a positive toxicology test alone does not in and of itself suggest that an infant is harmed or is at risk of harm.⁶

In this crucial moment when New York is working to improve care and outcomes for moms and babies, with special attention to disproportionately severe outcomes for Black mothers, it is critical that health care providers engender trust and encourage early and regular access to care. Consent is the standard for medical procedures and new parents should not be the exception. We urge the New York State Legislature to pass the Informed Consent Act (S.320-B/A.109-B).

April 5, 2024

¹ The term “new parents” refers to parents immediately before and after birth (perinatal people).

² Jamila Perritt, M.D., M.P.H., #WhiteCoatsForBlackLives – Addressing Physicians’ Complicity in Criminalizing Communities, *New England J. of Medicine* (Nov. 5, 2020), https://www.nejm.org/doi/full/10.1056/NEJMp2023305?query=recirc_inIssue_bottom_article.

³ Diana Montoya-Williams, Rachel Fleishman, Confronting the Harms Caused by Racism in Perinatal Drug Testing, *Health Affairs* (August 28, 2023), available at [Confronting The Harms Caused By Racism In Perinatal Drug Testing | Health Affairs](#)

⁴ McCabe, K. (2022). Criminalization of Care: Drug Testing Pregnant Patients. *Journal of Health and Social Behavior*, 63(2), 162-176. <https://doi.org/10.1177/00221465211058152>

⁵ See Allison Eck, *Psychological Damage Inflicted by parent-Child Separation is Deep, Long-Lasting*, NOVA (June 20, 2018), https://www.pbs.org/wgbh/nova/article/psychological-damage-inflicted-by-parent-child-separation-is-deep-long-lasting/?utm_source=FBPAGE&utm_medium=social&utm_term=20180620&utm_content=1603761016&linkId=53285432&utm_source=FBPAGE&utm_medium=social&utm_term; see also *Trauma Caused by Separation of Children From Parents*, American Bar Association (Last updated Jan. 2020), available at https://www.americanbar.org/content/dam/aba/publications/litigation_committees/childrights/child-separation-memo/parent-child-separation-trauma-memo.pdf; and see Emma Ketteringham et al., *Healthy Mothers Healthy Babies: A Reproductive Justice Response to the “Womb-to-Foster Care Pipeline,”* 20 CUNY L.R. 77, 100-101 (2016)

⁶ New York law does not require reporting to the State SCR a positive drug test of a mother or newborn at birth. Still, nearly 27,000 new reports are added to the SCR each year, many of those related to drug use and positive tests at birth.