

## **MEMORANDUM IN SUPPORT**

S.845/A.860

***The Schuyler Center for Analysis and Advocacy urges the Legislature to pass S.845/A.860, the Maternal Health, Dignity, and 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 154-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.

Informed consent to medical treatment is a fundamental ethical concern, with the AMA code of ethics stating that, “Patients have the right to receive information and ask questions about recommended treatment so they can make well-considered decisions about care.”<sup>1</sup> New York Public Health Law and Civil Rights Laws set forth informed consent requirements in the health care setting and typically, patients will sign a packet (or virtual packet) of paperwork upon admission to a hospital, often without much explanation.

New York State’s Office of Addiction Services and Supports reports that “multiple studies have indicated significant inequities in toxicology testing, particularly highlighting that Black individuals are disproportionately likely to be tested compared to White individuals, even though drug use by Black and White women occurs at approximately the same rate in the United States.”<sup>2</sup>

Black maternity patients and babies are significantly more likely to receive drug testing, irrespective of risk factors.<sup>3,4</sup> A positive test often triggers a report to Child Protective Services (CPS), leading to investigations and too often, family separations.<sup>5</sup> Family separations, even short ones, cause long lasting damage.<sup>6</sup>

Impacted communities report and research confirms that this “test and report” practice can make pregnant people fearful of engaging in critical prenatal care and may result in an overall wariness of engaging with care. Positive drug tests generally do not lead to any change in 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.<sup>7</sup>

In 2022, Yale New Haven hospital overhauled its approach to drug testing newborns, and the policy change appears to have curbed unnecessary child welfare reports without harming babies. After the policy went into effect, child welfare referrals from the newborn nursery dropped almost 50%, according to preliminary data provided by the investigating physician. At the same time, the hospital did not see an uptick in babies coming back in need of new treatment for drug withdrawal.<sup>8</sup>

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 families, it is critical that our health care providers engage clearly and directly with maternity patients to build trust and encourage early and regular access to care.<sup>9</sup>

We urge the New York State Legislature to pass the Maternal Health, Dignity, and Consent Act (S.845/A.860).

May 11, 2026

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<sup>1</sup> American Medical Association, Code of Ethics, <https://code-medical-ethics.ama-assn.org/ethics-opinions/informed-consent>

<sup>2</sup> NYS Department of Health and Office of Addiction Services and Supports, Screening and Testing for Substance Use in Pregnancy (no date). <https://www.health.ny.gov/diseases/aids/consumers/prevention/oduh/docs/21749.pdf>

<sup>3</sup> Diana Montoya-Williams, Rachel Fleishman, Confronting the Harms Caused by Racism in Perinatal Drug Testing, Health Affairs (August 28, 2023). <https://www.healthaffairs.org/doi/10.1377/forefront.20230824.716788>

<sup>4</sup> Karvonin et al, Structural Racism Operationalized Via Adverse Social Events in a Single Center Neonatal Intensive Care Unit, J. Pediatrics 2023 September. [https://www.jpeds.com/article/S0022-3476\(23\)00347-5/fulltext](https://www.jpeds.com/article/S0022-3476(23)00347-5/fulltext)

<sup>5</sup> Shoshana Walter, Why Some Doctors Are Pushing to End Routine Drug Testing During Childbirth, The Marshall Project, 4/2/25, <https://www.themarshallproject.org/2025/04/02/hospital-connecticut-colorado-pregnancy-drug-testing>

<sup>6</sup> 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=](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](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)

<sup>7</sup> 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.

<sup>8</sup> Shoshana Walter, Why Some Doctors Are Pushing to End Routine Drug Testing During Childbirth, The Marshall Project, 4/2/25, <https://www.themarshallproject.org/2025/04/02/hospital-connecticut-colorado-pregnancy-drug-testing>

<sup>9</sup> The American College of Obstetricians and Gynecologists. 2025. Policy Priorities: Substance Use Disorder in Pregnancy. <https://www.acog.org/advocacy/policy-priorities/substance-use-disorder-in-pregnancy>