Maternal Health, Dignity, & Consent Act

S.845-A / A.860-A: Bill Overview

The Problem: Across New York State, pregnant and postpartum people and newborns are subjected to medically unnecessary drug, cannabis, and alcohol testing without their consent or even their knowledge; which can deter prenatal care access and cause devastating family separation. NYS Department of Health Clinical Guidelines and recommendations express the importance of informed consent for substance use testing during pregnancy, yet practitioners across the state are not following these guidelines because of stigma and misunderstanding.

The Solution: The Maternal Health, Dignity, and Consent Act would support healthy pregnancies, infants, and families by promoting trust and transparency between people and their health care providers–essential for accessible, high-quality care. It would ensure consistent statewide application of clinical best practices, in alignment with recommendations from the American College of Obstetricians & Gynecologists, that support pregnant and postpartum patients' rights to informed consent before they or their newborns are drug tested, unless an emergency requires otherwise. This legislation is supported by numerous professional medical societies and reproductive health organizations, as well as the U.S. Commission on Civil Rights - NY Advisory Committee.

Addressing the Harms of Non-Consensual Drug, Cannabis & Alcohol Testing

Maternal Health Harms	Requiring consent for drug testing must be part of New York's efforts to reduce maternal mortality rates—especially given the associated racial disparities despite similar rates of use. Drug testing perinatal people and their infants without their consent is a violation of trust that damages the patient-provider relationship. This deters people from seeking vital prenatal, postpartum and pediatric care, which in turn puts maternal-fetal and infant health at risk. Access to prenatal and postpartum care is one of the most critical factors in the health and well-being of mothers and infants. *Note: Non-consensual drug tests rarely serve a medical purpose or inform the course of care—they do not lead to different or better treatment for pregnant people or newborns. If there is a medical reason why a drug test is needed, this should be explained to the perinatal person and consent should be obtained. In practice, perinatal patients consented 100% of the time when the medical need for the test was explained to them.*
Racial Justice Harms	Current drug testing practices cause disproportionate harm to Black and Latine families, exposing them to traumatic investigations and devastating family separation. Black women are more frequently drug tested during pregnancy than white women despite similar rates of substance use. A positive drug test is often reported to the Family Policing System (FPS; also called CPS), where Black and Latine families are significantly more likely to be separated from their infant and have their parental rights terminated. Family separation causes irreparable harm to infant development and maternal mental health.
Reproductive Rights & Justice Harms	Drug testing perinatal people without their consent is a core reproductive rights and justice issue. It undermines perinatal people's bodily autonomy and equality by violating their fundamental right to determine what happens to their own body. It is a key way our country criminalizes pregnancy by surveilling and punishing people for their conduct during pregnancy. This feeds into anti-abortion frameworks, like fetal personhood, that are extraordinarily dangerous for reproductive rights and have no place in New York. Fear of drug testing and reporting to FPS can even deter people from having children they would otherwise want. No person should have to make that devastating decision.

Maternal Health, Dignity, & Consent Act

Organizational Support for S.845A / A.860A

Medical Societies, Birth Workers, & Reproductive Health Organizations:

American Academy of Pediatrics – New York
American College of Obstetricians & Gynecologists, District II
American Nurses Association – New York
Ancient Song Doula Services
Doctors for America
Doing Right By Birth
National Institute for Reproductive Health
New York Midwives
New York State Nurses Association
New York Society of Addiction Medicine
New York State Psychiatric Association
Physicians for Reproductive Health
Planned Parenthood Empire State Acts
Pregnancy Justice
Society for Maternal-Fetal Medicine

Additional Organizational Support:

Brooklyn Defender Services
Council of Family and Child Caring Agencies
Drug Policy Alliance
Elephant Circle
Families Together in New York State
Girls for Gender Equity
Hope's Door
JMAC for Families
Legal Action Center
Legal Aid Society
Legal Momentum
March of Dimes
Medical Students for Choice
Medical Students for Choice NYC
Movement for Family Power
NAACP-Yonkers Branch #2188-B
National Black Harm Reduction Network
New York Civil Liberties Union
New York State Defenders Association
NYC Bar Association
NYCD16/15-Indivisible
Our Common Beliefs
Parents Supporting Parents NY
Peer Network of New York
Reproductive Health Access Project
WESPAC Foundation Inc.
Women's Diversity Network