

Dear Chairman Barker, Vice Chairman Awerkamp, Ranking Member Ruiz and members of the committee,

I ask you to please not support any attempts at amending the Kansas Constitution that will only serve to strip pregnant women of their Constitutional right to body autonomy. Vote no on HCR 5019.

From National Advocates for Pregnant Women:

**Arrests of and forced interventions on pregnant women in the United States (1973-2005):  
The implications for women's legal status and public health.**

**EXECUTIVE SUMMARY**

National Advocates for Pregnant Women's [one-of-a-kind study](#) identifies hundreds of criminal and civil cases involving the arrests, detentions and equivalent deprivations of pregnant women's physical liberty that occurred between 1973 and 2005, after the decision in *Roe v. Wade* was issued. In each of the 413 cases, pregnancy was a necessary element and the consequences included: arrests; incarceration; increases in prison or jail sentences; detentions in hospitals, mental institutions and drug treatment programs; and forced medical interventions, including surgery. Data showed that state authorities have used post-*Roe* measures including feticide laws and anti-abortion laws recognizing separate rights for fertilized, eggs, embryos and fetuses as the basis for depriving pregnant women – whether they were seeking to end a pregnancy or go to term – of their physical liberty. The findings make clear that if so called “personhood” measures are enacted, not only will more women who have abortions be arrested, such measures would create the legal basis for depriving all pregnant women of their status as full persons under the law.

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**OVERVIEW**

The new National Advocates for Pregnant Women study published in the peer-reviewed [Journal of Health Politics, Policy, and Law](#), and authored by Lynn M. Paltrow and Jeanne Flavin, reveals a disturbing range of punitive state actions directed at pregnant women. The study found:

- Arrests and incarceration of women because they ended a pregnancy or expressed an intention to end a pregnancy;
- Arrests and incarceration of women who carried their pregnancies to term and gave birth to healthy babies;
- Arrests and detentions of women who suffered unintentional pregnancy losses, both early and late in their pregnancies;

- Arrests and detentions of women who could not guarantee a healthy birth outcome;
- Forced medical interventions such as blood transfusions, vaginal exams, and cesarean surgery on pregnant women;

Pregnancy was a necessary element in all of the cases reviewed in the study. The data revealed that pregnant women were denied a range of fundamental rights normally associated with constitutional personhood, including the right to life, physical liberty, bodily integrity, due process of law, equal protection, and religious liberty, based solely on their pregnancy status. (See summaries at p. 5).

## **FINDINGS**

Analysis of the legal claims used to justify the arrests of pregnant women found that such actions relied on the same arguments underlying so called “personhood” measures – that state actors should be empowered to treat fertilized eggs, embryos, and fetuses as completely and legally separate from the pregnant woman. Specifically, police, prosecutors, and judges in the U.S. have relied directly and indirectly on:

- Feticide statutes that create separate rights for the unborn and which were passed under the guise of protecting pregnant women and the eggs, embryos, and fetuses they carry and sustain from third-party violence;
- State abortion laws that include language similar to so called “personhood” measures;
- Misinterpretation of *Roe v. Wade* as holding what personhood measures propose – that fetuses may be treated as separate legal persons.

This study is the only comprehensive documentation and examination of cases in which a woman’s pregnancy was a necessary factor leading to attempted and actual deprivations of pregnant women’s liberty in its most concrete sense: physical liberty.

National Advocates for Pregnant Women reports:

- 413 cases in 44 states, the District of Columbia and federal jurisdictions from 1973-2005, a number that is likely a substantial undercount and does not include more than 250 known cases that have occurred since 2005;
- Cases occurred in every region of the country and to women of all races;
- The women subjected to deprivations of physical liberty were overwhelmingly economically disadvantaged;
- African American women were found to be significantly more likely to be arrested, reported to state authorities by hospital staff, and subjected to felony charges;
- Although every pregnancy in this study involved a man, in 77% of the cases, the father or the woman’s male partner was not even mentioned in any case document;
- One in ten cases mentioned violence against women.

The study found in a majority of cases, no adverse pregnancy outcome was reported and that where an adverse outcome was alleged, state authorities were typically not required to provide expert testimony or scientific evidence to prove that the pregnant woman's actions, inactions, or circumstances would or in fact did cause the alleged harm.

The study documented cases in which fear of arrests and forced interventions deterred women from seeking help for themselves and in some cases for their newborns. These findings are consistent with the medical and public health consensus that punitive measures, and the legal arguments supporting them, will undermine rather than further state interests in child, fetal, and maternal health.

This study found that far from protecting patient privacy and confidentiality, professionals in the health care system were often the people gathering information from pregnant women and new mothers and disclosing it to police, prosecutors, and court officials.

- In 112 cases, the disclosure of information to the police or other state authority that led to the arrest, detention, or forced intervention was made by health care or other "helping" professionals;
- In some states, the majority of cases came from just one or a few hospitals.

This study also found that:

- Medical misinformation and ignorance about science and evidence-based research, particularly regarding drug use and pregnant women, played a major role in fueling the arrests, detentions, and forced interventions of pregnant women;
- In nearly one in five cases, not adhering strictly to medical advice was cited as a factor in justifying the arrest, detention, or forced medical interventions;
- In nearly one in five cases authorities viewed a woman's history of prenatal care as a consideration in their decision to arrest or otherwise deprive the pregnant woman of her liberty.
- Thirty of the cases involved efforts to force women to undergo medical interventions including forced surgery and/or examinations that could include internal vaginal exams.

## **CONCLUSION**

This study provides a basis for building a shared public health and political agenda that includes all pregnant women. The public debate and public policies overwhelmingly focus on the issue of abortion and interference with one kind of right – reproductive rights. However, this study confirms that if passed, personhood measures would: 1) provide the basis for arresting pregnant women who have abortions; and 2) provide state actors with the authority to subject *all* pregnant women to surveillance, arrest,

incarceration and other deprivations of liberty whether women were seeking to end a pregnancy or not. Furthermore, the study demonstrates that there is no way to add fertilized eggs, embryos, and fetuses to state constitutions or to the United States Constitution without removing all pregnant women from the community of constitutional persons. These measures create a “Jane Crow” system of law, establishing a second class status for all pregnant women and disproportionately punishing African American and low-income women.

## **RECOMMENDATIONS**

Based on its findings, National Advocates for Pregnant Women offers five policy recommendations:

1. “Personhood” measures that treat fertilized eggs, embryos and fetuses as completely separate legal persons will deprive pregnant women of their status as constitutional persons and should be rejected.
2. There should be a moratorium on new feticide laws and anti-abortion measures that recognize separate legal status for eggs, embryos and fetuses. There should be a fair and open inquiry into whether feticide laws passed with the promise of protecting pregnant women and fetuses have actually reduced violence against pregnant women.
3. Health care providers should provide pregnant women the confidentiality, respect, and dignity afforded other patients and, as suggested by the ACOG Committee on Health Care for Underserved Women, challenge the state reporting laws that undermine maternal, fetal and child health ([http://www.acog.org/Resources\\_And\\_Publications/Committee\\_Opinions/Committee\\_on\\_Health\\_Care\\_for\\_Underserved\\_Women/Substance\\_Abuse\\_Reporting\\_and\\_Pregnancy\\_The\\_Role\\_of\\_the\\_Obstetrician\\_Gynecologist](http://www.acog.org/Resources_And_Publications/Committee_Opinions/Committee_on_Health_Care_for_Underserved_Women/Substance_Abuse_Reporting_and_Pregnancy_The_Role_of_the_Obstetrician_Gynecologist)).
4. Legislators should adopt policies that promote women’s health and remove barriers to family planning and contraceptive services, abortion services, birthing options, and effective and humane drug treatment. Legislators should also address the stark racial and economic inequalities that exist in the U.S. that are perpetuated by the war on drugs and our system of mass incarceration.
5. Legislative authorities should confirm that upon becoming pregnant, women retain their civil and human rights through all stages of pregnancy, labor, and delivery.

## SAMPLE CASE SUMMARIES (1973-2013)

### **LOCKED-UP IN JAILS AND PRISONS**

- A pregnant woman accidentally falls down a flight of stairs and is arrested on charges of attempted feticide;
- A woman who obtained the contraceptive *Depo Provera* later experiences a miscarriage. She is held in jail for year on murder charges;
- A woman is arrested under the state's feticide law because she exercised her right to medical decision making and delayed having cesarean surgery – the state claimed this decision caused one of her twins to experience a stillbirth;
- Prosecutors use the fact that a woman had an abortion in the past to show it is likely that the woman had demonstrated a disregard for life and in fact murdered her boyfriend;
- A pregnant woman about to be released from prison is re-incarcerated when the judge learns she is pregnant and HIV positive;
- A pregnant woman who is awaiting sentencing that mandates probation is held in jail to prevent her from having an abortion;
- A pregnant woman who attempts suicide survives, but because she lost the pregnancy she is arrested on charges of murder;
- A woman is convicted of homicide by child abuse after she suffers a stillbirth and tests positive for an illegal drug. All agree she had no intention of losing the pregnancy. She serves 8 years in prison before a court decides she received ineffective assistance of counsel in which her trial attorney failed to call experts who would have testified about "recent studies showing that cocaine is no more harmful to a fetus than nicotine use, poor nutrition, lack of prenatal care, or other conditions commonly associated with the urban poor;"
- A woman refuses fetal monitoring and cesarean surgery at which point medical staff call the police. She is charged with attempted homicide of her fetus based on the claim that her use of alcohol during pregnancy could have caused her fetus to be stillborn.

### **LOCKED-UP IN MENTAL HOSPITALS**

- A woman goes to her nearby hospital voluntarily seeking help for her opiate addiction. Despite the fact that her addiction posed no significant risk to the health of the fetus, she is reported to the state, sheriffs take her into custody and she is sent to a locked psychiatric ward away from her husband and son and where she receives no prenatal care;
- A woman is held in a locked psychiatric facility because she did not obtain a recommended follow-up gestational diabetes test. The facility never administers the test;
- A woman about to be released from a mental hospital because she has been determined to be sane is, nevertheless, kept in the institution through a civil child welfare proceeding in which the state argued that she should remain

institutionalized because the state alleged she would not properly care for the fetus still inside of her.

## **DEPRIVED OF LIBERTY & SUBJECTED TO MEDICAL INTERVENTIONS INCLUDING SURGERY**

- A woman wishes to avoid unnecessary surgery if she can. She seeks to deliver vaginally but is denied access to any hospital unless she agrees to give up her right to medical decision-making and schedules cesarean surgery. Her attempt to labor and delivery at home is discovered and she is taken into custody by a sheriff while in active labor, transported against her will to the hospital with her legs strapped together, and forced to have the surgery;
- Despite knowing that forced cesarean surgery could kill her, a court orders a pregnant woman to undergo that surgery – and both she and the baby die;
- A hospital obtains a court order forcing a woman to undergo cesarean surgery. Her opposition is so strong that hospital staff ties her down with leather wrist and ankle cuffs while she screams for help.

As you can see, these are not hypotheticals. These will happen in Kansas if this amendment proceeds. I do not want pregnant Kansans to go through this.

Thank you,  
Kelly Stromberg