



Equity in Newborn Drug Testing

Protecting families by limiting CPS investigation for cannabis exposure in pregnancy



Study shows racial bias in newborn drug testing

In a study of **over 26,000** mother-baby dyads from **2014-2020** at Michigan Medicine, the odds of drug testing are **four times higher for newborns of Black mothers** than newborns of White mothers.

The tests for Black newborns were no more likely to be positive for drugs than other newborns, which suggests **racial bias in the health care system leads to overtesting.**

After marijuana legalization in Michigan in 2018, there were more positive tests for THC (tetrahydrocannabinol) and **43%** of all tests were **only positive for THC.**

Negative impact of reporting cannabis to CPS

The federal Child Abuse Prevention and Treatment Act (CAPTA) requires states to **identify** newborns exposed to substances during pregnancy and develop plans of safe care for these infants and their families.

Michigan's Child Protection Law goes **beyond CAPTA requirements** in requiring clinicians to **report** cannabis-exposed newborns to CPS.

Cannabis is legal for adults ages 21 and older in Michigan. Prenatal cannabis use is associated with preterm birth and low birth weight but there is no link to anatomic defects. Other parental behaviors like tobacco use during pregnancy are strongly associated with poor infant and maternal outcomes yet do not trigger mandatory CPS reports.

The American College of Obstetricians and Gynecologists (ACOG) opposes punitive laws like Michigan's state law because they cause patients to **avoiding needed prenatal care and substance use treatment.**

Cannabis is a driver of racial disparities.

- Mandatory CPS reporting increases the risk of criminalization and family separation for pregnant people who use cannabis disproportionately for those belonging to racial or ethnic minority groups.
- Substance use in pregnancy is similar across different racial and socioeconomic groups, but people who are poor, Black, or from other marginalized communities are **more likely to be reported to CPS** and lose parental rights for prenatal substance use.

Policy Recommendations

Michigan CPS has already stopped investigating reports solely for cannabis exposure. State law still requires hospitals to file CPS reports, which creates mistrust between patients and their health care teams.

Recommendations:

#1 Eliminate reporting requirement for cannabis.

- States like Vermont have stopped CPS reports for cases only affected by prenatal marijuana use and use a de-identified reporting form to meet federal requirements.
- Michigan should amend Section 722.623a of Michigan's Child Protection Law to comply with federal CAPTA recommendations requiring healthcare providers to **"notify"** Child Protective Services of substance exposed newborns rather than "report" them to CPS.
- This change will protect the therapeutic alliance between pregnant people and their healthcare providers while reducing unnecessary CPS contact for low-risk newborns exposed to cannabis.

#2 Invest in treatment and education of health care professionals.

- Future state legislation should prioritize harm reduction and treatment-oriented approaches over criminalization of pregnant patients who use substances.
- Obstetrical and newborn providers need tools and education on early screening and counseling about marijuana and other drug use in pregnancy.

#3 Center respectful care and equity for Black birthing people.

- Michigan should collect data on **rates of screening and referral** by race as a **proxy for racism**, require anti-racism training, and work to center **equity** in any improvement work that we do.

References: Child Protection Law (722.621 – 722.638). Michigan Legislature. Act 238 of 1975. McCourt <https://doi.org/10.1111/1468-0009.12591>. Children's Bureau. About CAPTA: a legislative history. <https://www.childwelfare.gov/pubpdfs/about.pdf>. ACOG Marijuana use during pregnancy and lactation 2017. Metz <https://doi.org/10.1016/j.ajog.2015.05.025>. Narendran. <https://doi.org/10.1542/neo.22-8-e521>. ACOG <https://www.acog.org/clinical-information/policy-and-position-statements/statements-of-policy/2020/opposition-criminalization-of-individuals-pregnancy-and-postpartum-period>. Lloyd <https://doi.org/10.1016/j.chilgyouth.2019.01.042>. Krening. doi.org/10.1097/JPN.0000000000000303. Dettlaff doi.org/10.1080/15548732.2020.1814542. Thomas <https://doi.org/10.1177/10775595211070248>. Child Welfare Information Gateway. (2021). Child Welfare Practice to Address Racial Disproportionality and Disparity. U.S. Department of Health and Human Services, Administration for Children and Families, Children's Bureau. Thomas doi.org/10.1177/0091450918790790. Terplan. doi.org/10.1097/AOG.0000000000004884.

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The Equity in Newborn Drug Testing Study (ENDS) uses the principles of anti-racism, community engagement, reproductive justice, and harm reduction to produce research findings that help transform health care to be more equitable and respectful and to share power with our patients and communities.

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