



April 23, 2020

Craig Ladd, District Attorney
Carter County Annex #1
107 1st Ave SW
Ardmore, OK 73401

District Attorney Ladd:

As signatories to this letter, including health care professionals, public health advocates, legal advocates, and experts in reproductive health and gender equality, we are writing to demand that you stop the counterproductive and unauthorized prosecutions of pregnant women in your district — Carter, Johnston, Love, Marshall, and Murray Counties.

In December 2017, your office announced a policy of prosecuting women who are pregnant and alleged to have used controlled substances.¹ In January of this year, your office charged four new mothers, Brittany Cravatt, Megan Messenger, Racheal Ned, and Charmaine Bruner with child neglect shortly after giving birth.² The charges were based upon the claim that they had been pregnant and used a controlled substance. Many of them face serious felony charges, excessive bail or bond, are separated from their families and are in custody.

Elected prosecutors from across the country are recognizing that an outbreak of COVID-19 in jails and prisons will spread quickly and impact not only those behind bars, but entire communities, leading to deaths and serious health complications for many. Thus, these prosecutors are calling on officials to immediately reduce the detained and incarcerated population by releasing many of those currently held.³ In light of this situation, it is particularly disappointing that you are continuing the targeted prosecutions and jailing of pregnant people in your area.

These prosecutions are *not authorized under Oklahoma law*⁴, something you yourself have acknowledged. In 2017, you said:

*Even though the law, as it pertains to ‘child neglect,’ does not recognize a fetus as a child, we have taken the position that when newborn babies test positive for drugs, then proof of those positive tests establishes that the mother essentially neglected her newborn by her prior use of drugs while the baby was in utero.*⁵ (emphasis added)

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Your radical re-interpretation of the State’s criminal neglect law violates your ethical and legal obligations as a District Attorney. It also reflects medically inaccurate and unsupported assumptions.

The research does not support the assumption that a positive drug test on a pregnant woman or newborn demonstrates neglect. A positive drug test, even an accurate one, can only indicate an exposure.

Pregnant women with substance use disorders care about the health of their pregnancies, as do women with other chronic health conditions such as epilepsy, diabetes, hypertension, and asthma. Drug dependency is a medical condition, not a crime. The supposition that pregnant women who use drugs or experience drug dependencies are somehow neglecting their fetuses and don’t care about their future children is in complete conflict with medical evidence and social science research.

Moreover, bringing charges against these four women prompted a highly inaccurate and stigmatizing news story on claiming that “many” children exposed prenatally to methamphetamine “will be born with mental defects.”⁶ Such statements are absolutely without support and deeply damaging to the children irresponsibly labeled in this way.⁷

If your goal is to protect children, you should be aware that arrests and prosecutions are ineffective. They actually increase danger by deterring women from seeking health care of any kind. For many pregnant women, there are already significant structural and social barriers to obtaining health care. These barriers include lack of treatment services as well as stigma, fear of prosecution, forcible detention, and removal of their children. All of these prevent or discourage women from seeking what little care may be affordable and available to them.⁸

Stigma and fear dissuaded women from obtaining treatment in Tennessee as a result of a 2014 fetal assault law that authorized the arrest of pregnant women who used narcotic drugs. After two years of enforcement, it became clear that the law did not deter drug use or make babies healthier.⁹ The law did, however, lead women to avoid prenatal care and drug treatment and avoid delivering their babies in hospital settings.¹⁰ Presented with this evidence, the legislature allowed the law to sunset just two years after its enactment.

Your personal policy of prosecuting pregnant women mirrors Tennessee’s law and will likewise discourage women from seeking drug treatment (when needed) and other health care, jeopardizing maternal and infant health while violating women's constitutional rights.

Your policy of prosecution also contradicts the recommendations of *every leading medical group* to address these issues. These medical organizations, including the American Medical Association, the American College of Obstetricians and Gynecologists, the American College of Nurse-Midwives, the American Academy of Pediatrics, and the March of Dimes, have concluded that the health issue of pregnancy and drug use is best addressed through

education and evidence-based treatment when necessary for substance use disorder, not through the criminal legal system.¹¹

In addition, it is wrong to assume or suggest that women could get care if and when they need it. Many drug treatment providers in Oklahoma do not serve pregnant women, and the State has not created or funded drug treatment programs that address the specialized needs of pregnant women who use drugs.¹²

The arrests in your districts assume that pregnant people can set aside their medical conditions at will, and that they should be held criminally liable if they “fail to properly accommodate the children (sic) they carry.” Medical knowledge about dependency and treatment demonstrates that patients do not and cannot simply stop drug use as a result of threats of arrest or other negative consequences.

Published data confirm that criminal prosecution has not reduced the rate of substance use or misuse in the United States.¹³ Nor does the risk of prosecution serve to dissuade people, including pregnant women, from using drugs.¹⁴ Punitive policies related to pregnancy and substance use are not associated with any reduction in use (or improvement in birth outcomes) at the population level.¹⁵

Your ill-informed policy and the recent arrests erroneously suggest that pregnancy outcome depends primarily on what a woman does or does not do during the course of a pregnancy. Research has shown, however, that pregnancy outcomes have far more to do with the economic and social conditions a woman has experienced in the course of her life, than with anything she does or does not do while pregnant.¹⁶ Using your position as a District Attorney to invent a new crime for pregnant women and new mothers that threatens them with arrest, incarceration, and family separation will only add to the destructive and health-harming stress that many women experience. This is especially true for those most likely to be targeted for arrest and prosecution – women of color and low-income white women.¹⁷

Oklahoma is notorious for having the highest incarceration rates for women – more than any other state, twice as high as the national average.¹⁸ Oklahoma has held this shameful position for twenty-five years. Your efforts focused on prosecuting pregnant women will only increase the number of Oklahoma women in the carceral system instead of a supportive, accessible, healthcare system. In addition, incarceration causes family separation, something well documented to cause trauma to children.¹⁹ Your office should be working to reduce the rate of incarceration, rather than dreaming up new ways to lock-up more women and destroy more families.

Far from safeguarding the health and well-being of women and their children, coercive and punitive policies are more likely to discourage pregnant women from seeking health care and appropriate drug treatment (when needed), adversely affect maternal and infant mortality rates, and undermine the trust that is essential for the physician-patient relationship.²⁰

We therefore call on you, in the interests of maternal, fetal, and child health and Oklahoma women, children, and families, to drop the dangerous and counter-productive prosecution of pregnant women that the laws of Oklahoma clearly do not support.

Sincerely,

National Advocates for Pregnant Women, and:

Organizations

**American College of Nurse-Midwives
American Medical Student Association
American Medical Women’s Association
Center for Gender & Justice
Coalition of Oklahoma Breastfeeding Advocates
Harm Reduction Coalition
Harm Reduction International
Healthy and Free Tennessee
If/When/How: Lawyering for Reproductive Justice
The InTune Mother Society
Law Office of Kathleen W. Wallace, PLLC
Legal Action Center
NARAL Pro-Choice North Carolina
NASW-Oklahoma
National Alliance for Medication Assisted Recovery
National Association of Nurse Practitioners in Women’s Health
Oklahoma Call for Reproductive Justice
Oklahoma Mothers’ Milk Bank
Oklahoma Section of ACOG (American College of Obstetricians and Gynecologists)
Our Bodies Ourselves
Physicians for Reproductive Health
Project RESPECT at Boston Medical Center, Boston MA
Sinergia Inc
SisterReach
SisterSong: Women of Color Reproductive Justice Collective
Women and Harm Reduction International Network**

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Individuals

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Cc: Attorney General Mike Hunter

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¹ Matt Payne, *District Attorney, county entities target pregnant drug-abusers*, The Daily Ardmoreite, (Dec. 4 2017) available at <http://www.ardmoreite.com/news/2017/12/04/district-attorney-county-entities-actively-target-pregnant-drug-abusers>. See 21 O.S. § 843.5 the Oklahoma child neglect statute that the majority of prosecutions have fallen under.

² *Four women charged with child neglect in Ardmore after babies test positive for meth, one at large*, News12 available at <https://www.kxii.com/content/news/Four-women-charged-with-child-neglect-in-Ardmore-after-babies-test-positive-for-meth-one-at-large-567340711.html>

³ Fair & Just Prosecution, JOINT STATEMENT FROM ELECTED PROSECUTORS ON COVID-19 AND ADDRESSING THE RIGHTS AND NEEDS OF THOSE IN CUSTODY, March 2020, available at <https://fairandjustprosecution.org/wp-content/uploads/2020/03/Coronavirus-Sign-On-Letter.pdf>.

⁴ See 21 O.S. § 843.5 the child neglect statute; 10A Okl.St. Ann. § 1-1-105 the definitions section defining “child” as “any unmarried person under eighteen (18) years of age” and “neglect” as ““Neglect” means: a. the failure or omission to provide any of the following: (1) adequate nurturance and affection, food, clothing, shelter, sanitation, hygiene, or appropriate education, (2) medical, dental, or behavioral health care, (3) supervision or appropriate caretakers, or (4) special care made necessary by the physical or mental condition of the child, b. the failure or omission to protect a child from exposure to any of the following: (1) the use, possession, sale, or manufacture of illegal drugs, (2) illegal activities, or (3) sexual acts or materials that are not age-appropriate, or c. abandonment.”

⁵ See *supra*.

⁶ See *supra* n. 2

⁷ Mishka Terplan et al., *The Effects of Cocaine and Amphetamine Use During Pregnancy on the Newborn: Myth versus Reality* 30 *Journal of Addictive Diseases*, 1 (2011) available at <http://dx.doi.org/10.1080/10550887.2011.532048>; see also Tricia Wright et al., *Methamphetamines and Pregnancy Outcomes*, 9 *Journal of Addiction Medicine* 111 (2015).

⁸ See Rebecca Stone, *Pregnant women and substance use: fear, stigma, and barriers to care*, 3 *Health & Justice* 1- 15 (2015); Sarah C. M. Roberts & Amani Nuru-Jeter, *Universal screening for alcohol and drug use and racial disparities in Child Protective Services reporting*, 39 *J. Behavioral Health Services Research* 1199-1216 (2012); Sarah C. M. Roberts & Cheri Pies, *Complex Calculations: How Drug Use During Pregnancy Becomes a Barrier to Prenatal Care*, 15 *Maternal & Child Health J.* 333-41 (2011); Ashley H. Schempf & Donna M. Strobino, *Drug use and limited prenatal care: an examination of responsible barriers*, 200 *Am. J. Obstetrics & Gynecology* 412.e1- 412.e10 (2009); Embry M. Howell & Nancy Heiser, *A Review of Recent Findings on Substance Abuse Treatment for Pregnant Women*, 16 *J. Substance Abuse Treatment* 195-219 (1999); Norma Finkelstein, *Treatment Issues for Alcohol- and Drug-Dependent Pregnant and Parenting Women*, 19 *Health & Social Work* 7-15 (1994).

⁹ Tony Gonzalez, *Tennessee Fetal Assault Bill Fails, Allowing It To Be Struck From State Law*, NASHVILLE PUB. RADIO (Mar. 22, 2016), <http://nashvillepublicradio.org/post/tennessee-fetal-assault-bill-fails-allowing-it-be-struck-state-law#stream/0>.

¹⁰ Rosa Goldensohn & Rachel Levy, *The State Where Giving Birth Can Be Criminal*, THE NATION (Dec. 10, 2014), <https://www.thenation.com/article/state-where-giving-birth-can-be-criminal/>

¹¹ See National Advocates for Pregnant Women, Medical and Public Health Statements, available at <http://advocatesforpregnantwomen.org/Medical%20and%20Public%20Health%20Group%20Statements%20revised%20June%202018.pdf> (June 2018).

¹² *Substance Use During Pregnancy*, Guttmacher Institute, <https://www.guttmacher.org/state-policy/explore/substance-use-during-pregnancy> (last visited June 1, 2018).

¹³ Jeffrey A. Miron, *The Economics of Drug Prohibition and Drug Legalization*, 68 *Social Research* 835 (2001).

¹⁴ Association of Women’s Health Obstetrics and Neonatal Nurses, *Criminalization of Pregnant Women with Substance Use Disorders*, 19 *JOGNN* 93, 93 (2015) (“the threat of incarceration has been shown to be an ineffective strategy for reducing the incidence of substance abuse”), available at [https://nwhjournal.org/article/S1751-4851\(15\)30046-5/pdf](https://nwhjournal.org/article/S1751-4851(15)30046-5/pdf).

¹⁵ *Id.*; see also Sara Roberts et al., *Complex Calculations: How Drug Use During Pregnancy Becomes a Barrier to Prenatal Care*, 15 *Maternal and Child Health Journal* 333 (2011).

¹⁶ See World Health Organization, Social Determinants of Health. 2017, http://www.who.int/social_determinants/sdh_definition/en/ ("social determinants of health are the conditions in which people are born, grow, live, work and age."); Kim Krisberg, American Public Health Association, Transforming Public Health Works: Targeting Causes of Health Disparities, 46 The Nation's Health, July 2016 ("at least 50% of health outcomes are due to the social determinants ...").

¹⁷ Elizabeth Swavola, Kristeine Riley and Ram Subramanian, Overlooked: Women and Jails in the Era of Reform, Vera Institute of Justice, 12, (2016) available at: https://storage.googleapis.com/vera-web-assets/downloads/Publications/overlooked-women-and-jails-report/legacy_downloads/overlooked-women-and-jails-rreport-updated.pdf. Finding:

"79 percent [of women in jail] have young children and approximately five percent are pregnant when they are incarcerated. Most often, they are single mothers. Given that many come from communities blighted by high rates of poverty, crime, and low educational attainment, even a short stay in jail may do more than temporarily break up their families. Without the financial means to support their families for the length of their detention and upon their release, these women are very likely to be separated from their children, especially those who are in foster care, for longer than necessary."

¹⁸ "State of Women's Incarceration: The Global Context 2018", Prison Policy Initiative <https://www.prisonpolicy.org/global/women/2018.html>; ("Oklahoma has long had a reputation for over- incarcerating women, especially mothers dealing with drug or alcohol addictions."); see also Still She Rises, "The Issue" available at <https://www.stillsherises.org/the-issue/>; Elizabeth Winkler, Wall Street Journal Why Oklahoma Has the Most Women Per Capita In Prison, Jan. 2, 2018 Print Ed. available at <https://www.wsj.com/articles/why-oklahoma-has-the-most-women-per-capita-in-prison-1514898001/>.

¹⁹ See e.g. "You Miss So Much When You're Gone:" The Lasting Harm of Jailing Mothers Before Trial in Oklahoma, Human Rights Watch, et. al., (2018) available at <https://www.hrw.org/report/2018/09/26/you-miss-so-much-when-youre-gone/lasting-harm-jailing-mothers-trial-oklahoma>

²⁰ See The AMA Code of Medical Ethics' Opinions on Confidentiality of Patient Information, 14 American Medical Association Journal of Ethics 715 (2012) ("The patient should feel free to make a full disclosure of information to the physician in order that the physician may most effectively provide needed services.")