1997-98 SESSION

COMMITTEE HEARING RECORDS

Assembly Committee on Children & Families (AC-CF)

Sample:

Record of Comm. Proceedings … RCP
- 05hrAC-EdR_RCP_pt01a
- 05hrAC-EdR_RCP_pt01b
- 05hrAC-EdR_RCP_pt02

- *Appointments* … *Appt*
- **
- *Clearinghouse Rules* … *CRule*
- **
- *Committee Hearings* … *CH*
- **
- *Committee Reports* … *CR*
- **
- *Executive Sessions* … *ES*
- **
- *Hearing Records* … *HR*
- **
- *Miscellaneous* … *Misc*
- **97hr_AC-CF_Misc_pt03**
- *Record of Comm. Proceedings* … *RCP*
- **

Committee Meeting Attendance Sheet

Assembly Committee on Children and Families

Date: 11-13-97 Meeting Type: Exec.
Location: 328 NW

Committee Member	Present	Absent	Excused
Rep. Michael Huebsch, Chair	☑	☐	☐
Rep. John Dobyns	☑	☐	☐
Rep. Robert Goetsch	☐	☐	☑
Rep. John Ainsworth	☑	☐	☐
Rep. Bonnie Ladwig	☑	☐	☐
Rep. Rebecca Young	☐	☐	☑
Rep. Barbara Notestein	☑	☐	☐
Rep. Shirley Krug	☑	☐	☐
Rep. Tom Hebl	☑	☐	☐
Totals:	7		2

Robert Delaporte, Committee Clerk

Although the goal of Assembly Bill 463 is positive, its measures for reaching this goal were not created with the current knowledge in this field. It is counter-productive for the following reasons:

-It is punitive in nature. It creates fear for pregnant substance abusing clients and therefore its passage would guarantee the disappearance of voluntary clients from AODA treatment and most prenatal care services. A punitive approach will drive pregnant substance abusers underground. A much smaller minority will ever be identified - far fewer endangered fetus's will obtain the benefit of the intervention that is available.

- The pregnant substance abuser coming to AODA and health care services though a "carrot" rather than a "stick" method is much more likely to be successful in obtaining abstinence and recovery from addiction. The effect of this bill will be that along with fewer women presenting for AODA treatment, those that do present will be through involuntary means - under sanction - and treatment effectiveness will be reduced.

-The mandated reporting aspect of this bill will destroy the essential safety provided to clients to honestly and directly address their alcohol/drug use with the professionals who can help them. Open talk of relapse - and then the interventions we can provide to help eliminate further abuse - will disappear, and thus so will treatment effectiveness. Again, the endangered fetus will no longer get the intervention previously available once this safety is gone.

To summarize, Assembly Bill 463 is counter-productive. It's affect in fact will be to lose ground that's been gain in improving fetal health because:

-This bill ignores - and in fact flies in the face of- current literature and research regarding addressing fetal health through developing systems that encourage women into AODA treatment and prenatal care, sensitizing and specializing services, and above all creating the safety necessary for the pregnant substance abuser to seek intervention on her own.

-This bill provides disincentives for pregnant substance abusers to get help, destroys the confidentiality necessary for an effective therapeutic relationship and the interventions that follow, and reduces overall effectiveness of services by eliminating the voluntary client population and turning the far fewer who will be identified into mandated, coerced clients.

I urge you to lay Assembly bill 463 to rest so that we do not frustrate the actual goal of this bill - improving fetal health. We have had real success in increasing the number of pregnant women in AODA treatment significantly over the past 10 years. Further improvements are obviously needed. I urge you to use your concern and commitment to this issue to build on the knowledge, gains, and increasing development of a service system that is and can effectively intervene to improve fetal health.

At the other end of the spectrum are those who wish to expand the bill beyond its current scope and bring within its regulation the entire pregnancy rather than the last third of pregnancy.

Assembly Bill 463 stands squarely between these two polar opposites. It is a moderate and balanced solution to a complex and vexing problem. The bill is sponsored by a diverse coalition of legislators, pro-life and pro-choice, Republicans and Democrats.

In the interest of time, I will describe the bill in general terms. Two weeks ago, a very detailed Legislative Council staff memo describing the substitute amendment was distributed to all committee members. The memo was prepared by the committee staff attorney, Anne Sappenfield.

First of all, the intent of this bill is two-fold. First, it is intended to prevent serious physical harm to unborn children – and to the children when born – caused by severe, chronic and untreated alcohol or drug abuse by the expectant mother. Second, it is intended to provide care and treatment to addicted, expectant mothers who, for whatever reason, have refused to seek or accept treatment.

Assembly Bill 463, like the entire Children's Code, is remedial in nature. It provides no punishment or criminal sanctions. Anyone who tells you that this bill punishes women must not have read it or must not understand the purpose of the Children's Code.

Under AB 463, child protection officials would be able to file a court petition under the CHIPS law, asking the court to order a woman with a viable pregnancy into alcohol or drug abuse counseling, if it can be proven in court that the expectant mother's chronic and severe abuse of alcohol or drugs creates a substantial risk of serious physical injury to her unborn child and to the child when born.

In extreme and urgent cases, such as the well-publicized Angela M.W. case that occurred in Waukesha, the court would have the option of ordering the expectant mother into an inpatient treatment center.

I want to address a few of the major objections that I know will be raised today.

First, why does the bill only apply after fetal viability? I want to say a few words on that, but I'm going to leave the more complicated legal arguments on this point to Bill Domina, who litigated the Angela M.W. case for Waukesha County, and to the memo from David Stute to Representative Jensen and Representative Ladwig, which has been distributed to you.

In his memo, Mr. Stute concludes that the constitutionality of any effort to apply the provisions of this bill prior to fetal viability is "*highly doubtful.*" Specifically, he states:

Copy

Calvin S. Bruce, M.D.
710 Baltzell Street
Madison, Wisconsin
53711-1831
October 28, 1997

State Representative Mike Huebsch
Chairman, Assembly Children and Families Committee
P.O. Box 8952
Madison, Wisconsin

Dear Representative Huebsch:

I am a family physician in private group practice in Madison and am writing to express my opposition to AB 463 on Mandatory Reporting of Unborn Child Abuse. Please share this letter with other members of your committee.

I see three potential unintended adverse effects of this measure:

1. One of the primary tenets of the practice of medicine is the preservation of patient confidentiality. Obtaining a full and honest medical history from a patient is the single most important part of diagnosis and treatment for most medical conditions, including prenatal care. If women fear that the confidential revelation of drug abuse in the physician's office could result in public exposure or possible incarceration, **they will be much less likely to confide in their physicians, or indeed, to seek prenatal care at all**. This would, in turn, lead to less adequate prenatal care and less favorable pregnancy outcomes. It could, in fact, lead some women to choose abortion over continuing their pregnancies.

2. The measure puts physicians in a difficult position. If the physician reports the woman's abuse, the therapeutic relationship with her and the ability to intervene or help with her addiction is effectively ended. If the physician does not report, he/she is liable to criminal prosecution and fine. For a physician practicing in a setting where drug abuse is prevalent, once it becomes known that the physician is an "informer," the practice will suffer. This, in turn, could lead to **decreased physician supply in areas where it is most urgently needed**.

3. Will this bill really help? It does not take effect until after 24 weeks gestation. For Fetal Alcohol Syndrome and probably for other fetal drug abuse exposures, the **damage to the developing fetus has already been done** by this time.

Finally, there seem to me to be larger societal considerations to this bill. Is the State prepared to fund the institutionalization of young women for 3 or 4 months at the end of their pregnancies? To make arrangements for ongoing medical care and delivery? To deal with the disruption caused to these women's families? To arrange child care for their other offspring? In short, are we ready to create a whole new prenatal penal bureaucracy?

The recent publicity surrounding a case in Waukesha where a woman continued to abuse cocaine during her pregnancy has shocked us all. I laud the sponsors of this bill for trying to address a vexing social issue. As a physician who cares for mothers and babies, I do not think this will work.

Very truly yours,

Calvin S. Bruce, M.D.

Health Department Bureau of Administration

Paul W. Nannis
Commissioner of Health

Seth L. Foldy, MD
Medical Director

Frank P. Zeidler Municipal Building, 841 North Broadway, Room 112, Milwaukee, WI 53202-3653 Phone (414) 286-3521 FAX (414) 286-5990

October 27, 1997

Representative Michael Huebsch
Assembly Committee on Children and Families
P. O. Box 8953
Madison, WI 53708

Dear Rep. Huebsch:

On the behalf of the City of Milwaukee Health Department, I wish to express our position opposing AB 463 and Substitute Amendment 1 because of the serious potential this bill has for reducing the length and quality of prenatal care in this state, thereby negatively affecting the health of mothers and children. I regret that I am not able to offer this testimony in person on October 30th.

As you know, this bill would expand the children's code to cover unborn children who are at the state of development such that they are likely to survive outside of the womb, and the Health Department has specific concerns relative to public health. These concerns are shared by public health experts nationwide.

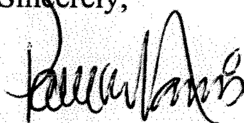
Clearly alcohol and other drug abuse by expectant mothers is a hazard to the health of the fetus. However, there are effective programs which can be employed to address this problem. Women in need of such services should be aggressively directed to enroll in them by their physicians.

Our specific concerns with the bill include the following:
1. This act has the potential to cause mothers to conceal substance use from their health care providers, thus interfering with voluntary identification and treatment processes which the health care provider could assist the mother in obtaining.
2. This act may encourage mothers to delay or even avoid prenatal care entirely, thus introducing new and significant risks to the health of the mother and the child.
3. Restricting this act to alcohol and illicit drugs is arbitrary in the sense that tobacco and other substances are also harmful to the fetus. It opens a pandora's box in terms of potential enforcement challenges.

4. It is difficult to define adequately what "habitual use" and "substantial risk" mean in order to satisfy all parties, including health care providers who would be legally at-risk for not reporting. These terms are insufficiently defined within the act, and writing clear definitions may well be impossible.
5. Most of all, we are concerned that a criminal justice approach to maternal and child health issues is not the first and best alternative. Indeed it is destructive. Readily available alcohol and drug treatment for expectant mothers would be preferable to threatening mothers with incarceration and loss of parental rights.

Thank you for considering our position on this bill. Please do not hesitate to contact me or Dr. Seth Foldy, Medical Director, if you have any questions regarding this opinion.

Sincerely,



Paul W. Nannis
Commissioner of Health

/cm
cc: Alderman Wayne Frank, Chair, Judiciary and Legislation Committee
Seth Foldy, MD, Medical Director, Milwaukee Health Department

Milwaukee Substance Abuse Services Network

Turning Hope into Reality

MEMORANDUM

TO	Assembly Committee on Children and Families
FROM	Dave Rohlfing, Convener, Substance Abuse Services Network
DATE	October 30, 1997
RE	Assembly Bill 463 - Protective Services to the Unborn

While appealing to societal concerns for children, the bill itself and the language of extending child protective services to the unborn - a foetus with likelihood of survival outside of the womb - masks substantial issues:

1. **The disease concept** - accepted in medical and treatment practice for more than 50 years in most parts of the world and providing the basis of successful efforts of prevention and treatment of the diseases of addiction - is challenged by characterizing it as a 'habitual lack of self control' and denying the pernicious quality of addiction for most individuals. Addiction becomes the physical, psychological and values/spiritual burden for the individual, and 'self control' without treatment and support groups works in very few cases. Women - pregnant or not - must receive strong and effective prevention and treatment services in order to solve the problem, not be subject to incarceration or severe externally imposed restrictions. The proposed legislation blames the disease ridden individual, not the disease itself, and such blame solves nothing.,...

2. **No means of paying for necessary treatment** is shown anywhere in the proposed legislation. Already, too often, poorer pregnant women are severely challenged to find any means of paying for treatment, and incarceration or other limitations will not solve that problem alone. Current financial means of treating women with insurers and HMO's already carry severe limitations within restricting such care. (Note; the new State Budget creates even further restrictions)

3. **Little evidence of due process** appears in the legislation. Will all pregnant women seeking pre-natal care be subject to new testing? Will the medical profession be required to turn over the pregnant woman to the authorities? Fear of such activities will aggravate existing deficits in pre-natal and neo-natal care. What will be the legal liability for professionals in the addiction field should they choose not to report or if there is sufficient doubt to report? What will be the liability of 'adult family or friends' charged with responsibility of supervising the pregnant woman through birth should the disease be so strong that in the absence of effective treatment, she could not maintain abstinence? What are restrictions on possible angry family members, Inquisitive neighbors, etc. from causing detention without due cause? Too often such concerns open the state for new and expensive court interventions, and challenges do cost the tax-payer more money.

c/o MCADD, 1126 South 70th Street, Milwaukee WI 53214 (414) 475 2363 Fax (414) 475 2380

"In the situation addressed by the proposed amendment to the Substitute Amendment, the issue is whether, prior to viability, the state's interest in unborn human life is such as to effectively regulate specific conduct, under threat of loss of physical liberty by application of provisions of the Children's Code. . . . It appears *unlikely* that a court would hold that the state's interest in unborn human life is sufficient to justify the burden placed on the mother to conform her previability behavior and actions to that implicitly require by the Substitute Amendment, under pain of deprivation of personal liberty.

We are as concerned as anyone about the devastating harm caused by alcohol and drugs prior to viability. But we want a bill that has a decent chance of being upheld in court. We also want a bill that has a decent chance of passing this legislature. Even in its current, moderate form, this bill faces a very tough road in the Senate. It serves no purpose to pass a bill that is likely to fail either in the other house of the legislature or in the courts.

I would like to find a way – a way that will hold up in court – to help addicted, expectant mothers prior to viability. I just don't think current constitutional law will allow us to do that in this bill.

However, I do think there is a limited way that AB 463 will help even prior to viability. By knowing that they could eventually come under the jurisdiction of the juvenile courts once their pregnancy is viable, pregnant women who severely abuse alcohol or drugs have a powerful incentive to get their problem under control as soon as possible.

One final objection sure to be raised is that AB 463 somehow violates the constitutional rights of the expectant mother.

AB 463 furthers the compelling state interest recognized by the U.S. Supreme Court in <u>Roe v. Wade</u> and affirmed in <u>Casey</u>: protecting the health and life of the viable, unborn child. AB 463 has been narrowly tailored to further that compelling state interest. It accords substantial protections to guard the constitutional rights of the expectant mother.

The burden of proof rests at all times with the government. The mother must be released from custody as soon as possible and into the least restrictive environment possible. An expectant mother who is to be held in custody must be accorded a full court hearing within 48 hours. The expectant mother is entitled to representation by counsel and is entitled to a public defender if she is indigent.

Assembly Bill 463 offers a unique and perhaps unprecedented opportunity for people who are pro-life and people who are pro-choice to find common ground and unite on an issue that will improve the health of the children of our state. I ask you to give this bill your support.

Oct. 28, 1997

Representative Michael Huebsch, Chairman, Committee on Children and Families
State Assembly
PO Box 8952
Madison WI 53708

Dear Rep. Huebsch:

Re: AB 463; hearing scheduled for Oct. 30

This is to register my sincere reservations and concerns about AB 463, relating to penalties against mothers of unborn children who are suspected of abusing the use of alcohol or other drugs. As one who is involved in child abuse prevention activities and also health care issues involving AODA persons, I feel this bill is far too broad and punitive and may indeed not solve the problem being addressed by the legislation. Several concerns come to mind immediately:

1. The severe punitive actions prescribed in the legislation may discourage mothers from voluntarily coming forth to seek treatment. Our experience has shown that when many mothers become pregnant they begin to have positive thoughts about the new life within them, and often seek means to set new directions for their life. Do not throw roadblocks in front of these women who are seeking to improve their lives and the futures of their children.

2. Various pro-life advocates have indicated to me that these punitive strategies may encourage abortions.

3. While the legislation requires judges to order treatment, the bill provides no funding or resources for such services.

4. The potential violations of the civil liberties of the mothers also concerns us.

Obviously we support the goals of your legislation to protect the future lives of unborn children, but we feel the measure as it stands now raises far too many concerns and may not be effective. We hope you will hold this measure for further study. I hope you are able to share this communication with your committee. Thank you.

Sincerely,

Kenneth A. Germanson
313 E. Plainfield Ave.
Milwaukee WI 53207
414-483-1754 (hm) 414-449-4777 (wk)

Dane County Department of Human Services
Division of Children, Youth & Families

1202 Northport, Madison, Wisconsin 53704
PHONE: (608) 242-6200 FAX: (608) 242-6256

KATHLEEN M. FALK
DANE COUNTY EXECUTIVE

Interim Director--Susan Crowley
Division Administrator--Severa Austin

MEMO

TO: Members of the Assembly Committee on Children and Families, Representative Michael Huebsch, Chair

FROM: Severa Austin, Division Administrator of the Children, Youth and Families Division

DATE: October 30, 1997

RE: Assembly Bill 463

I am here today to share information with you on how the passage of AB463 will affect my division which administers child protective services for Dane County.

My staff is charged with ensuring the safety of children in Dane County. Our ability to provide that insurance is contingent, in part, on the availability of funding to pay for services that will provide foster care, if needed, and counseling, treatment and other services to reduce the likelihood of a family member abusing or neglecting a child again. The major source of state/federal funding for the provision of child protective services has historically come from Community Aids, an allocation that has either been frozen or reduced in the last three biennial budgets. This lack of state and federal support severely strains our ability to protect children in my county. It has only been through the generosity of our county board and our county executive in providing county tax dollars to make up for the freezes and losses we have incurred through Community Aids that our child protective services system has not been bankrupted.

AB463 requires the child protective service staff to provide supervision and potentially take into custody a pregnant woman who is suspected of abusing alcohol or other substances to a severe degree and authorizes the court to order that woman into treatment. It will increase the caseloads of my social work staff, who are already carrying caseloads of 30 or more families. This caseload is far in excess of the standard of 15 families set by the Child Welfare League of America. Standards which, I

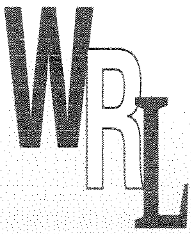
might add, are taken so seriously that DHFS is planning to meet them in its takeover of the Milwaukee Child Protective Service System.

It also imposes additional demands on Dane County's substance abuse treatment resources for pregnant women. Dane County is fortunate to have the ARC Center for Women and Children, which provides Healthy Beginnings, a treatment program targeting pregnant women and women in postpartum, and the Recovery Options Program for Women and Children. However, Healthy Beginnings and Recovery Options are among only a handful of treatment alternatives targeted to pregnant women in the state. AB463 will increase the demand for these services, but does not provide the funding to replicate these services throughout the state or to expand them in Dane County.

AB463 would also require my social workers to take into custody a pregnant woman thought to be severely abusing alcohol or other drugs and authorizes the court to order pregnant women into supervision by my department. What this means is, in certain instances, my social work staff will need to find a supervised placement for the woman which is, again, an additional work load and associated expense to pay for that placement if it ends up having to be in a paid, supervised setting. Yet, as with all the other requirements imposed by AB463, there are no new funds provided.

AB463 will increase our caseloads, the costs for supervised care and the demand for treatment resources without providing any new funding to cover those increases. Given the strains in all areas of our department's budget right now due to both federal and state funding reductions, we are simply not in a position to absorb the additional demands imposed by AB463.

Thank you.



Wisconsin Right to Life, Inc.

State Affiliate of the National Right to Life Committee, Inc. Washington, DC 20004-2293

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Mary A. Klaver

Operations Director
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E-MAIL: wrtl@inc.net
HMPGE: http://www.wrtl.org

TESTIMONY OF

MARY A. KLAVER

LEGISLATIVE LEGAL COUNSEL

WISCONSIN RIGHT TO LIFE, INC.

ON

ASSEMBLY BILL 463

October 30, 1997

before the

Assembly Committee on

Children and Families

Dedicated successfully since 1968 to advocating for and protecting precious human life.

Please remember the Wisconsin Right to Life Education Fund 501(c)(3) charity and its lifesaving programs in your estate plan. By doing so, you may be able to achieve significant income, gift or estate tax benefits. Please call our development department today for confidential help in successfully implementing the gift plan most suitable for you.

8/97

Chairman Huebsch and members of the committee, my name is Mary Klaver. I am the Legislative Legal Counsel for Wisconsin Right to Life, Inc. I appear today for information purposes regarding Assembly Bill 463, the "cocaine mom" bill, and in support of an amendment that would extend the protective services provided under this legislation to an unborn child throughout the mother's pregnancy.

Some concern has been expressed as to whether this amendment would be constitutional. There are some very strong arguments in favor of the constitutionality of this legislation and its application throughout pregnancy. In *Planned Parenthood v. Casey*, 505 U.S. 833 (1992), when the U.S. Supreme Court reaffirmed the essential holding of *Roe v. Wade*, 410 U.S. 113 (1973), it reaffirmed that "the State has legitimate interests from the outset of the pregnancy in protecting the health of the woman and the life of the fetus that may become a child." In its rejection of the rigid trimester approach of *Roe*, the court stated that "[b]efore viability, *Roe* and subsequent cases treat all governmental attempts to influence a woman's decision on behalf of the potential life within her as unwarranted. This treatment is, in our judgment, incompatible with the recognition that there is a substantial state interest in potential life throughout pregnancy." Clearly, the U.S. Supreme Court is openly inviting states to assert more interest in the life of an unborn child throughout pregnancy.

It should be remembered that the privacy right recognized by *Roe v. Wade* is not absolute. In *Roe*, the court recognized the state's "important interests in safeguarding health, in maintaining medical standards, and in protecting potential life." The court stated, "[t]he privacy right involved, therefore, cannot be said to be absolute. In fact, it is not clear to us that the claim asserted by some *amici* that one has an unlimited right to do with one's body as one pleases bears a close relationship to the right of privacy previously articulated in the Court's decisions. The

Court has refused to recognize an unlimited right of this kind in the past." The court then concluded "that the right of personal privacy includes the abortion decision, but that this right is not unqualified and must be considered against important state interests in regulation."

For many years, medical professionals have sought and obtained court orders for necessary medical interventions on behalf of unborn children. The most common are court orders for a cesarean section or a blood transfusion which is being refused by the mother on religious grounds. Many of these cases involve a viable unborn child, as a factual matter, especially those involving a cesarean section where the child must be viable in order to survive. In 1985, a New York court ordered a blood transfusion over the mother's religious objections in order to save the mother and her 18-week old unborn child. *See In Re Application of Jamaica Hospital*, 491 N.Y.S.2d 898 (N.Y. Sup. Ct. 1985). The court recognized that "the state has a highly significant interest in protecting the life of a mid-term fetus, which outweighs the patient's right to refuse a blood transfusion on religious grounds." There appear to be no cases that have refused to intervene on behalf of an unborn child because it is not yet viable.

The state of Wisconsin has substantial legitimate interests in the well-being of unborn children and can assert these interests by intervening in the exceptional cases covered by AB 463. This legislation is narrowly drawn to cover extreme cases of unborn child abuse and carefully balances the liberty interests of the mother and the right of a child to be born with a sound mind and body. The decision in *Roe* addressed the respective interests of the state and the mother and focused on the woman's right to privacy in the narrow context of a criminal abortion statute that had to be narrowly construed. That is not the case here. The children's code is a civil law which is to be liberally construed for the benefit of the children it seeks to protect. There was an unfortunate era in our history when adults could abuse *born* children with total legal immunity.

Fortunately, there is now legal protection from abuse for all born children. This legislation will change that and provide legal protection for *unborn* children as well. There is no legal reason to only protect viable unborn children from severe alcohol and drug abuse. This legal protection can and should apply throughout pregnancy.

Oct. 28, 1997

Representative Michael Huebsch, Chairman, Committee on Children and Families
State Assembly
PO Box 8952
Madison WI 53708

Dear Rep. Huebsch:

Re: AB 463; hearing scheduled for Oct. 30

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1. The severe punitive actions prescribed in the legislation may discourage mothers from voluntarily coming forth to seek treatment. Our experience has shown that when many mothers become pregnant they begin to have positive thoughts about the new life within them, and often seek means to set new directions for their life. Do not throw roadblocks in front of these women who are seeking to improve their lives and the futures of their children.

2. Various pro-life advocates have indicated to me that these punitive strategies may encourage abortions.

3. While the legislation requires judges to order treatment, the bill provides no funding or resources for such services.

4. The potential violations of the civil liberties of the mothers also concerns us.

Obviously we support the goals of your legislation to protect the future lives of unborn children, but we feel the measure as it stands now raises far too many concerns and may not be effective. We hope you will hold this measure for further study. I hope you are able to share this communication with your committee. Thank you.

Sincerely,

Kenneth A. Germanson
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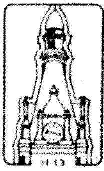
414-483-1754 (hm) 414-449-4777 (wk)



City of Milwaukee
Health Department Bureau of Administration

Paul W. Nannis
Commissioner of Health

Seth L. Foldy, MD
Medical Director

Frank P. Zeidler Municipal Building, 841 North Broadway, Room 112, Milwaukee, WI 53202-3653 Phone (414) 286-3521 FAX (414) 286-5990

October 27, 1997

Representative Michael Huebsch
Assembly Committee on Children and Families
P. O. Box 8953
Madison, WI 53708

Dear Rep. Huebsch:

On the behalf of the City of Milwaukee Health Department, I wish to express our position opposing AB 463 and Substitute Amendment 1 because of the serious potential this bill has for reducing the length and quality of prenatal care in this state, thereby negatively affecting the health of mothers and children. I regret that I am not able to offer this testimony in person on October 30th.

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Clearly alcohol and other drug abuse by expectant mothers is a hazard to the health of the fetus. However, there are effective programs which can be employed to address this problem. Women in need of such services should be aggressively directed to enroll in them by their physicians.

Our specific concerns with the bill include the following:
1. This act has the potential to cause mothers to conceal substance use from their health care providers, thus interfering with voluntary identification and treatment processes which the health care provider could assist the mother in obtaining.
2. This act may encourage mothers to delay or even avoid prenatal care entirely, thus introducing new and significant risks to the health of the mother and the child.
3. Restricting this act to alcohol and illicit drugs is arbitrary in the sense that tobacco and other substances are also harmful to the fetus. It opens a pandora's box in terms of potential enforcement challenges.

4. It is difficult to define adequately what "habitual use" and "substantial risk" mean in order to satisfy all parties, including health care providers who would be legally at-risk for not reporting. These terms are insufficiently defined within the act, and writing clear definitions may well be impossible.
5. Most of all, we are concerned that a criminal justice approach to maternal and child health issues is not the first and best alternative. Indeed it is destructive. Readily available alcohol and drug treatment for expectant mothers would be preferable to threatening mothers with incarceration and loss of parental rights.

Thank you for considering our position on this bill. Please do not hesitate to contact me or Dr. Seth Foldy, Medical Director, if you have any questions regarding this opinion.

Sincerely,

Paul W. Nannis
Commissioner of Health

/cm
cc: Alderman Wayne Frank, Chair, Judiciary and Legislation Committee
Seth Foldy, MD, Medical Director, Milwaukee Health Department

Delaporte, Robert

From: mmmille4@facstaff.wisc.edu[SMTP:mmmille4@facstaff.wisc.edu]
Sent: Thursday, October 30, 1997 10:29 PM
To: Rep.Huebsch
Cc: Rep.Black
Subject: AB 463

Dear Chairman Huebsch:

I registered to give oral testimony at today's hearing, but was unable to stay. I was told I could submit written testimony by e-mail. I am pleased to do so; I have copied the Assemblyman from my district for his information.

I am opposed to AB 463. While I am a Fellow in the American Society of Addiction Medicine, the Delegate to the American Medical Association from the American Society of Addiction Medicine, the Chair of the Commission on Addictive Diseases of the State Medical Society, the Past President of the Wisconsin Society of Addiction Medicine, and the Medical Director of the NewStart Alcohol/Drug Program at Meriter Hospital, and thus have basis for submitting testimony on this bill, my testimony is as an individual citizen and licensed physician only, as I have not sought counsel from other bodies before preparing my remarks.

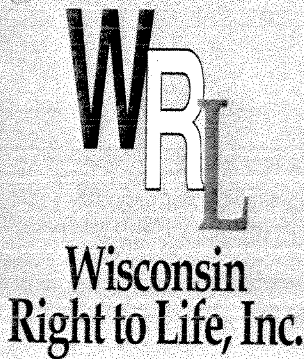
The basic issue underlying legislation such as AB 463 is: are individuals with addiction bad, or are they sick? Do they have a health care condition, or is their substance use simply a social ill, misconduct, a defect of will, or a moral blight?

Pregnant women who repeatedly and compulsively use alcohol and other drugs are ill. Any reasonable person who is pregnant will, through good judgment and based on widespread public education, will take care of their body and their fetus while pregnant. To repeatedly place in their body cocaine, heroin, amphetamines, or large doses of alcohol, despite knowledge of pregnancy, is pathological, and constitutes a diagnostic criterion for addictive disease.

What is the best way to help these women and their babies? It is to offer treatment, to have it available and affordable, and to provide encouragement for voluntary entry into treatment.

Mandatory reporting laws are counterproductive. They "drive the person underground", increasing their shame and attempts to hide their problem, made it less likely that the individual will offer honest responses to health care or social service professionals, and even inhibit access to general health care services. My work with impaired physicians over many years has shown that mandatory reporting laws--even well intended--decrease the rate of physicians coming forward and entering treatment. In the case of pregnant women, there is the risk that they will avoid prenatal care if they view health care providers as people who will "turn them in" to some governmental authority.

I was saddened to hear at today's hearing the comment that META House funding in Milwaukee has been cut out of the new budget. Such moves to restrict access to treatment are ill-advised public policy, which will cost more in the long run than they save in the short run. Punitive approaches such as AB 463 will not protect pregnant women, their babies, society, or the state's fiscal coffers. I encourage defeat of this pending legislation.



LEGISLATIVE ANALYSIS

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October, 1997

AB 463 and SB 264 – "COCAINE MOM" BILL
AMENDMENT NEEDED TO EXTEND PROTECTION THROUGHOUT PREGNANCY

Purpose of the Bill

The purpose of the "cocaine mom" bill is to extend the coverage of Wisconsin's children's code to *viable* unborn children who are alleged to be in need of protection or services because they are at substantial risk of serious physical injury due to the habitual lack of self-control of their expectant mothers in the use of alcohol beverages, controlled substances or controlled substance analogs, exhibited to a severe degree.

Background Information

This legislation was introduced in response to the case of an 8-month old unborn male child of a cocaine addicted Waukesha County woman. The unborn child was placed in protective custody by Waukesha County so that he would be spared further trauma from cocaine in the final weeks prior to his birth.

Unfortunately, the Wisconsin Supreme Court ruled in *Angela M.W. v. Kruzicki* that Waukesha County did not have legal authority to confine an **unborn child** who is being harmed by the expectant mother's use of cocaine. This legislation would correct this by expressly providing legal authority for counties to intervene on behalf of unborn children.

Rationale for Extending Protection Throughout Pregnancy

Although the general approach of this legislation is positive because it uses the children's code rather than the criminal code to protect an unborn child from drug abuse, it is unfortunate that the scope of the bill is limited to protecting the baby only after viability which is that stage of fetal development when there is a reasonable likelihood of sustained survival outside the womb, with or without artificial support. An amendment is needed that would correct this shortcoming by extending the scope of the bill to protect the unborn child from drug abuse **throughout pregnancy**.

There is ample evidence that many babies suffer irreversible and devastating damage in the critical first months of pregnancy as a result of their mother's abuse of drugs or alcohol. Behavior impairment, genito-urinary defects and other congential malformations, especially those associated with neuron tube and brain formation, are all irreversible conditions that can result from drug or alcohol abuse in the early months of pregnancy.

By limiting protective intervention to the last months of pregnancy, help will come much too late for many babies. This was the case for the 5-month old unborn child who was stillborn and tested positive for cocaine after delivery was induced in May, 1997 at Mercy Hospital in Janesville. Without this amendment, the child protective services agency of Rock County and other counties that discover similar drug abuses in the early stages of pregnancy would be powerless to intervene to protect unborn children before they die *in utero*.

If the legislature is serious about erradicating the long-term consequences of drug and alcohol abuse on helpless unborn children, it makes no sense to pass inadequate legislation. To effectively accomplish its purpose, the legislation must protect the child throughout pregnancy, particularly in the critical first months of an unborn child's development.

Constitutionality

There appear to be no court cases dealing directly with whether it is *constitutional* for a state to use its child protective services laws to intervene on behalf of an unborn child in situations where the child is being harmed by the mother's abuse of alcohol or drugs.

However, there are strong arguments in favor of the constitutionality of this legislation and its application throughout pregnancy. In the1992 *Casey* decision, when the U.S. Supreme Court reaffirmed the essential holding of *Roe v. Wade*, it reaffirmed that "the State has legitimate interests from the outset of the pregnancy in protecting the health of the woman and the life of the fetus that may become a child." In its rejection of the rigid trimester approach of *Roe*, the court stated that "[b]efore viability, *Roe* and subsequent cases treat all governmental attempts to influence a woman's decision on behalf of the potential life within her as unwarranted. This treatment is, in our judgment, incompatible with the recognition that there is a substantial state interest in potential life throughout pregnancy." Clearly, the **U.S. Supreme Court is openly inviting states to assert more interest in the life of an unborn child throughout pregnancy**.

For many years, medical professionals have sought and obtained court orders for necessary medical interventions on behalf of unborn children. The most common are court orders for a caesarean section or a blood transfusion which is being refused by the mother on religious grounds. Many of these cases involve a viable unborn child, as a factual matter, especially those involving a caesarean section where the child must be viable in order to survive. In 1985, a New York court ordered a blood transfusion over the mother's religious objections in order to save the mother and her 18-week old unborn child. *See In Re Application of Jamaica Hospital*, 491 N.Y.S.2d 898 (N.Y. Sup. Ct. 1985). The court recognized that "the state has a highly significant interest in protecting the life of a mid-term fetus, which outweighs the patient's right to refuse a blood transfusion on religious grounds." There appear to be no cases that have refused to intervene on behalf of an unborn child because it is not yet viable.

WISCONSIN RIGHT TO LIFE STRONGLY SUPPORTS THE AMENDMENT THAT WOULD EXTEND PROTECTION THROUGHOUT PREGNANCY.

Stillborn baby tests positive for cocaine; woman charged

By Kathleen Ostrander
Special to the Journal Sentinel

Janesville — A 24-year-old Edgerton woman who gave birth to a stillborn baby that tested positive for cocaine was charged Tuesday in Rock County Circuit Court with possession of cocaine.

District Attorney David O'Leary said he and two other prosecutors, one of them his veteran drug prosecutor, pored through state statutes exploring options for charging Geraldine Feldbruegge.

O'Leary said he and his staff reviewed statutes on murder, reckless injury, reckless endangerment — even delivery of cocaine — and concluded their only option was the drug possession charge.

"We can only charge what we can prove under the statutes," he said. "Believe me, if we could have found something stronger, we would have charged it. But the state statutes don't identify the fetus as a person, and the charges we looked at require a person."

The case is similar to that of a Racine County woman who was charged in July 1996 with the attempted homicide of her baby for allegedly drinking alcohol during her pregnancy.

At the time, prosecutors said that if Deborah J. Zimmerman's baby had been stillborn, she could not have been charged with attempted homicide because it would have been considered an abortion.

According to the criminal complaint and police reports:

Feldbruegge, who was five months pregnant, came to Mercy Hospital in May suffering from cramps. Hospital personnel determined the fetus had no heartbeat and labor was induced.

Rock County Coroner Karen Gilbertson was called and told by hospital personnel that they believed the fetus' death was suspicious.

Feldbruegge left the hospital against medical advice before police arrived to ask that her blood be tested for drugs.

Autopsy results indicate the fetus tested positive for cocaine and for metabolized cocaine. The fetus would have had to be alive for the cocaine to be ingested and partially metabolized, hospital personnel told police.

Feldbruegge, who was convicted in 1993 of attempting to possess cocaine in Dane County, will appear in court Sept. 11. Because of her previous drug conviction, she has been charged as a second offender, which makes the charge a felony that carries a maximum prison sentence of two years.

In the Matter of the Application of JAMAICA HOSPITAL for permission to transfuse blood into the person of Santiago X.

Supreme Court, Special Term, Queens County, Part II.

April 22, 1985.

Hospital sought order to permit blood transfusion for patient who was 18 weeks pregnant and in critical condition after patient had refused transfusion on religious grounds, although necessary to stabilize her condition and save life of unborn child. The Supreme Court, Queens County, Special Term, Part II, A. W. Lonschein, J., conducted hearing at patient's bedside and held that patient's interest in exercise of her religious beliefs was not sufficient to override state's significant interest in protecting life of a midterm fetus, who could be regarded for purposes of this proceeding as a human being to whom court stood in parens patriae.

Special guardian appointed.

[1] CONSTITUTIONAL LAW ⚿84.5(17)
92k84.5(17)
Hospital patient's interest in exercise of her religious beliefs precluding blood transfusion necessary for her health would be sufficient to permit such refusal in situation wherein her own life was the only one involved; however, this interest was not sufficient to allow refusal when transfusion was necessary to protect life of 18-week-old fetus since state has a highly significant interest in protecting its life.

[2] CONSTITUTIONAL LAW ⚿84.5(17)
92k84.5(17)
For purposes of proceeding seeking court order to provide mother with blood transfusion which mother had refused on religious grounds, although necessary to save life of fetus, fetus could be regarded as a human being to whom court stood in parens patriae and had an obligation to protect.
*1006 **898 Hayt, Hayt & Landau, Great Neck (Mark Hartman, Great Neck, of counsel), for Jamaica Hosp.

LONSCHEIN, Justice.

This past Saturday evening, April 20th, 1985, at about 6 P.M., while I was getting dressed for a dinner engagement, I received **899 a telephone call at my home from an attorney who identified himself as Mark Hartman, and who told me that he was associated with the firm of Hayt, Hayt & Landau, Esqs., representing Jamaica Hospital. He informed me that at the moment, the hospital had a patient suffering from internal bleeding and who was in critical condition. He further informed me that the patient was 18 weeks pregnant and had refused a blood transfusion necessary to stabilize her condition and to save the life of the unborn child. I advised counsel that the application for leave to transfuse the patient should be made to Justice Aaron F. Goldstein, who was the Justice assigned to Special Term, Part II of the court and that Justice Goldstein's home was but a few blocks from the hospital. Because of the emergency that existed, I advised him of Judge Goldstein's telephone number and told him to call.

Some minutes thereafter, Mr. Hartman called again and told me that he had been unable to communicate with Judge Goldstein, and realizing that this was a life threatening situation for the unborn child as well as the mother, I told Mr. Hartman that I would conduct a hearing at the bedside of the patient. I further advised him that I would take testimony from the physician attending the patient and to have a tape recorder available so that a record could be made of the proceedings.

*1007 Upon arriving at the hospital a half hour later, I was escorted to the Intensive Care Unit by an officer where I met Mr. Hartman and Dr. Angelo Capiello. I was advised at the time by Dr. Capiello that the patient was 18 weeks pregnant, that her condition was critical because of bleeding from esphogeal varices, that her hemoglobin reading was far below normal as was her hematocrit, and that she was in danger of dying without a transfusion which she refused because of her religious beliefs, she being a member of Jehovah's Witnesses. I asked whether her family was notified and was informed that she was single, was the mother of 10 children, that her only next of kin was a sister who was unavailable. The doctor informed me that the fetus was at that time in mortal danger as a result of her condition. Because of all the information conveyed to me at that time and because I considered the fetus as a potentially viable human

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being in a life-threatening situation, I ordered a hearing and convened Special Term, Part II at the patient's bedside. In so doing, I felt that the usual formalities of the assignment of counsel, notice to her family and testimony in a courtroom setting with stenographic record must be dispensed with because of the danger of imminent death.

Dr. Capiello was sworn, and testified that he was a physician duly licensed to practice medicine, specializing in internal medicine and was in charge of the patient's care. He testified as to the critical nature of the patient's condition, her hemoglobin level and hemotocrit and that without a transfusion, she would die. The hospital chart was deemed received in evidence and Dr. Capiello read a gynecologist's note describing the danger to the fetus. Dr. Phillip Louis was also sworn and testified. He advised me that he was a gynecologist and that unless the patient had a transfusion, the fetus would die.

I spoke to the patient and advised her who I was and the purpose of the hearing. I asked her if she would consent to a blood transfusion. She told me, in effect, that because of her religion she would not.

[1] The patient, of course, has an important and protected interest in the exercise of her religious beliefs. If her life were the only one involved here, the court would not interfere. (See Matter of Melideo, 88 Misc.2d 974, 390 N.Y.S.2d 523, and generally, Matter of Storar, 52 N.Y.2d 363, 438 N.Y.S.2d 266, 420 N.E.2d 64; Schloendorff v. Society of New York Hospital, 211 N.Y. 125, 105 N.E. 92). Her life, however, is not the only one at stake. The court must consider the life of the unborn fetus.

The Supreme Court has held, in the context of abortion, that the state has a significant interest in protecting the potential of *1008 human life represented by an unborn fetus, which increases throughout the course of **900 pregnancy, becoming "compelling" when the fetus reaches viability. (Roe v. Wade, 410 U.S. 113, 162-163, 93 S.Ct. 705, 731, 35 L.Ed.2d 147; Beal v. Doe, 432 U.S. 438, 446, 97 S.Ct. 2366, 2371, 53 L.Ed.2d 464). "Viability" is defined as that point at which the fetus becomes capable of independent life, outside of the womb. (Roe v. Wade, supra).

While I recognize that the fetus in this case is not yet viable, and that the state's interest in protecting its life would be less than "compelling" in the context of the abortion cases, this is not such a case. In this case, the state has a highly significant interest in protecting the life of a mid-term fetus, which outweighs the patient's right to refuse a blood transfusion on religious grounds.

This decision is in agreement with the decisions of sister states (Raleigh Fitkin-Paul Morgan Mem. Hosp. v. Anderson, 42 N.J. 421, 201 A.2d 537; Jefferson v. Griffin Spaulding City Hosp. Auth., 247 Ga. 86, 274 S.E.2d 457). An additional basis for ordering the transfusion may exist in the patient's responsibility to her living minor children (Application of Pres. & Dirs. of Georgetown College, 331 F.2d 1000 (D.C.Cir.), reh. den. 331 F.2d 1010 (D.C.Cir.) cert. den. sub. nom. Jones v. Pres. & Dirs. of Georgetown College, 377 U.S. 978, 84 S.Ct. 1883, 12 L.Ed.2d 746) but this was not considered in view of the sparseness of the record on that point and the decisive nature of the interests of the unborn fetus.

[2] For the purposes of this proceeding, therefore, the fetus can be regarded as a human being, to whom the court stands in parens patriae, and whom the court has an obligation to protect.

I therefore appointed Dr. Capiello as special guardian of the unborn child and ordered him to exercise his discretion to do all that in his medical judgment was necessary to save its life, including the transfusion of blood into the mother. The proceedings were then closed.

I advised counsel to prepare a typewritten record of the proceedings and submit the same to me with a formal order of the appointment of Dr. Capiello as special guardian containing his authority.

END OF DOCUMENT

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Meta House

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October 28, 1997

Testimony
Re: AB 463/SB 264

My name is Dr. Francine Feinberg. I am the Executive Director of Meta House in Milwaukee, Wisconsin and a member of the Substance Abuse Services Network. The program I run treats women who are addicted to alcohol and drugs, many of whom are pregnant or post-partum. It is a residential treatment program and women can actually enter the program with their children. Our goals for the program include healthy birth outcomes and a reduction in child abuse and neglect.

I certainly share the concern expressed in this bill and frankly, I am not opposed to coercing people into treatment. As a matter of fact, many of the women we treat in our program are there because they have been given the choice between Meta House or losing their children. They also may have been told that if they enter Meta House, and do well, their children will be returned. These women do as well in treatment as women who knock on the door and ask for help on their own.

Pregnant women do very well in treatment if the appropriate treatment is applied. Proven treatment for pregnant women is being done in five programs in this state. For those of you who question whether it works, let me share some data. Meta House just completed a federal grant, which included a large research component done by outside evaluators. Over 90% of the women are not using cocaine two years after leaving the treatment program. We have had 50 babies born over a four-year period while their mothers were in treatment. All were born drug free. In a two-year period 205 children were returned to their mothers either during their treatment or soon thereafter.

Meta House has concentrated its efforts on pregnant women for over 10 years. I know the population of women that this bill is meant to affect extremely well. I can tell you that, beyond a shadow of a doubt, this bill will have the exact opposite effect of its intention. Nothing will keep women from getting medical care and seeking treatment for their addiction more than the knowledge that they

will be reported to authorities. In order to protect a few fetuses from harm, this bill will severely increase the number of women who will not get prenatal care or seek the treatment that they need and want.

Addiction is not something that happens in isolation. It is not a matter of pure choice with the ability to quit. It is a very complicated phenomena. Over 95% of the women we treat have a history of brutal sexual abuse and other kinds of violence. Over 65% also have a mental health diagnosis in addition to the substance abuse problems.

Every day we get phone calls from women who are pleading for help. They literally say that they are afraid they are going to hurt their babies. They find out they are pregnant and want their baby to be healthy. They feel completely overwhelmed, hopeless and helpless. I have to put them on a waiting list because there is little money being provided for the treatment of pregnant and parenting women.

I am saying this in the State of Wisconsin where, according to the C.D.C., this is the state with the highest prevalence of alcohol consumption and frequent drinking among women 18 - 44 years old. We are number one.

Each time there is an article in the media that brings to the attention of the public a woman who is drinking or using drugs or who has caused devastating harm to her baby, I look for the name of the woman and go back to our waiting list. On more than one occasion, that woman tried to get help for her addiction and I had to tell her she had to wait.

Aren't these the same people that are targeted by this bill? Wouldn't it make more sense to provide the treatment early and get a healthy birth outcome than wait until the damage is done? For every woman that is being targeted with this bill, there are hundreds of others who are pleading for help.

We know what to do, our results speak for themselves, but the financial resources are simply not forthcoming. To make it worse, I fear that all those women who now know they can call and ask for help, will stop. They will stop because our agency will be put in the position of having to report them to authorities.

This bill will only serve to increase the number of children born drug affected. If the intent of this bill is really to protect children, then it needs to provide funding to the hundreds, perhaps thousands, of women who are pregnant or parenting who sit on waiting lists crying for help.

Wisconsin Nurses Association
6117 Monona Drive
Madison, Wisconsin 53716-3995
(608) 221-0383
FAX (608) 221-2788

TO: Assembly Committee on Children and Families

FROM: Deborah Schwallie, MS, APNP, CS, President

DATE: November 4, 1997

RE: ***AB463***

The Wisconsin Nurses Association (WNA), the professional association for Registered Nurses in Wisconsin, appreciates the opportunity to submit testimony on AB463 relating to extended coverage of the Children's code to fetuses in need of protective services.

Wisconsin Nurses Association opposes AB463 for the following reasons:

1. AB463 will be a deterrent to prenatal care

There are already a variety of reasons why pregnant women choose not to seek prenatal health care, (i.e., denial, lack of insurance coverage, domestic violence situations, language barriers, cultural differences, unaware of being pregnant, immigration status, etc.). Mandated reporting, as called for in this bill, sets up one more possible barrier to access. Women will refuse to seek care out of fear. This will result in ongoing and untreated addiction.

2. Lack of financial resources

AB463 mandates many interventions ranging from counseling to inpatient treatment. The burden for providing these services falls onto the counties. Gaps in payment for and providing mental/behavioral and women's health services already exists. This women-specific program would need a commitment of dollars. Where would the dollars come from?

3. Risk of liability for nurses

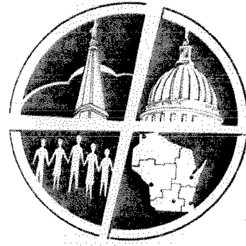
AB463 requires nurses to report. WNA is concerned because AB463 expects nurses to know if there is potential for serious injury. How is the nurse suppose to know this? Damage to fetuses occur in the first trimester before a woman may ever be aware of her pregnancy. The risk of liability for nurses who fail to report run the risk of being sued by a parent for not protecting her/his child.

4. Right to privacy

WNA urges that any statutory changes with respect to privacy should be approached with caution.

WNA shares the authors of AB463 concern for infants who are affected by maternal substance use and abuse. It is WNA's position that improvements to healthy birth outcomes comes about through education, prevention and early intervention. AB463 does not provide the dollars necessary to address this approach. Research shows that prenatal care is cost effective and it improves birth outcomes.

Please feel free to contact me if you have any questions or need more information.



WISCONSIN CATHOLIC CONFERENCE

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TO: Committee Members, Assembly Children and Families Committee

FROM: Sharon L. Schmeling, Associate Director

DATE: October 30, 1997

RE: Assembly Bill 463 -- "cocaine babies"

Thank you for this opportunity today to testify for "information only" about some thoughts and concerns the Wisconsin Catholic Conference has regarding AB 463.

First, we recognize the worthy intent of this legislation to protect unborn children from extreme alcohol and drug abuse inflicted upon them by their own mothers.

Our compassion and concern for women imprisoned by such extreme alcohol and drug addictions makes us grateful that the bill does not seek punitive measures against these mothers but seeks to intervene in a way that benefits both mother and child. Despite our overwhelming concern for the health and welfare of unborn children we much prefer seeking treatment rather than punishment for pregnant women who engage in such harmful behavior.

Further, we applaud the fact that the law seeks to intervene in only the most extreme cases of maternal abuse of an unborn child. If a pregnant woman chooses to smoke or drink alcohol or not wear a seat belt or ride a motorcycle, she is still free to do so.

This recognizes the inherent dignity of women and acknowledges that there is a wide and diverse range of activities that are considered "safe" during pregnancy. It also recognizes that not every unsafe activity can, or should, be made illegal.

While the effort to protect unborn children in SB 312 is noteworthy, we are concerned that only "viable" unborn children are protected by this proposal.

This is of concern not just because we believe that society is best served by protecting its most vulnerable members -- in this case the youngest unborn children -- but also because

some of the greatest harm to unborn children can be done during the earliest weeks of their development. We would support efforts to expand this bill to include unborn children in all nine months of pregnancy.

Some have questioned whether or not this bill will prompt women with grave alcohol or other drug addictions to skip prenatal care because their medical care-givers will be forced to report their activities to police. This would be counterproductive given the fact that the doctor-patient relationship developed through ongoing prenatal care can provide multiple and potentially effective interventions for pregnant women abusing drugs and alcohol.

In addition, some might be concerned that this bill will lead to an increase in abortions because women who abuse drugs and alcohol to a severe degree will choose to kill their unborn children rather than be subject to potential intervention by the state. Or, that women will be pressured by family members to have an abortion because the family that the women has been released into does not want to deal with the women's addiction.

Will this bill discourage prenatal care or encourage abortions? There is no way to know since this bill is the first of its kind in the nation. We believe it is equally plausible to argue that many babies will be saved from miscarriage, premature birth, birth defects or severe learning or health disabilities, as a result of this legislation.

We believe that careful monitoring of the impact of this law, including its impact on the abortion rate, will allow the Legislature to revisit this issue. Certainly, a key to such monitoring -- and one which we support -- is the bill's provision that statewide statistics on abuse of unborn children be maintained.

In addition, we support the provision in the bill for a pilot project to reduce the incidence of alcohol and other drug abuse by expectant mothers. Clearly, for both mother and unborn child, prevention is far preferable to after-the-fact intervention.

Finally, legislators may want to consider the economic impact on a woman who is subjected to the interventions outlined in AB 463. Many alcohol and other drug abusers are able to hold down jobs despite severe addictions. Pregnant women with such addictions are no exception. It would be a grave injustice to a pregnant woman and her unborn child if the woman were to lose her job because she was forced to miss work to attend hearings and participate in other treatments mandated by this bill.

If the intent of the legislation is to assist pregnant women and their unborn children, it must be done in a way that makes both the woman and unborn child better and not worse off after the state has intervened.

The Catholic Conference will continue to deliberate with you over these issues in the coming weeks and invites you to consider us a resource as you weigh the merits of this legislation.

Thank you for your consideration.

Susanne L. Malestic,RN,BS
616 Patricia Street Apt. 201
Elkhorn, WI 53121

I have come today in support of the Cocaine Mom bill, but would like to see the ammendment added which would extend protection throughout the entire pregnancy.

If our purpose is to prevent harm from drug and alcohol abuse during pregnancy, it cannot be done by dividing our advocacy into compartments of viability--nor can we ignore the vital role of the first trimester in the development of a healthy baby.

There are conflicting results from research on the damage caused by substance abuse during pregnancy. Yet, there are cold, hard facts that cry out for the earliest possible intervention for those "at-risk" babies.

There is the unforgettable suffering that these babies endure as they go through withdrawal--their haunting cries; the uncontrollable tremors that alert us to what the mothers rarely admit; the abdominal cramps when we try to feed them; the vomiting and diarrhea that excoriates their skin and threatens to dehydrate them; the frantic sucking of their fists which often causes the chin to be rubbed raw...in worst case scenarios there can be convulsions.

A baby who is withdrawing from heroin may suffer these and other symptoms for 8 to 16 weeks--some even longer.

Although there is no physiological withdrawal with cocaine, the neonate can suffer great harm from exposure to cocaine in utero. When cocaine is mixed with alcohol the combination is even more harmful. Many addicts take other narcotics along with cocaine, which can cause withdrawal symptoms.

The placenta is the vital link between mother and the unborn

baby during the entire pregnancy. The transfer of any drug across the placenta is always a concern, but during early pregnancy any chemical may disrupt the healthy formation of vital organs.

We know that both cocaine and heroin cause the placental vessels to constrict. The blood flow to the fetus is comprimised and there is a deprivation of oxygen to the unborn child. Narcotics also reduce placental blood flow.

With cocaine, which is a central nervous system stimulant, there is an increased rate of spontaneous abortions as well as an increased rate of stillbirths (due to placental abruption).

Cocaine affects the cardiovascular system and has the ability to cause hypertension in the unborn baby. Spontaneous bleeding of the brain has occurred following cocaine-induced, abrupt hypertensive episodes. The newborn may have a cerebral infarction (stroke) after birth.

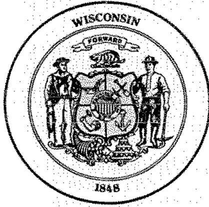
We believe cocaine abuse during pregnancy may cause anomolies of the genitourinary tract and skeletal system.

Heroin addicted infants have an increased risk of meconium aspiration. We also see SGA infants with prenatal heroin. The lack of prenatal care, abuse of alcohol and tobacco, and use of dirty needles and/or prostitution which often accompanies this addiction places the unborn baby at risk for prematurity and infection (Hepatitis B, AIDS, venereal disease and other infections).

Lastly, we cannot ignore the maternal factor. When considering the rights of the unborn baby in relation to the rights of the addicted mother, I believe on the babsis of my experience that these women are already subject to the worst kind of bondage. They

have been stripped of their maternal instincts to the extent that the only significant event in their lives has become the obtaining of their drugs. I believe that many of these women have lost the ability to make choices based upon the welfare of their unborn babies.

This is a complex problem riddled with denial, fear, and great suffering. I can assure you that whatever statistics you may have at your disposal at this time, it doesn't begin to match the true numbers. It is time for us to put a stop to the needless suffering that is devastating our young.



Joanne B. Huelsman
WISCONSIN STATE SENATOR

TESTIMONY OF SENATOR JOANNE B. HUELSMAN

IN SUPPORT OF ASSEMBLY BILL 463

Before the Assembly Committee on Children and Families

October 30, 1997

Chairman Huebsch and committee members, thank you for this opportunity to testify in support of Assembly Bill 463.

I will be addressing a few of the legal issues involved. Representative Ladwig will then address some of the medical issues. Neither of us will be going into great detail because there are both legal and medical experts here representing both sides of the issue, experts who are more capable than either of us at addressing the complicated issues involved here.

Assembly Bill 463 is first-of-its kind legislation. We started from scratch when we drafted this bill. We do not pretend that it is a perfect bill, but we do believe it is a very good bill.

Assembly Bill 463 is very complicated legislation intended to address an issue that is vexing, both legally and medically. None of the legal or medical issues here are simple. That is the reason for the bill's complexity.

We introduced this bill to address a seemingly intractable problem: what should society do about women who are pregnant, who have every intention of bringing their pregnancy to term, and who repeatedly refuse to seek treatment for severe and chronic alcohol or drug abuse, or who even refuse such treatment when it is offered to them?

That is the problem we seek to address. We believe our bill offers some valuable, if admittedly partial, solutions.

Legal and medical opinions about how we should address chronic, severe and untreated alcohol and drug abuse during pregnancy run the entire political spectrum.

At one end of the spectrum are those who are completely opposed to this bill. At worst, they believe that our response to the specific problem we have identified should be this: Do Nothing.

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State Representative
Bonnie L. Ladwig
63rd Assembly District

Assistant Majority Leader

TESTIMONY OF REPRESENTATIVE BONNIE LADWIG IN SUPPORT OF ASSEMBLY BILL 463

Assembly Committee on Children and Families
October 30, 1997

As Senator Huelsman pointed out, Assembly Bill 463 is intended to address the specific problem of pregnant women who refuse to seek or accept treatment for severe alcohol and drug addiction.

Untreated and chronic abuse of alcohol and drugs during pregnancy is a severe public health problem. The devastating effects of this problem are felt by the thousands of disabled children born every year to alcohol- and drug-addicted women. Cocaine babies and children with fetal alcohol syndrome can be seen as abused children. Alcohol and drug abuse by a mother – during any part of her pregnancy – can cripple a child for life.

Unlike other disorders, the damage caused by alcohol and other drugs is preventable. The Wisconsin Department of Health and Family Services does not have any reliable figures on alcohol consumption during pregnancy, due to under-reporting by women who continue to drink during pregnancy. But a telling statistic comes from a recent Centers for Disease Control (CDC) study that showed Wisconsin does have the single highest reported rate in the nation of drinking by women of child-bearing age. The same CDC study also showed that the nationwide rate of drinking by pregnant women is increasing, not decreasing. The CDC also reports that, since 1979, the percentage of babies born in America with Fetal Alcohol Syndrome has increased six-fold.

This problem is getting worse, not better.

Abuse of drugs *other* than alcohol can also have a devastating effect on unborn children. Although the research in this area is less certain than that for alcohol, no one will dispute that the illegal consumption of drugs during pregnancy poses a substantial health risk to the unborn child.

According to the March of Dimes, cocaine use during pregnancy has been shown to be correlated with low birth weight, decreased head circumference, miscarriage, premature birth and cocaine addition for the baby upon birth.

Now, I know that there will be questions as to why AB 463 does not address *any and all* threats to pregnancy like tobacco or even poor nutritional habits. The simple answer is that we do not seek to solve every single substance-related or health-related threat to pregnancy. The fact that we are trying to solve this one problem does not obligate us to devise a solution to every problem. We are simply trying to solve one major problem.

-more-

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Some who are opposed to this bill will say that the answer to the problem we have identified is simply increased government spending on treatment. But this proposed solution is not responsive to the problem we seek to address. Regardless of the merits of increased spending on treatment for women who want it, the problem we seek to address is not those pregnant women who voluntarily seek treatment and who accept it when available.

Rather, the problem we seek to address is pregnant women with addictions, women who refuse under any and all circumstances to seek treatment and who even refuse it when it is offered to them – women such as Deborah Zimmerman and Angela M.W..

Another objection sure to be raised today concerns the fact that AB 463 expands the Children's Code mandatory reporting requirements to unborn child abuse due to alcohol and drug abuse. Please keep in mind that these objections are the very same objections raised by certain experts back when we first required physicians, nurses, social workers and other professionals to report physical and sexual abuse of children.

Back then, these experts said that parents who abused their children would no longer take their children to the doctor because they might be turned in. Or they said we should not stigmatize these parents, these parents were somehow not responsible for their abusive behavior.

Well, as far as I know, no one today suggests that doctors should not be required to report abusive parents. And certain behaviors should be stigmatized – certainly none more so than child abuse.

No one here today will dispute the devastating effects of severe alcohol and drug abuse during all stages of pregnancy. Assembly Bill 463 offers an effective mechanism for getting addicted mothers into treatment and preventing serious physical injury to their unborn children. Assembly Bill 463 does not punish these women. It provides them with the care and treatment they need and that they are too ill to seek for themselves.

Let's take this first step to help end the tragedy of alcohol- and drug-damaged children.

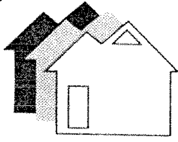
Assembly Committee on Children and Families
Public Hearing
Testimony on Assembly Bill 463
Expanding Coverage of the Children's Code
to Include Unborn Children
given by:
The Wisconsin Council on Children and Families
October 10, 1997

Representative Huebsch, members of the Assembly Committee on Children and Families, thank you for this opportunity to speak to you on behalf of the Wisconsin Council on Children and Families. The council is a state-wide, not for profit agency that promotes the well being of children. I am here in opposition to Assembly Bill 463.

Recent brain research has taught us the importance of the developmental period between birth and the age of three, but this process begins in the womb. At birth, the brain contains all the nerve cells it will ever have, in fact more than we need. It is during gestation that all of these cells develop. In the third week after conception a fluid filled cylinder known as the neural tube produces brain cells at a pace of 250,000 a minute forming the brain and spinal cord. Although nature plays a dominant part in this miracle, there is no doubt that the environment plays a critical supportive role. As noted by the Families and Work Institute, it is during the prenatal period that the environment affects how the intricate circuitry of the brain is wired. Changes in the environment of the womb caused by a lack of prenatal care can ruin the clock work precision involved in brain development.

Through early prenatal care we have many opportunities. With proper nutrition and early monitoring we can decrease the rates of low birth-weight and premature births. With the knowledge we have now, we see that these same measures help to ensure healthy brain development. Prenatal care is essential to creating healthy bodies and healthy minds. For these reasons the Wisconsin Council on Children and Families supports unlimited access to prenatal care.

Although the intention of Assembly Bill 463 may be to provide proper prenatal care the bill may actually backfire and limit the number of women who receive these services. By reporting substance-abusing pregnant women we are assigning them a criminal label that may cause them to avoid prenatal service professionals. The fear of being reported for child abuse would work as a barrier to prenatal care as well as AODA treatment. We need to focus our efforts on providing incentives, not deterrents, for all pregnant women to seek prenatal care.



Recovery Options for Families
605 Spruce Street
Madison, WI 53715

251-7910

To: Members of Assembly Committee on Children and Families
From: Kim Bean, Project Coordinator of Mental Health Center of Dane County's Drug/Alcohol Units Recovery Options for Families program
Date: October 30, 1997

I am representing AODA program services designed specifically for pregnant women and mothers with young children. Recovery Options for Families was begun in 1990 as a result of obtaining a grant from the State of Wisconsin - part of Governor Thompson's Omnibus Drug Bill - to provide increased access to AODA treatment and specialized services for substance abusing pregnant women and mothers of young children.

I am here to oppose Assembly Bill 463 which would extend the CHIPS code to include viable fetuses. My reasons are outlined below.

The key elements to addressing and eliminating risks to fetal health due to substance abuse during pregnancy has been researched on a national level for over a decade. CSAP, our federal alcohol/drug abuse agency, has funded much of this research and then funds specialized AODA services for pregnant women based on these key findings.

1- Pregnant substance abusers are under-represented in the general AODA treatment population. Fetal health is dependent on getting these women into AODA and health care services. The following items are most effective in addressing this.

2- Concrete barriers to AODA treatment exist for pregnant women - and more barriers than for about any other population.

3- The most effective treatment for pregnant substance abusers are services that are specialized and sensitized to their unique issues.

4- Safety is the key psychological ingredient for pregnant substance abusers to initiate getting help to eliminate their alcohol/drug use.

We have made a lot of progress in getting pregnant substance abusers into treatment through federal, state and local efforts to address the problems outlined above. Twenty percent of our clients in treatment are pregnant substance abusers - a dramatically higher number than in conventional treatment services. This approach works.

Abuse Laws Cover Fetus, a High Court Rules

By TAMAR LEWIN

In a ruling that runs contrary to every other state supreme court that has addressed the issue, South Carolina's highest court this week upheld the criminal prosecution of pregnant women who used drugs, finding that a viable fetus is a "person" covered by the state's child-abuse laws.

The ruling came in the case of Cornelia Whitner, who in 1992 pleaded guilty to child neglect after her baby was born with traces of cocaine in its system. Ms. Whitner, 33, of Central, S.C., a tiny town in the northwest corner of the state, was sentenced to eight years in prison.

"The abuse or neglect of a child at any time during childhood can exact a profound toll on the child herself as well as on society as a whole," the state's high court said in its ruling on Monday. "However, the consequences of abuse or neglect which takes place after birth often pale in comparison to those resulting from abuse suffered by the viable fetus before birth. This policy of prevention supports a reading of the word 'person' to include viable fetuses."

Ms. Whitner was released in 1994 after serving 16 months, when a lower court agreed to her request for a review of her case based on her claim of inadequate legal representation and the argument that the fetus had not been a person. Her baby is living with relatives.

Lawyers for Ms. Whitner, who plan to appeal the case to the United States Supreme Court, say that giving a fetus the same legal status as a child will have dire consequences: If women who use drugs during pregnancy can be prosecuted for child abuse, they say, what about women who drink or smoke while pregnant, or fail to get prenatal care?

"If fetus is a person, everything a pregnant women does is potentially child abuse, abortion is murder, and women lose the right to make medical decisions on their own behalf during pregnancy," said Lynn Paltrow, a reproductive-rights lawyer from New York who represented Ms. Whitner. "The effect of declaring fetal personhood is to declare the pregnant woman's non-personhood."

The question of whether a fetus is a person has arisen frequently over the last decade, both as a response to the growing number of babies being born with crack cocaine in their systems, and as an offshoot of abortion politics, a marker of the tensions between women's autonomy and fetal welfare.

At issue is a pregnant woman's autonomy vs. the welfare of a fetus.

Since 1990, prosecutors in at least 30 states have used a variety of criminal laws to bring charges against pregnant women who abuse drugs or alcohol. Some, as in South Carolina, have used child-endangerment statutes, while others turned to the drug laws, charging that women were delivering drugs through the umbilical cord. So far, only South Carolina has upheld such charges. State Supreme Courts in Florida, Kentucky, Nevada, Ohio and Wisconsin, and many lower courts, have struck them down, usually ruling narrowly that a fetus was not a person under the particular criminal law and avoiding broader constitutional issues.

In South Carolina, the high court ruled 3 to 2 against Ms. Whitner, with the chief justice one of the dissenters. The majority opinion said that a viable fetus was a person, unambiguously under the plain meaning of the child abuse law.

Ms. Whitner's lawyers disagreed: "They heard the case in May '95," said C. Rauch Wise, of Greenwood, S.C. "When it takes five judges 29 months to decide what 'child' means, that's not plain or unambiguous."

The court also rejected the argument that the prosecution had violated Ms. Whitner's constitutional right of privacy, saying, "It strains belief for Whitner to argue that using crack cocaine during pregnancy is encompassed within the constitutionally recognized right of privacy."

Courts in South Carolina, as in most other states, have long treated a viable fetus as a person in certain legal contexts: in 1960, for example, the South Carolina Supreme Court ruled that a wrongful death suit could be brought on behalf of an infant who died four hours after her birth as a result of injuries she received prenatally. More recently, the same court upheld murder charges against a man who stabbed his pregnant wife and in the process killed the fetus in her womb. So, the majority in the Whitner case said, consistency requires that a viable fetus be treated as a person under the child-abuse laws.

Many other states that treat a fetus as a person under the wrongful-death laws, however, refuse to do so under the child-abuse laws.

Many feminists and health groups argue that although prosecutors say they hope the threat of criminal charges will encourage pregnant drug-users to get treatment, the actual effect is to frighten such women away from the medical system.

Ms. Paltrow said the ruling would "hurt babies" by deterring pregnant women from seeking drug treatment and prenatal care for fear that their drug use might be discovered.

New York Times 10/30/97

Delaporte, Robert

From: mmmille4@facstaff.wisc.edu[SMTP:mmmille4@facstaff.wisc.edu]
Sent: Thursday, October 30, 1997 10:29 PM
To: Rep.Huebsch
Cc: Rep.Black
Subject: AB 463

Dear Chairman Huebsch:

I registered to give oral testimony at today's hearing, but was unable to stay. I was told I could submit written testimony by e-mail. I am pleased to do so; I have copied the Assemblyman from my district for his information.

I am opposed to AB 463. While I am a Fellow in the American Society of Addiction Medicine, the Delegate to the American Medical Association from the American Society of Addiction Medicine, the Chair of the Commission on Addictive Diseases of the State Medical Society, the Past President of the Wisconsin Society of Addiction Medicine, and the Medical Director of the NewStart Alcohol/Drug Program at Meriter Hospital, and thus have basis for submitting testimony on this bill, my testimony is as an individual citizen and licensed physician only, as I have not sought counsel from other bodies before preparing my remarks.

The basic issue underlying legislation such as AB 463 is: are individuals with addiction bad, or are they sick? Do they have a health care condition, or is their substance use simply a social ill, misconduct, a defect of will, or a moral blight?

Pregnant women who repeatedly and compulsively use alcohol and other drugs are ill. Any reasonable person who is pregnant will, through good judgment and based on widespread public education, will take care of their body and their fetus while pregnant. To repeatedly place in their body cocaine, heroin, amphetamines, or large doses of alcohol, despite knowledge of pregnancy, is pathological, and constitutes a diagnostic criterion for addictive disease.

What is the best way to help these women and their babies? It is to offer treatment, to have it available and affordable, and to provide encouragement for voluntary entry into treatment.

Mandatory reporting laws are counterproductive. They "drive the person underground", increasing their shame and attempts to hide their problem, made it less likely that the individual will offer honest responses to health care or social service professionals, and even inhibit access to general health care services. My work with impaired physicians over many years has shown that mandatory reporting laws--even well intended--decrease the rate of physicians coming forward and entering treatment. In the case of pregnant women, there is the risk that they will avoid prenatal care if they view health care providers as people who will "turn them in" to some governmental authority.

I was saddened to hear at today's hearing the comment that META House funding in Milwaukee has been cut out of the new budget. Such moves to restrict access to treatment are ill-advised public policy, which will cost more in the long run than they save in the short run. Punitive approaches such as AB 463 will not protect pregnant women, their babies, society, or the state's fiscal coffers. I encourage defeat of this pending legislation.

Dane County Department of Human Services
Division of Children, Youth & Families

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KATHLEEN M. FALK
DANE COUNTY EXECUTIVE

Interim Director--Susan Crowley
Division Administrator--Severa Austin

MEMO

TO: Members of the Assembly Committee on Children and Families, Representative Michael Huebsch, Chair

FROM: Severa Austin, Division Administrator of the Children, Youth and Families Division

DATE: October 30, 1997

RE: Assembly Bill 463

I am here today to share information with you on how the passage of AB463 will affect my division which administers child protective services for Dane County.

My staff is charged with ensuring the safety of children in Dane County. Our ability to provide that insurance is contingent, in part, on the availability of funding to pay for services that will provide foster care, if needed, and counseling, treatment and other services to reduce the likelihood of a family member abusing or neglecting a child again. The major source of state/federal funding for the provision of child protective services has historically come from Community Aids, an allocation that has either been frozen or reduced in the last three biennial budgets. This lack of state and federal support severely strains our ability to protect children in my county. It has only been through the generosity of our county board and our county executive in providing county tax dollars to make up for the freezes and losses we have incurred through Community Aids that our child protective services system has not been bankrupted.

AB463 requires the child protective service staff to provide supervision and potentially take into custody a pregnant woman who is suspected of abusing alcohol or other substances to a severe degree and authorizes the court to order that woman into treatment. It will increase the caseloads of my social work staff, who are already carrying caseloads of 30 or more families. This caseload is far in excess of the standard of 15 families set by the Child Welfare League of America. Standards which, I

might add, are taken so seriously that DHFS is planning to meet them in its takeover of the Milwaukee Child Protective Service System.

It also imposes additional demands on Dane County's substance abuse treatment resources for pregnant women. Dane County is fortunate to have the ARC Center for Women and Children, which provides Healthy Beginnings, a treatment program targeting pregnant women and women in postpartum, and the Recovery Options Program for Women and Children. However, Healthy Beginnings and Recovery Options are among only a handful of treatment alternatives targeted to pregnant women in the state. AB463 will increase the demand for these services, but does not provide the funding to replicate these services throughout the state or to expand them in Dane County.

AB463 would also require my social workers to take into custody a pregnant woman thought to be severely abusing alcohol or other drugs and authorizes the court to order pregnant women into supervision by my department. What this means is, in certain instances, my social work staff will need to find a supervised placement for the woman which is, again, an additional work load and associated expense to pay for that placement if it ends up having to be in a paid, supervised setting. Yet, as with all the other requirements imposed by AB463, there are no new funds provided.

AB463 will increase our caseloads, the costs for supervised care and the demand for treatment resources without providing any new funding to cover those increases. Given the strains in all areas of our department's budget right now due to both federal and state funding reductions, we are simply not in a position to absorb the additional demands imposed by AB463.

Thank you.