



September 19, 2017

Rep. Jim Runestad, Chair
Judiciary Committee
Michigan House of Representatives
124 North Capitol Avenue
Lansing, MI 48933

Opposition to House Bill No. 4500, Which Will Harm Pregnant Women and Children

Chairman Runestad and members of the Judiciary Committee:

National Advocates for Pregnant Women (NAPW) submits this letter in opposition to House Bill 4500, which would amend Chapter XVII Section 39 of the code of criminal procedure to increase criminal sentences by defining embryos and fetuses as completely separate “persons” when counting the number of victims of a crime under that section. NAPW is a non-profit legal advocacy organization dedicated to ensuring the rights, health, and dignity of pregnant and parenting women and their children. We oppose HB 4500 because it is unconstitutional and dangerous to maternal, fetal, and child health for the following reasons:

First, this bill denies pregnant women equal protection of the laws as well as dignity. The bill contains no acknowledgement that legislation addressing the status of embryos and fetuses necessarily involves pregnant women. Specifically, this legislation would permit (without saying so explicitly) unequal punishment of those women when convicted of a crime. As a result of this law, any woman convicted of a crime covered by this bill who happens to be pregnant at the time of the offense will be subject to enhanced penalties because she is female, had the capacity for pregnancy, and committed the crime while pregnant. This will be the outcome whether or not the woman knows she is pregnant and despite the significant possibility that any particular pregnancy will not go to term.¹

Second, as our peer-reviewed and published research found, laws that assert completely separate rights or personhood status for fertilized eggs, embryos, or fetuses, such as state feticide laws, have been used directly as the basis for arresting pregnant women and new mothers – even when those laws explicitly state they are not intended to reach or punish the pregnant woman herself.

¹For example, in the United States, 15-20% of all pregnancies end in miscarriage or stillbirth. See, Raj Rai & Lesley Regan, Recurrent Miscarriage, 368 *Lancet* 601, 601 (2006); Ruth C. Fretts, Etiology and Prevention of Stillbirth, 193 *Am. J. Obstetrics & Gynecology* 1923, 1924 (Mar. 2005).

Laws declaring separate personhood status for embryos and fetuses have also been used as the justification for wrongly applying and interpreting a wide range of criminal laws as mechanisms for punishing pregnant women and new mothers².

In Michigan itself, claims of separate personhood for embryos and fetuses were used in an attempt to justify the legislatively unauthorized arrest and prosecution of Kimberly Hardy, whose conviction was overturned. *People v. Hardy*, 469 N.W.2d 50 (Mich. Ct. App. 1991). Such claims have also been used in Michigan to justify other types of punitive actions, including court orders to force pregnant women to undergo unconsented to and unnecessary surgery. Orders like this deprive women of their fundamental rights including the rights to medical decision making, bodily integrity, and physical liberty.³

Third, this bill raises significant questions about the privacy rights of crime victims. In order to apply this law, would all women victims of certain crimes be required to undergo pregnancy tests in violation of their rights to privacy, to obtain evidence that could later be used for sentencing enhancement?

Fourth, adopting legislation that seeks to establish separate personhood status for embryos and fetuses creates a punitive climate and culture for all women and specifically pregnant women and children. Because pregnancy occurs inside the body, it is not possible to know whether or not any particular woman is pregnant. This law would suggest that all women be treated as pregnant at all times in order for third parties to avoid the possibility of harming or creating danger to an embryo or fetus. While some may firmly hold the belief that all women should be defined by their capacity for pregnancy, such a definition is not permissible in our system of constitutional democracy that assures all persons equal protection of the laws.

Finally, if this legislation is being introduced out of a sincere interest in protecting pregnant women or their future children, it should be noted that those interests are already addressed more specifically in Michigan's criminal law. For example, Michigan law already contains provisions that add sanctions when another person harms a woman who is pregnant and the crime is "intended to cause or result in miscarriage or stillbirth or death to the embryo or fetus" or "great bodily harm," "serious or aggravated physical injury" or "physical injury" to the embryo or fetus. See Mich. Comp. Laws Ann. § 750.90a et seq..

² See Lynn M. Paltrow and Jeanne Flavin, *Arrests of and Forced Interventions on Pregnant Women in the United States, 1973–2005: Implications for Women's Legal Status and Public Health*, JOURNAL OF HEALTH POLICY, POLITICS, AND LAW (2013). See also *Ex Parte Ankrom*, 152 So.3d 397 (Ala. Sup. Ct. 2013) (Parker, J., concurring specially); *Ex Parte Hicks*, 153 So.3d 53 (Ala. Sup. Ct. 2014) (Parker, J., concurring specially and Moore, J., concurring).

³ See e.g., *In re Jeffries*, No. 14004 (Mich. Prob. Ct. Jackson County May 24, 1982); Harry Cook, *Woman Ordered to Allow Cesarean*, DETROIT FREE PRESS, May 29, 1982, at 3A; *Pregnant Woman Ordered to Enter Hospital to Save Child's Life*, ASSOC. PRESS, May 29, 1982.

The laudable legislative goal of promoting the health and welfare of mothers and children is best achieved by providing accessible, affordable, and confidential health care to Michigan's families and assuring that all families live in healthy environments with, among other things, safe and clean water and air. We urge you to vote against HB 4500.

Sincerely,

National Advocates for Pregnant Women



Lynn M. Paltrow, Executive Director



Nancy Rosenbloom, Director of Legal Advocacy

