

CRIMINALIZATION OF CARE: DRUG TESTING PREGNANT PATIENTS

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RESEARCH PROBLEM & DATA

How do health care providers integrate criminal-legal tasks into routine clinical care, and what are the consequences for patients?

Substance use during pregnancy is a growing concern. In the United States, pregnant and postpartum individuals may experience criminal prosecutions or child welfare investigations for their substance use. The role that maternal and infant health care providers play in identifying and referring patients to punitive systems is not well documented. In most settings and jurisdictions, the decision to drug test patients is up to the discretion of providers. This study examines providers' rationales and justifications for drug testing their pregnant patients. I argue that when providers drug test patients, they introduce criminalization processes that transform clinical norms.

To understand providers' decisions to drug test patients, I conducted qualitative interviews with 30 health care professionals in a Midwest state that classifies prenatal substance use as a form of child neglect. The sample of providers was recruited from five local hospitals to capture experiences working with race- and class-diverse patient populations and included obstetricians, neonatologists, and hospital social workers. I asked participants about a broad range of experiences providing care to pregnant patients with substance use issues. The themes that inform drug-testing decisions highlight clinical decision-making, medical surveillance, risk, and collaborations between medicine and child welfare.

KEY FINDINGS

- Providers framed criminal suspicion in medical terms. By blending clinical definitions and routines with forensic interests, the legal intent of drug testing was obscured from patients.
- Providers grappled with and expressed uncertainty about the risks associated with different types of chemical exposures. In the face of uncertainty regarding the effects of certain substances, providers swapped clinical for legal risk assessments.
- Providers made decisions about drug testing based on patient traits such as perceived race, class, and age. Providers also shielded some patient populations from forensic testing based on their perceived class status.

POLICY IMPLICATIONS

This research reveals several ethical challenges posed by drug testing patients in perinatal care settings. Providers and hospitals should consider the role they play in referring pregnant and postpartum patients to punitive systems. Prior research suggests that the risk of criminalization and child welfare referral deters women from seeking prenatal care and care beyond the perinatal period. Current guidelines outlined by maternal health organizations discourage the use of drug testing and emphasize the importance of informed consent. Clinicians and health care advocates should challenge laws and institutional practices that violate their code of ethics. As the provision of health care becomes increasingly politicized (i.e., seen in recent debates about trans health care and abortion access), policymakers have an opportunity to proactively create laws that solidify patient rights, for example, by codifying informed consent and strengthening patient privacy laws. Seeking health care should not place patients at risk of punitive system involvement.