



October 25, 2021

House Children and Youth Committee  
Pennsylvania General Assembly

Re: HB 1737 (Drug Screening)

Dear Members of the Pennsylvania House Children and Youth Committee,

The Women's Law Project urges you to oppose HB 1737, which permits the state to compel drug screening during child protective services investigations. This bill enables unconstitutional intrusions of the government into a family's private sphere based on unsound and unsupported public policy. It will likely compound the child welfare system's disproportionate targeting of people of color, resulting in grave legal consequences for many children and families in Pennsylvania.

Founded in 1974, the Women's Law Project (WLP) is a nonprofit, legal advocacy organization that defends and advances the rights of women, girls, and LGBTQ+ people in Pennsylvania and beyond. WLP engages in impact litigation, direct representation and assistance, public policy advocacy, and community education. Our core values include a belief in the right of all people to bodily integrity and personal autonomy, a dedication to listening to and learning from women and members of the LGBTQ+ communities, and a commitment to fairness, equality, and justice.

Guided by these values, WLP has worked on issues related to the punishment of pregnant or parenting people for substance use. We were co-counsel to the plaintiffs in *Ferguson v. City of Charleston*,<sup>1</sup> a U.S. Supreme Court case, and co-counsel in *In Re LJB* before the Pennsylvania Supreme Court.<sup>2</sup> We joined an *amicus* brief in *In the Interest of D.R.* in support of the parents' challenge to a compelled drug test during a civil child welfare investigation.<sup>3</sup>

In that case, the Pennsylvania Supreme Court rightly affirmed the Superior Court's judgment that the Child Protective Services Law does not authorize an agency to compel a drug screening. HB 1737 seeks to override this decision in a way that will likely deprive Pennsylvanians—especially Black and brown people—of their constitutional rights.

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<sup>1</sup> *Ferguson v. City of Charleston*, 532 U.S. 67 (2001) (successful challenge to hospital-based police searches of pregnant women suspected of drug use).

<sup>2</sup> *In Re LJB*, 650 Pa. 266 (2018) (holding that alleged behavior while pregnant does not constitute child abuse under Pennsylvania's Child Protective Services Law).

<sup>3</sup> Brief of Amici Curiae National Advocates for Pregnant Women, Community Legal Services of Greater Philadelphia, and Experts in Child Welfare, Public Policy, and Law in Support of Appellees, *In the Interest of D.R.*, 232 A.3d 547 (Pa. 2020), <https://clsphila.org/wp-content/uploads/2020/06/AMICUS-FINAL-CLS-NAPW-WITH-APPENDIX.pdf> [hereinafter *Amicus Brief*].

While it was not necessary for the Pennsylvania Supreme Court to reach the question of the constitutionality of compelled drug screenings during civil child welfare investigations in *In the Interest of D.R.*, the Court noted the privacy interest at stake, stating that the matter involved a “Motion to Compel before the juvenile division where an arm of the State seeks to intrude into a family’s private sphere based on a third-party report.”<sup>4</sup> Intrusions into a family’s private sphere in this way are likely to be unconstitutional, violating the Fourth Amendment of the United States Constitution, which protects people from unreasonable searches and seizures, and Article I, Section 8 of the Pennsylvania Constitution.<sup>5</sup>

These deprivations of rights will fall the hardest on Black and brown families as a result of racism and racial profiling within the U.S. civil and criminal legal systems. In comparison to white families, Black and Indigenous families are more likely to be investigated for child abuse and neglect, and their children are more likely to be placed in foster care.<sup>6</sup> Additionally, despite the fact that the rate of drug use is similar for Black people and white people, Black people are more likely to face legal consequences for it, including referral to child welfare authorities.<sup>7</sup>

The risk that HB 1737 will cause harm to Pennsylvanians is high, while the likelihood that it will help children is low. The results of a drug screening will not establish whether child abuse or neglect occurred—positive toxicology alone is not evidence of abuse or neglect—and drug screening is often unreliable, as described at length in the *amicus* brief in *In the Interest of D.R.*<sup>8</sup> Erroneous results or results that are given undue weight in an investigation could have dire consequences for families, including the unjust removal of children from their parents.

WLP urges you to oppose HB 1737.

Respectfully,

Carol Tracy  
Executive Director

Amal Bass  
Director of Policy and Advocacy  
WOMEN’S LAW PROJECT  
125 S. 9<sup>th</sup> Street, Suite 300  
Philadelphia, PA 19107  
(215) 928-5772  
abass@womenslawproject.org

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<sup>4</sup> *In the Interest of D.R.*, 232 A.3d 547, 559 (2020).

<sup>5</sup> Amicus Brief at 15-25.

<sup>6</sup> Tanya Cooper, *Racial Bias in American Foster Care: The National Debate*, 97 Marq. L. Rev. 215 (2013).

<sup>7</sup> Amicus Brief at 27.

<sup>8</sup> *Id.* at 9-11.