

**Public Policy Position**  
**DHHS Policy – PSM 716-7**

The Children's Law Section is a voluntary membership section of the State Bar of Michigan, comprised of 472 members. The Children's Law Section is not the State Bar of Michigan and the position expressed herein is that of the Children's Law Section only and not the State Bar of Michigan. To date, the State Bar does not have a position on this item.

The Children's Law Section has a public policy decision-making body with 19 members. On August 18, 2018, the Section voted to oppose DHHS Policy – PSM 716-7. Of 10 members present for the August 18 meeting, 9 voted in favor of the Section's position on DHHS Policy – PSM 716-7, and 1 member voted against. On September 28, 2018, the Section approved the drafted statement opposing PSM 716-7 after a discussion and vote at a scheduled meeting. 8 members voted in favor of the Section's statement on DHHS Policy – PSM 716-7, 0 members voted against this position, 0 members abstained.

**Explanation:**

CLS opposes new DHHS policy which changes mandatory petition filing when newborn tests positive for drugs.

A detailed statement is attached.

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## Children's Law Section Objections to DHHS PSM 716-7.

The Children's Law Section (CLS) of the State Bar of Michigan hereby expresses its opposition to the changes contained in DHHS PSM 716-7 involving "Complaints (of child abuse/neglect) Involving Substances." Specifically, the CLS objects to the policy changes below:

Parental substance use, or positive toxicology in a newborn does not in and of itself prove child abuse or neglect. A caseworker will need to determine if harm has occurred or is likely to occur, not simply if the child has been affected by or exposed to a substance.

Parental substance use is a risk factor, not a determinant for case confirmation. Many children of parents who are dependent on substances will not experience abuse or neglect or suffer negative developmental outcomes. They may however be at an increased risk for maltreatment and entering the child welfare system. (PSM 716-7, p 8 of 10, emphasis added.)

The members of this Section of the State Bar are shocked and saddened that the DHHS has chosen to treat the purposeful exposure of illegal substances to newborns while in utero with such gross indifference to the welfare of those children. The DHHS, by this policy change (precipitously made effective 7/1/18), has chosen to allow caseworkers rather than the Court to make the decision whether criminal exposure to state controlled or illegal substances is evidence of child abuse/neglect. The very fact that ingestion of these substances by the parent is illegal and that the parental choice to engage in illegal drug use endangers a (now even more unprotected) newborn must be a factual issue decided by the Juvenile Court. While the Department may make a recommendation to the Court that it is "contrary to the welfare" of the child to be removed from the parent, the decision on whether drug exposure to a newborn is proof of child abuse/neglect as defined by state statutes is a decision which warrants court involvement. Failure by the DHHS to bring this matter before the Court disregards the intent of the Michigan Legislature in making such substance use illegal and acts to rob the Juvenile Court of both its discretion and charge of child protection in the abuse and neglect forum. Further, exposure to many legally prescribed or recreational drugs clearly places children at an increased risk of harm. The evaluation of that risk, based upon both testimony and evidence, is within the purview, not of DHHS, but of this State's judiciary.

**Thus, the Children's Law Section of the State Bar of Michigan requests that the DHHS rescind policy 716-7 or, in the alternative, redact or modify the above cited portions of this PSM.**