

DRUG USE AND PREGNANCY IN TENNESSEE

What You Should Know if You Use Drugs & Become Pregnant



Please Note: The following information is not intended to serve as medical or legal advice. You should consult a medical professional and attorney.



1. Pregnant people may no longer be prosecuted for assault for drug use.

In 2014 Tennessee became the first state to pass a law criminalizing women for their pregnancy outcomes. The Tennessee General Assembly enacted Public Chapter 820, which amended the Tennessee Code to permit the criminal prosecution of a woman for assault for the “illegal use of a narcotic drug...while pregnant, if her child is born addicted to or harmed by the narcotic drug.”¹



In response to widespread concerns about the impact of the law on maternal, fetal, and child health, the Tennessee General Assembly included a sunset clause, meaning the law would remain in effect for two years while the General Assembly studied its effects. The law deterred women from seeking prenatal care and impeded access to medical treatment for pregnant drug-using women. As a result, the General Assembly decided not to extend the law. **Tennessee’s fetal assault law sunset on Friday, July 1, 2016. The law is no longer in effect.**



As of Friday, July 1, 2016 no new prosecutions of pregnant women are permitted pursuant to T.C.A. § 39-13-107. The provisions of the law permitting the prosecution of women with respect to their own pregnancies will no longer be in effect. The statute will automatically revert to language *prohibiting* prosecution for “any act or omission of a pregnant woman with respect to an embryo or fetus with which she is pregnant.”



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2. There are grounds for the dismissal of cases initiated prior to July 1, 2016.

Since the General Assembly contemplated but refused to extend T.C.A. § 39-13-107, there are grounds for dismissal of existing prosecutions initiated prior to July 1, 2016.

3. You deserve access to prenatal care and treatment, not jail time.

Pregnant people with substance use disorders should not be subject to special criminal prosecutions. The medical profession has long acknowledged that substance use disorders are not simply the product of a failure of individual willpower. Access to effective treatment, not jail, is the best way to advance health and recovery.

For pregnant people who are dependent on opioids, medication-assisted treatment with methadone or buprenorphine is the standard of care. Taken in constant daily doses, methadone and buprenorphine work by preventing withdrawal, which can result in miscarriage or fetal death, and reducing cravings for opioids.

¹ T.C.A. § 39-13-107.

² Diagnostic and Statistical Manual of Mental Disorders (American Psychiatric Association, 5th ed. 2003). See also *Linder v. United States*, 268 U.S. 5, 18 (1925); *Robinson v. California*, 370 U.S. 660 (1962).

³ ACOG, Committee on Health Care for Underserved Women, Opioid Abuse, Dependence, and Addiction in Pregnancy, Committee Opinion No. 524 (May 2012).

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4. Accessing treatment can be difficult, but the following support is available.



Although the fetal assault law is no longer in effect, barriers to accessing treatment and care remain. The following are a few resources to begin with when seeking out support.



Treatment Referrals: The Tennessee REDLINE (1-800-889-9789) is a toll-free information and referral line with up-to-date alcohol, drug and other addiction information.

Legal Support: National Advocates for Pregnant Women (NAPW) offers pro bono support for defense attorneys. Let your attorney know that technical and strategic assistance in representing pregnant women charged under T.C.A. § 39-13-107 is available and they should contact legalstaff@advocatesforpregnantwomen.org or 212-255-9252.



Healthy and Free Tennessee: Healthy and Free Tennessee is a statewide advocacy coalition which worked to defeat the law. If you would like to be involved in ongoing advocacy to protect the rights of pregnant drug using women, please email info@healthyandfreetn.org or call 901-791-9385.



Emergency Planning: If you are concerned about the possibility of law enforcement or Child Protective Services (CPS) intervention, having an emergency plan in place in advance can be helpful. Consider gathering together important information including: your contact and health information, your physician's contact information, your lawyer's contact information, and childcare instructions. Make sure to share your plan with people you trust. You can access a ready-made form to help with such planning at www.incaseofmyarrest.org.

