

## Tennessee's Fetal Assault Law Sunsets July 1, 2016

### Women May No Longer Be Prosecuted for Assault for Drug Use During Pregnancy

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."<sup>1</sup>

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 sunsets on Friday, July 1, 2016. The law will no longer be in effect.**

### New and Existing Prosecutions Under T.C.A. § 39-13-107

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."

There are also grounds for dismissal of existing prosecutions initiated prior to July 1, 2016 because the General Assembly contemplated but refused to extend T.C.A. § 39-13-107. Existing prosecutions should be dismissed. To do otherwise would offend all notions of justice.

### Ending criminalization promotes the health and well-being of Tennessee babies, women, and families.

Tennessee's fetal assault law contravened the recommendations of medical experts, who recognize that prenatal care is one of the most important factors in a healthy pregnancy. Every major medical organization – including the American College of Obstetricians and Gynecologists, the American Medical Association, and the American Academy of Pediatrics – opposes creating special crimes to punish drugusing pregnant women.<sup>2</sup> Punitive laws drive women away from prenatal care and treatment, creating much greater dangers to public health. This is precisely what happened in Tennessee: immediately after the law went into effect, doctors documented an increase in patients delaying prenatal care and even fleeing the state because they feared arrest.<sup>3</sup>



<sup>1</sup> T.C.A. § 39-13-107.

<sup>2</sup> *Medical and Public Health Statements Addressing Prosecution and Punishment Of Pregnant Women*, National Advocates For Pregnant Women (Dec. 2015), <http://bit.ly/1RWun1p>.

<sup>3</sup> Rosa Goldensohn & Rachael Levy, *The State Where Giving Birth Can Be Criminal*, *The Nation* (Dec. 10, 2014), <https://www.thenation.com/article/state-where-giving-birth-can-be-criminal/>.

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### Pregnant women need access to prenatal care and treatment, not jail time.



Pregnant women 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 women 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. Although medication-assisted treatment results in better pregnancy outcomes and shorter hospital stays for newborns, for many women in Tennessee this treatment is inaccessible. Of the 177 treatment facilities throughout Tennessee, only 19 in the entire state list themselves as serving pregnant women. Often transportation barriers, cost, waiting lists, and lack of childcare and mental health services further impede access, particularly during the short time frame of pregnancy. Tennessee should focus on increasing access to treatment rather than criminalizing pregnant women.



### Pro bono support for defense attorneys is available!

Attorneys who would like technical and strategic assistance in representing pregnant women charged under T.C.A. § 39-13-107 at any time should contact:



**National Advocates for Pregnant Women at  
[legalstaff@advocatesforpregnantwomen.org](mailto:legalstaff@advocatesforpregnantwomen.org) or 212-255-9252.**

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<sup>4</sup> 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).

<sup>5</sup> ACOG, Committee on Health Care for Underserved Women, *Opioid Abuse, Dependence, and Addiction in Pregnancy*, Committee Opinion No. 524 (May 2012).

<sup>6</sup> Substance Abuse & Mental Health Servs. Admin., U.S. Dep't Health & Human Servs., *Substance Abuse Treatment Facility Locator*, available at <http://findtreatment.samhsa.gov/facilitylocator/doc.htm>.

<sup>7</sup> Thomas M. Brady & Olivia S. Ashley, *Women in Substance Abuse Treatment: Results from the Alcohol and Drug Services Study* (Sept. 2005), <http://bit.ly/28Wx4oF>.