By signing the controversial SB 1391, Gov. Bill Haslam makes Tennessee a battleground over the rights of pregnant women and prosecutorial bounds

Birth of Vexation
by ANDREA ZELINSKI and STEVEN HALE

NEWS - CITY LIMITS

With the official stroke of Gov. Bill Haslam's pen last week, Tennessee went where no other state has gone before.

Despite opposition from obstetric medicine and drug addiction specialists (as well as women's rights groups) at the state and national level, the governor signed SB 1391, a bill allowing women to be criminally charged and possibly sent to prison for drug use during pregnancy if their baby is harmed. It made Tennessee the first state to do so, a fact that did not go unnoticed by national news outlets — including the New York Times editorial board, which urged Haslam to veto the bill.

He did not.

Once it goes into effect, the law will let prosecutors charge women with misdemeanor assault if they give birth to drug-dependent babies. That charge, supporters say, is the "velvet hammer" that will convince addicted mothers to get help: They can avoid jail time by entering and completing a drug treatment program. Critics counter that the last thing desperate mothers-to-be need is a blow from a hammer, however it's wrapped.

Everything about the bill has been unusual. It has brought unlikely alliances, and provoked unexpected divisions. Even as it worked its way to the governor, there were signs that this bill was a distinct sort of legislative creature.

First, somewhat rare for a bill in the supermajority era, it was bipartisan from the start — sponsored by Sen. Reginald Tate (D-Memphis) and Rep. Terri Lynn Weaver (R-Lancaster). It ended that way as well, passing with bipartisan majorities in both chambers. Every Senate Democrat voted for the bill, with the only seven opposing votes coming from Republicans. In the House, opposition came from 20 Democrats and 10 Republicans, with high-ranking GOP Leader Gerald McCormick among them.

The proposal caused rancor on arrival. Opponents said its supposed intent (getting addicted pregnant women into treatment and protecting their babies from harm) is at odds with its actual consequences (criminalizing those women, quite possibly resulting in harm to them and their babies). The divide showed in the different ways the bill was received by legislators who largely share ideological beliefs.

On the House floor, before the final vote, Weaver trumpeted the bill as a pro-life measure, arguing that "any society which puts value on life would agree that these defenseless children deserve some protection and these babies need a voice." She frequently punctuated her statements with a nod to the mothers, who could "also be helped."

Meanwhile, two of her Republican colleagues in the Senate opposed the bill for similar reasons. Sen. Mike Bell tells the Scene he opposed the bill from "a pro-life perspective," saying he didn't want to do anything "that would encourage a woman to have an abortion or end a pregnancy to avoid prosecution." Sen. Steve Dickerson, a practicing physician when he's not on the Hill, also voted nay, saying he feared the threat of prosecution would discourage women from seeking crucial prenatal care.

The governor's administration raised opposition to a more aggressive early version of the bill. But after negotiations that largely reduced charges on guilty mothers and built in a two-year trial period, the state's departments of health and mental health agreed to stand down. They opted to leave the matter to the will of the legislature, as did key players in the medical community.

"Is it a perfect bill? No. It is not where we would want to go, but it was better than what was going to pass," says Julie Griffin, lobbyist for the Tennessee Medical Association. "There was a very strong passion by the sponsors of this bill, and they wanted it to pass, and the DAs were all in."
By signing the controversial SB 1391, Gov. Bill Haslam makes Tennessee a battleground over the rights of pregnant women and prosecutorial bounds | CI

Compounding the problem, prescription drug abuse outpaces more traditional illegal drug use. The state admitted 14,000

For their part, district attorneys must contend with the fallout from Tennessee's raging drug epidemic. The state is No. 2 in

"I know the DAs were pushing this bill very hard," Bell says. "I have a problem with giving DAs too much discretion, because it's

Lawyers have differing interpretations of whether the bill gives prosecutors an opening to seek the harsher penalty. When

But the measure has raised still more questions about how it will be enforced. One is whether women will have enough access
to drug treatment programs, should they seek help fighting their addiction and escaping the drug charge.

The answer for many women is no, critics say. Among the state's 95 counties, the state funds 33 substance abuse agencies
equipped to treat pregnant women, particularly those of low income, according to the Department of Mental Health and
Substance Abuse Services. Opponents of the law refute those numbers, saying fewer than 20 centers are suited to care for
pregnant women. Many have wait lists.

In addition, critics argue, few treatment centers offer specialized care for pregnant women, and even fewer allow older
children to stay with moms during treatment, which could split up families. Between state-funded programs and private ones,
opponents of the new law say only two centers allow children to stay with their mothers during treatment. Addicted mothers
seeking care would have little choice but to be separated from their children.

One of Sen. Mike Bell's five East Tennessee counties lacks a drug treatment center. He says he told district attorneys he
worries what will happen when women there fail to enroll in a treatment program — and the DAs replied that they can use
their discretion. That makes him uneasy.

"I know the DAs were pushing this bill very hard," Bell says. "I have a problem with giving DAs too much discretion, because it's
abused at times, and it can be abused either way in this situation."

For their part, district attorneys must contend with the fallout from Tennessee’s raging drug epidemic. The state is No. 2 in
the country for the number of discovered and busted meth labs. For overdose mortality rates, it ranks No. 8.

Compounding the problem, prescription drug abuse outpaces more traditional illegal drug use. The state admitted 14,000
people to substance abuse treatment programs last budget year. Nearly a third were addicted to prescription painkillers like hydrocodone, morphine and oxycodone, according to officials. The number of prescription drug enrollees rivals those of alcoholics.

To further complicate the situation, state figures show that in more than 40 percent of the cases of infants showing drug withdrawal symptoms in 2013, the babies were exposed only to drugs prescribed to the mother.

Women struggling with a variety of drug addictions while pregnant would fall under the scope of the new law as of July 1. Once the law kicks in, the American Civil Liberties Union’s Tennessee chapter will begin looking to build a legal case against it.

Any legal challenge could be short-lived, though. Another peculiarity in this criminal statute is it will exist for only two years. It’s a rare move — but one that convinced the Haslam administration, the state departments of health and mental health and the medical community to lower their opposition, despite advocates who wanted the law to last longer.

"I've never heard of a sunset provision on a criminal act. Can you imagine a woman is being prosecuted on this and their attorney goes in and says, 'Judge, the legislature thought so much of this crime that they have it go away in a couple years.' It doesn't make sense to do that," said Rep. Bill Dunn, a Knoxville Republican and noted conservative, on the House floor during debate.

"I'm not sure why we're putting it on if this is a wonderful thing and it's gonna work and everybody's on board with it, why you'd put a sunset provision on a criminal law," he said.

But the expiration date means discussion isn't going away. Long after national media scrutiny refocuses elsewhere, the General Assembly's elected officials — and the governor — will have to decide if this odd, divisive pioneer of a law deserves to live.

Email editor@nashvillescene.com.