

Criminalizing high-risk pregnancy? Law makes having a disease and baby simultaneously a crime

It's tough to be pregnant. There's morning sickness, doctors appointments, swollen feet and exhaustion. And, in Tennessee the threat of incarceration. [Lawmakers have just passed a bill](#) that authorizes the arrest, jailing and prosecution of women who use drugs while they're pregnant. New moms can be charged with assault if any harm comes to their baby because of drug use.

[Opponents of bill say it will cause women who struggle with substance abuse to avoid getting prenatal care](#) and discussing a potentially important pregnancy risk factor with their doctors:

“Today, the Tennessee governor has made it a crime to carry a pregnancy to term if you struggle with addiction or substance abuse,” said Alexa Kolbi-Molinas, a staff attorney with the ACLU Reproductive Freedom Project, in a statement. “This deeply misguided law will force those women who need health care the most into the shadows. Pregnant women with addictions need better access to health care, not jail time.”

They also noted that only 2 of the 177 rehab facilities in Tennessee even offer programs that can facilitate newborns and older children alongside these moms.

But, the law is even more deeply flawed than its inadvertent curb to high risks moms seeking prenatal care. This law makes having a disease and a baby simultaneously a crime. And, while now limited to the prosecution of mothers who suffer from addiction to illegal drugs, the spirit of the law could be used to prosecute women with a slew of diseases that raise the risk of fetal abnormality and harm, from diabetes to depression.

There is extensive and definitive research that addiction is caused, in part, by our genes. [GLP's Ben Locwin wrote about a panel of 11 genes that are significant predictors of addiction](#). Diabetes and depression also have genetic risk factors.

Substance abuse, diabetes and depression all cause increased risk to fetuses. Mothers who abuse alcohol have babies with higher risk of [fetal alcohol syndrome](#), a combination of intellectual and physical disabilities. Cocaine abuse by mom's can lead to low birth weight and early delivery, although the data is much more sparse, probably because moms are hesitant to admit to researchers or doctors that they've used the drug. Similarly, diabetes can cause heart defects, complicated labors and infant hospitalization. Use of antidepressants by moms who have depression increases the risk for [brain malformation](#) and [early delivery](#), an important cause of infant mortality.

How then, can the Tennessee legislature justify prosecuting women who suffer from one disease out of a myriad of conditions that increase risk to a fetus? And how can they only single out illegal drugs when cigarette smoking, alcohol and antidepressants are even better documented as causing fetal harm?

Why not prosecute women for risk factors they can entirely control instead? Earlier this week researchers reported that having children too close together can cause preterm birth, just like cocaine and antidepressants. Perhaps Tennessee will be the first state to mandate birth intervals as well.

Additional Resources:

- [Prosecuting mothers-to-be won't help disabled babies](#), Nicky Priaux, New Scientist
- [Case Explores Rights of Fetus Versus Mother](#), Erik Eckholm, New York Times
- Smoking Study Highlights Nuanced Role of Genetics in Nicotine Addiction and Cessation, Connie K. Ho, redOrbit