

Woman jailed under new Tennessee law criminalizing the use of narcotics while pregnant

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The first victim of a new Tennessee law that criminalizes the use of narcotics by pregnant women was arrested last week and is being held in a county jail just days after giving birth. Mallory Loyola and her new baby both tested positive for amphetamine, which is not considered a narcotic, resulting in the mother's arrest just two days after giving birth. Loyola's bond has been set at \$2,000, and she may be incarcerated for up to one year should she be convicted under the new legislation.

The new law, which went into effect on July 1, states that "a woman may be prosecuted 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."

The initial bill was passed on April 29 after Tennessee Governor Bill Haslam refused to veto this piece of legislation. Haslam defended his decision by claiming that the bill was created "to give law enforcement and district attorneys a tool to address illicit drug use among pregnant women through treatment programs." He suggested in April that the new law would encourage women to seek treatment, not throw them in jail, as in the case of Loyola.

According to a report published by the Guttmacher Institute on state policies concerning substance abuse during pregnancy, Tennessee is one of ten states that give priority access in drug treatment programs to pregnant women. Tennessee was not, however, included in a list of 18 states that have created a program that specifically targets pregnant women who suffer from drug addiction.

Opponents of the new legislation have argued that the new law will actually scare women away from seeking

prenatal care and addiction treatment, rather than assist them with finding the treatment they and their families will need. They also explain that this legislation provides no assistance to low-income mothers who are unable to take time away from their families or from employment in order to obtain help. According to RH Reality Check, only two of the 177 addiction treatment facilities in Tennessee provide on-site prenatal care and the accommodation of older children who need to stay with their mothers.

Rebecca Terrell, chair of Healthy and Free Tennessee, wrote in a statement that "we are already receiving reports of women seeking out non-licensed health providers to avoid having a medical record and risking arrest. This is extremely dangerous."

Dr. Nora Volkow, the director of the National Institute of Drug Abuse, has stated in interviews that drug addiction is a disease of the brain. When asked how those who are addicted to drugs should be treated in society, Volkow flatly stated that "we do not put people that have diseases in jail or prison. That is what we have decided... We should deal with drug addiction as a disease, like we deal with any of the other medical diseases. We should not be criminalizing it."

She continued, "When we criminalize a drug addict, nobody wins. Certainly you are not going to improve the behavior of that person that is thrown into jail... If you're throwing them in jail and not providing any treatment or treating them in jail and then throwing them out, they will relapse."

According to *ThinkProgress.org*, states typically do not arrest people simply for using drugs, "although drug possession and drug sales can result in criminal charges... Addiction is considered to be a medical issue,

and under the Constitution's definition of cruel and unusual punishment, states aren't allowed to criminalize those types of disorders."

While Tennessee is the first state to criminalize drug addiction amongst pregnant women, other states have been prosecuting pregnant women under different kinds of laws for years. In April, the Alabama Supreme Court ruled that women can be prosecuted under the state's chemical endangerment law if they use drugs while pregnant. According to the Guttmacher report, 18 states, including Tennessee and Alabama, consider substance abuse during pregnancy to be child abuse, and three of those states, Minnesota, South Dakota and Wisconsin, also consider this to be grounds for civil commitment.

Ultimately, according to opponents of these criminalizations, "personhood" measures being applied to fertilized eggs, embryos, and fetuses separately from pregnant women effectively removes legal protections from their mothers. Lynn Paltrow, the executive director of National Advocates for Pregnant Women, has explained that "this view of pregnant women essentially means that as soon as you're carrying a fertilized egg, you've lost your medical privacy and your right to make medical decisions."

In addition, the Drug Policy Alliance has pointed out that attacks on drug-addicted pregnant women unfairly target specific populations of women, particularly poor women and women of color. Senior Staff Attorney Tamar Todd has stated that "only a few are prosecuted and only for using certain drugs—not those drugs shown to pose greater possible risk to fetal health, such as alcohol, but those we have decided to criminalize largely because of the populations of people who use them."

Opposition to these measures includes nearly every major medical organization, including the American Medical Association, the American Academy of Pediatrics, the American College of Obstetricians and Gynecologists, and the American Public Health Association.



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