

Good essay on pregnant women and drugs

[Law](#), [Criminal Justice](#)



The problem of prosecution and punishment of those women who abuse drugs during pregnancy causes a variety of controversies relating to the legality of such measures, as well to the question of its effectiveness.

Advocates who support the idea that those pregnant women who abuse drugs must be prosecuted and punished state that this is the only effective way to fight the problem and deter other women from the use of illegal drugs during pregnancy. Opponents, on the other hand, express the opinion that the retribution measures have the sole purpose of punishment rather than fighting the problem. They support the idea that those women who use illicit substances during pregnancy must be given the opportunity to participate in drug treatment programs designed specifically for the purposes of treating of drug-dependency.

A number of factors have contributed to the growing tendency of prosecution of drug-dependent women. During last decades, medical studies have significantly expanded awareness about harmful effects of prenatal use of illicit drugs. The media coverage of reports relating to the prenatal drug abuse to a large extent formed a public opinion that favored the imposition of criminal sanctions on those women who use illicit drugs during pregnancy. Another factor which influenced the criminalization of prenatal drug use is the position of the movement that advocates for the determination of fetus' legal status. The idea of this movement is that fetuses should have the same legal status as persons. (Lyttle, 2006)

Realizing the seriousness of the problem, government officials, legislators and physicians put their efforts together in order to find ways how to punish and treat the women abusing illegal substances in the prenatal period. Due

to the lack of the legislature that specifically criminalizes drug abusing behavior of pregnant women, state prosecution incriminates these women with substance abuse, child endangerment, neglect or abuse crimes. The main idea behind these prosecutions and subsequent arrests is that these measures would protect fetus from mother`s drug abuse. This prosecutorial policy is a subject of criticism by legal scholars and representatives of medical and health organizations. They argue that the current prosecutorial policy may turn out to be detrimental to the women`s and child`s health, as those women who abuse drugs during pregnancy, most likely, will not seek professional medical help out of fear that their doctors may turn them over to the law enforcement authorities. Legal scholars and practitioners argue that the current policy of prosecutors aimed at the criminal punishment of those women, in fact, violates fundamental civil liberties as set forth by the Bill of Rights, including right to privacy, equal protection right, etc.

Considering these controversies, the Supreme Court in *Ferguson v. City of Charleston* established guidance for drug testing policies in accordance with constitutional provisions.

In this case, The Supreme Court set the aim to find whether the cooperation between hospital and law enforcement officials with the purpose to identify pregnant women who used illicit substances was constitutional. Law enforcement officials provided medical staff of the hospital with a list of common criteria that would help to identify such women. The list included points such as prior substance abuse, lack of prenatal care or late prenatal care. Based on these criteria, the medical staff conducted regular drug tests of women`s urine. These tests were conducted neither by the express

consent of women nor under the powers of a search warrant. After the analysis of the urine samples, the hospital staff turned over the results to police officers who after that arrested women whose test results came positive. (Pulatie, 2008)

The petitioners in the following case argued that the drug tests that are conducted without the consent of the patient or without a warrant violate Fourth amendment protection against unreasonable search and seizures. The Court upheld the petition of the claimants and offered the following reasoning of its decision. Drug-testing program was a result of cooperation between law enforcement officials and the hospital. In a given situation, the hospital by the collection of evidence partially carried out the responsibilities of police. Therefore, when the hospital staff acts in such authority it acquires certain obligations, particularly the obligation to inform patients of their constitutional rights. The Court recognized that medical workers have a duty to report evidence of criminal conduct that was found in the course of regular treatment without informing patients of their constitutional rights. However, in the following case the drug tests were taken for the sole purpose of obtaining evidence for the prosecution, so the health care workers were obliged to inform patients about their Fourth Amendment rights. The Court also recognized that the violation of privacy in this situation was even more blatant due to the fact that the tests were conducted under false pretence as well the hospital staff transferred, along with results of drug tests, confidential medical treatment history of their patients.(Pulatie, 2008)

Therefore, the Court acknowledged that the current prosecutorial practices

employed by law enforcement may in fact violate some of the fundamental civil liberties, particularly those protected by the Fourth Amendment. At the same time, the Court did not rule on the question whether the prosecution of the drug-addicted women is permissible under state or federal laws, the essential issue that must be addressed in order to solve the problem of women`s liability for drug abuse during pregnancy.

In this regard, legal scholars consider that it is a violation of the constitution to punish a pregnant woman for drug abuse. In *Robinson v. California*, The Supreme Court held that punishing an individual only because she or he is a drug addict is a violation of Eighth Amendment provision protecting persons from unusual or cruel punishment.

Opponents of treatment based approach express a similar opinion. Barbara Levy, of the American Congress of Obstetricians and Gynecologists, expresses her concern about the tendency to criminalize and punish pregnant women who have drug problems rather than to provide them with necessary medical treatment. She argues that from a medical standpoint, the sudden abruption in use of drugs resulting from prolonged incarceration may poorly reflect on the health of the fetus. Moreover, Ms. Levy states that according to scientific studies of infants who were exposed to opioids their cognitive development is not different to the cognitive level of unexposed children. So the question of negative influence of drugs on fetus` health must be evaluated more thoroughly.

Conclusion

The problem of drug abuse by the pregnant women is one of the most controversial questions in the modern American society. The public, for the

most part, stands on the position that the use of drugs in the prenatal period should be prohibited by law, and any violation of this law must be heavily penalized by all means possible. The criminal justice systems of the majority of states responded to this opinion and introduced new prosecutorial policies. As the result of these policies, many of those women suspected of drug use during pregnancy suffered the prosecution, and some were convicted on charges of child endangerment, abuse, neglect or substances abuse. However, many of the experts including law practitioners, physicians, members of NGO`s advocate more humanistic approach to this problem, the one that must involve medical drug treatment rather than the imposition of criminal sanctions, including imprisonment. Even though The Supreme Court acknowledges that some of the policies related to the collection of evidence in such cases may violate Fourth amendment right for privacy, in general terms, The Court seems to be content with states practicing criminal punishments in cases of drug abuse by the pregnant women.

In my opinion, the question of whether to prosecute those women who abused drugs during pregnancy must be decided on the basis of medical evaluation of both mother and child. Another factor that should be considered is whether the woman was drug dependent during the pregnancy or used drugs for recreational purposes, without showing any signs of dependency. If the medical evaluation shows that a woman during pregnant was drug dependent, then she must be subjected to medical drug treatment. If, however, it turns out that the woman used drugs for the purposes of recreation and was not dependent on drugs, then she must be punished as provided by the criminal statutes.

Works Cited

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