Don’t criminalize pregnant patients with substance-use disorders

JUL 5, 2023

Tanya Albert Henry
Contributing News Writer

An Ohio appellate court ruling is good for the patient-physician relationship and the health of expectant moms, their fetuses and their newborns.

In a win for pregnant patients and their physicians, an Ohio appellate court has overturned a jury verdict that would have sent a woman to prison after she disclosed that she used illicit drugs during her pregnancy.

A May opinion from the 5th District Court of Appeals in Muskingum County, Ohio, focuses on the question of whether the state’s “Corrupting Another With Drugs” law applies to a pregnant woman who ingested drugs herself, or if the offender and the pregnant person must be two different people.

The court concluded that the legislative history and the language in the statute mean that the law applies only when the person who supplied controlled substances and the pregnant person are two different people.

That interpretation is good for the health of pregnant people, their fetuses and newborns, physicians say.

The AMA opposes laws that criminalize pregnant individuals who have substance-use disorders. The AMA joined seven other Ohio and national organizations to file an amicus brief (PDF) that urged the court to overturn the verdict that would have sent the woman to prison for eight to 12 years. They were joined in the brief by 31 experts on maternal, fetal and neonatal health and the effects of drug use on pregnant people, pregnancies and babies.

Punishing pregnant women who use drugs endangers maternal, fetal and child health and deters pregnant women from seeking health care for themselves or their families, the AMA and the others told the appellate court in their brief.

URL: https://www.ama-assn.org/delivering-care/overdose-epidemic/don-t-criminalize-pregnant-patients-substance-use-disorders
Copyright 1995 - 2021 American Medical Association. All rights reserved.
“Amici are committed to reducing potential drug-related harms at every opportunity. Amici do not endorse the nonmedicinal use of drugs—including alcohol, caffeine or tobacco—during pregnancy. … In the view of amici, however, such interests are undermined, not advanced, by the judicial expansion of the corrupting-another-with-drugs statute to apply to pregnant women who self-administer drugs,” said the brief in the case, *State of Ohio v. Tara Hollingshead*.

**Threats deter patients**

Hollingshead’s trial lasted just 90 minutes and a jury convicted her after a little more than an hour of deliberations. If the appellate court had allowed the jury verdict to stand, it would have created a new understanding of the law that would have punished pregnant people “with profound and detrimental implications for the health and welfare of women, children and families,” the AMA and others said in their brief.

“Public health research establishes that pregnant women are often deterred from pursuing drug treatment and prenatal care in circumstances where they fear arrest, prosecution, and possible imprisonment,” the brief said.

Feeling threatened that they could face criminal charges and distrustful of the system, pregnant people are also discouraged from sharing information about drug use to their physician, information that is vital in helping physicians treat mothers, fetuses and newborns.

“A relationship of trust is critical for effective medical care because the promise of confidentiality encourages patients to disclose sensitive subjects to a physician. Open communication between pregnant women who are dependent on drugs and their health care providers is critical, and courts have long viewed confidentiality as fundamental to this relationship,” the brief said.

**Ohio in line with other states**

Courts in Michigan, Georgia, Texas and Kentucky have all stopped attempts to prosecute those who used drugs while pregnant.

Tennessee is the only state in the nation to ever pass a law specifically targeting pregnant people for their actions during their pregnancy, the brief points out. The legislature passed the “fetal assault” law in 2014 and let it sunset in 2016 after seeing the negative impact it had. In 2015, the law led to 20 fetal deaths and 60 infant deaths, the brief notes.
“Substance-use disorder is not a voluntary act that is cured by threats,” the brief from the AMA and others said. “The medical profession has long acknowledged that substance use disorder has biological and genetic dimensions and cannot be overcome without treatment. … Because of the compulsive nature of addiction, warning or threats (even threats of criminal punishment) are unlikely to deter drug use among pregnant women.”

The AMA believes that science, evidence and compassion must continue to guide patient care and policy change as the nation’s opioid epidemic evolves into a more dangerous and complicated illicit drug overdose epidemic. Learn more at the AMA’s End the Epidemic website.

Visit AMA Advocacy in Action to find out what’s at stake in ending the overdose epidemic and other advocacy priorities the AMA is working on.