

Prosecution for Illegal Use of a Narcotic While Pregnant (Note)

This act amends Tennessee's fetal homicide law to allow the prosecution of a pregnant woman for the illegal use of a narcotic drug, if her child is born addicted or harmed by the drugs she took during her pregnancy. The charge of assault is a misdemeanor offense, but if the child is harmed, aggravated assault, with a 15-year maximum prison term, could be charged. That a woman is enrolled in long term drug addiction treatment before the child is born, remains in the program after delivery and successfully completes the program is an affirmative defense under the law. The law is set to expire on July 1, 2016.

Submitted as:

Tennessee

[SB 1391](#)

Status: Signed into law on April 29, 2014.

Tennessee is the only state to adopt a law to criminalize drug use during pregnancy. The 2014 bill followed on the heels of the Safe Harbor Act passed in 2013, (see page 91) which encouraged pregnant women to seek substance abuse treatment by removing the threat of losing custody of their baby.

Other states, according to a December 2014 [Guttmacher Institute report](#), have laws on the books intended to address pregnant women who harm their babies because of substance abuse during their pregnancies, but they all stop short of criminalization.

- 18 states consider substance abuse during pregnancy to be child abuse under civil child welfare laws;
- 3 states consider substance abuse during pregnancy to be grounds for commitment of the pregnant woman;
- 15 states require health care professionals to report suspected prenatal drug abuse; and
- 4 states require testing of pregnant women for prenatal drug exposure if a health care professional suspects child abuse.

Only 19 states have drug treatment programs dedicated to the treatment of pregnant women. In 11 states, pregnant women have priority access to state-funded drug treatment programs.

State and national media reported the first arrest under the new law in July 2014 after an East Tennessee mother and her newborn tested positive for drugs. Her sentencing was ultimately postponed after she entered drug treatment.

Proponents of the bill say that in the first case, the law worked as intended, encouraging drug abuse treatment. Opponents of the law fear that pregnant women who may be abusing drugs will avoid health care altogether.

In an unusual move that secured bipartisan passage of the bill and the signature of Gov. Bill Haslam, the Tennessee law has a sunset clause setting its expiration on July 1, 2016.