

Case Explores Rights of Fetus Versus Mother



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JACKSON, Wis. — Alicia Beltran cried with fear and disbelief when county sheriffs surrounded her home on July 18 and took her in handcuffs to a holding cell.

She was 14 weeks pregnant and thought she had done the right thing when, at a prenatal checkup, she described a pill addiction the previous year and said she had ended it on her own — something later verified by a urine test. But now an apparently skeptical doctor and a social worker accused her of endangering her unborn child because she had refused to accept their order to start on an anti-addiction drug.

Ms. Beltran, 28, was taken in shackles before a family court commissioner who, she says, brushed aside her pleas for a lawyer. To her astonishment, the court had already appointed a legal guardian for the fetus.

"I didn't know unborn children had lawyers," recalled Ms. Beltran, now six months pregnant, after returning to her home north of Milwaukee from a court-ordered 78-day stay at a drug treatment center. "I said, 'Where's my lawyer?'"

Under a Wisconsin law known as the "cocaine mom" act when it was adopted in 1998, child-welfare authorities can forcibly confine a pregnant woman who uses illegal drugs or alcohol "to a severe degree," and who refuses to accept treatment. Now, with Ms. Beltran's detention as Exhibit A, that law is being challenged as unconstitutional in a [federal suit filed this month](#), the first in federal court to challenge this kind of fetal protection law. Its opponents are hoping to set an important precedent in the continuing tug of war over the rights of pregnant women and legal status of the unborn.

Wisconsin is one of four states, along with Minnesota, Oklahoma and South Dakota, with laws specifically granting authorities the power to confine pregnant women for substance abuse. But many other states use civil-confinement, child-protection or assorted criminal laws to force women into treatment programs or punish them for taking drugs.

"This is what happens when laws give officials the authority to treat fertilized eggs, embryos and fetuses as if they are already completely separate from the pregnant woman," said Lynn M. Paltrow, executive director of [National Advocates for Pregnant Women](#) in New York, of Ms. Beltran's arrest and confinement.

The Wisconsin law, according to the suit filed in United States District Court in Milwaukee, deprives women of physical liberty, medical privacy, due process and other constitutional rights. It is also based on faulty information about the risks to newborns and ultimately does more harm than good, the suit argues, by scaring pregnant women away from prenatal care. Bonnie Ladwig, a retired state representative who helped write the law, called it an appropriate effort to prevent harm. "It's the same as abuse of a child after it's born," she said. "If the mother isn't smart enough not to do drugs, we've got to step in."

The law is intended "to help both the woman and her baby," said Susan Armacost, the legislative director of [Wisconsin Right to Life](#), whose group lobbied hard for the measure. Similar policies have won strong support from anti-abortion groups around the country, in part because they advance the goal of granting independent personhood and rights to the unborn child.

The suit is being argued by National Advocates for Pregnant Women along with the [Reproductive Justice Clinic of the New York University School of Law](#) and [Linda S. Vanden Heuvel](#), a Wisconsin lawyer who was eventually hired by Ms. Beltran's mother. Wisconsin officials have not yet responded in court and declined to comment. Ms. Paltrow's group has [documented hundreds of cases](#) nationally over the last decade in which women were detained, arrested or forced to accept medical procedures in the name of fetal protection, with low-income and minority women affected disproportionately.

In the most extreme example, Alabama has applied a 2006 “chemical endangerment of a child” law, originally passed to protect children from methamphetamine laboratories, to prosecute about 100 women whose newborns tested positive for drugs, sending several new mothers to prison. Courts in more than 20 states have blocked the use of criminal child-abuse or related laws against pregnant women. But in January the Alabama Supreme Court [upheld](#) use of the endangerment law from the moment of conception.

In Wisconsin, because child-welfare proceedings are confidential, no one knows how often the 1998 law has been used, but [anecdotal evidence](#) suggests it may happen a few times each year at least.

Many medical experts say that these laws are based on exaggerated perceptions of the risks to newborns and are medically counterproductive. In 2011, [the American College of Obstetricians and Gynecologists said](#) that “incarceration and threat of incarceration have proved to be ineffective in reducing the incidence of alcohol or drug abuse” and that mandated testing and reporting lead women to avoid prenatal care that “greatly reduces the negative effects of substance abuse during pregnancy.”

[Dr. Cresta W. Jones](#), an obstetrician and a fetal medicine specialist at the Medical College of Wisconsin who sees many women with histories of drug or alcohol abuse, said that even sporadic detentions had sowed fear. “The women are scared to come in if they have dependency problems,” she said. “When you allow them to be honest you get better outcomes in their pregnancies.”

She and other experts said that while fetal alcohol syndrome is a proven but unpredictable threat, the impact of illegal drug use on newborns is generally less serious and more treatable than is popularly believed. Ms. Beltran thought she was being helpful when, in her first prenatal visit, on July 2, to a clinic at St. Joseph’s Hospital, she discussed her medical history. Ms. Beltran, who worked as a bartender and waitress and became pregnant by a boyfriend who remains close, told the physician assistant that she had become addicted last year to Percocet, a painkiller. But she had willed herself off it the previous fall, even going to the hospital in November for withdrawal symptoms.

She said she was unable to afford a prescription for Suboxone, which blocks other opiates and is widely used in treatment, including during pregnancy. So she obtained some from a friend and, on her own, reduced the dosage over time, stopping altogether three days before her appointment at St. Joseph’s. She said that in May, before she knew she was pregnant, she had taken one Vicodin tablet for a toothache.

The physician assistant, apparently skeptical, said she should get a prescription for Suboxone because withdrawal could be hard on the fetus, Ms. Beltran recalled. “But I told her I’d already tapered off and quit,” she said. A urine test that day found traces of Suboxone but no signs of other opiates, and later tests found her clear of both drugs. Two weeks after that prenatal visit the social worker showed up unannounced at Ms. Beltran’s home, telling her to restart Suboxone treatment or face a court order to do so. “I told her I’m off this stuff and I don’t want to go back on it,” she recalled, admitting that she lost her temper and shut the door on the social worker after saying, “Maybe I should just get an abortion.”

Two days later, the sheriffs arrived to take her to the county jail and the initial hearing. The case against Ms. Beltran was bolstered by the statement of [Dr. Angela Breckenridge](#), an obstetrician at the West Bend Clinic South at St. Joseph’s Hospital. In a letter dated July 16, Dr. Breckenridge said that Ms. Beltran had “openly admitted” taking opiates during pregnancy and was still using Suboxone.

“She exhibits lack of self-control and refuses the treatment we have offered her,” wrote Dr. Breckenridge, who, according to Ms. Beltran, had not personally met or examined her. She recommended “a mandatory inpatient drug treatment program or incarceration,” adding, “The child’s life depends on action in this case.”

Dr. Breckenridge did not respond to requests for comment. A hospital spokeswoman said, “We are confident that our medical staff acted in good faith.”

On threat of jail, Ms. Beltran remained at [Casa Clare](#), a treatment center two hours north in Appleton, Wis., until Oct. 4, when the center sent her home. She lost her job and now hopes to find temporary work over the holidays. Her due date is Jan. 15, and she already has a hand-me-down crib in her bedroom.

“I’m scared they can just come back after my baby’s born,” she said. “This is supposed to be the happiest part of my pregnancy, and I’m just terrified.”

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