



Office of Governor Bill Haslam  
1st Floor, State Capitol  
Nashville, Tennessee 37243

April 17, 2014

Dear Governor Haslam,

We are writing to you because research and experience show that SB 1391 will hurt babies, mothers, and families in ways that are unintended by its proponents but foreseeable by medical and public health experts.

Proponents of the bill suggest that it will allow prosecutors to charge women with misdemeanor assault as a mechanism for helping women who cannot afford treatment to get treatment through the drug courts. This is dangerously misguided on several counts.

First and most importantly, if signed into law, this bill will cause worse outcomes for babies. Every major medical organization is in accord: threats of punishment create fear and mistrust, driving women away from crucial prenatal care and what little drug treatment is available. For those who do seek care, it will discourage them from confiding in their health care providers. It will lead some pregnant women to have abortions rather than risk arrest.

Addiction is recognized to be a health problem, and one that responds to treatment if that treatment is appropriate, respectful, and confidential. Tennessee prosecutors claim that SB 1391 is a “velvet hammer” with which to force women to enter treatment. But medical experts agree: you don’t provide healthcare with a hammer. Prosecutors and lawmakers, however well intended, are not health care providers.

This law will not prevent babies from being born with the transitory and treatable symptoms of Neonatal Abstinence Syndrome (NAS). As Tennessee Health Commissioner Dreyzehner has acknowledged, 60% of babies born with NAS are born to mothers who were using opioids pursuant to a legal prescription for the treatment of pain, addiction, or a psychological or neurological condition.

Another problem is that SB 1391 goes much farther than its proponents acknowledge and allows for far more punishment than claimed. SB 1391 *permits but does not limit* charges to simple (misdemeanor) assault.<sup>1</sup> Even if it were true that the law only allowed misdemeanor assault charges, requiring that pregnant women and mothers be defined as criminals to any degree in order to access health care is simply wrong.

For some prosecutors, the lack of legal authority is no deterrent to arresting women for the outcome of their pregnancies. NAPW has documented arrests of Tennessee women including Anna Faye Parkinson, Krista Renee Brown, Tabitha Allen, Heather Patterson, and Vanessa Cleveland under Tennessee’s current Aggravated Assault law that was intended to protect pregnant women from violence, not treat pregnant women as though they were violent assailants.

We also know that mothers in Tennessee have been told by family court judges that they will lose custody of their children if they don’t stop receiving medication assisted treatments that are medically supervised and highly effective. Indeed, because treatments for opioid addictions are generally ongoing without completion dates, SB 1391 actually, on its face, rules out methadone and other medication-based treatment as a way of avoiding arrest and conviction.

This legislation assumes that effective drug treatment is widely available to pregnant women in Tennessee. That is not the case. Tennessee has 177 addiction treatment facilities. Only two of them provide prenatal care on-site and allow older children to stay with their mothers; only 19 provide any addiction treatment for pregnant women. And, where funding for needed treatment does not exist, the result of prosecution is incarceration, and it is expensive.

NAPW knows that drug-using mothers, including the few who become addicted, love their children as much as other parents do. Representative Weaver has called them the “worst of the worst,” but we know that they are doing their best under difficult circumstances. Prosecution only makes it harder for them to seek the help they need and to confide in and trust those who might help them.

SB 1391 will not deter drug use or ensure treatment. As the Center for the Future of Children explains:

Advocates for criminal prosecution view it as an “enhancement” to treatment—encouragement, by threat, for the pregnant woman to refrain from using drugs during pregnancy or at least to seek and stay in treatment. . . . [This approach] is contrary to common sense. It presumes that these women can and will “control” their behavior in response to threats. Yet . . . [the pregnant woman’s] use of illegal drugs in and of itself carried the possibility of prosecution and imprisonment whether or not she was pregnant, and that possibility did not deter her. There is little reason to believe that an additional threat will be a more effective deterrent.

There *is* a role for the State of Tennessee to play in ensuring the health and well-being of women and the children they bring into the world. That role should be to ensure that health care providers are required to learn about the 40 years of protocols and practices that have proven effective in reducing the incidence of NAS and treating it effectively if it does occur. Toward that end, we would be happy to work with you and your staff to

identify experts and resources, including the excellent *Internet-Based Quality Improvement Collaborative (iNICQ) 2014: Structuring Success in the Care of Mothers and Infants Affected by NAS*.

The bill's sunset of 2016 shows that its proponents realize that it might not be the right approach. Governor Haslam, the stakes are too high and two years is too long to undertake such a dangerous and unconstitutional experiment on Tennessee's children and families. We urge you to veto the bill before the irreparable harm is done.

Sincerely,



Lynn M. Paltrow  
Executive Director

Cc Herbert Slatery

---

<sup>i</sup> TCA § 39-13-107, the "Fetus as Victim" provision in the part of the penal code describing assault offenses, as amended, would read in relevant part: *(c)(1) Nothing in subsection (a) shall apply to any lawful act or lawful omission by a pregnant woman with respect to an embryo or fetus with which she is pregnant [...] (2) Notwithstanding subdivision (c)(1), nothing in this section shall preclude prosecution of a woman for an assault under § 39-13-101 for the illegal use of a narcotic drug while pregnant, if her child is born addicted to or harmed by the narcotic drug and the addiction or harm is a result of her illegal use of a narcotic drug taken while pregnant.* While section (c)(2) says that "nothing shall preclude" a charge of misdemeanor assault in the case of a baby born with symptoms at birth, section (c)(1) contains no limiting provision that would prevent charges for greater offenses.