

North Carolina Senate Bill 297: Educational Fact Sheet

What is the bill?

Title: AN ACT TO CREATE THE CRIMINAL OFFENSE OF PRENATAL NARCOTIC DRUG USE.

Sponsors: Senators B. Jackson, Pate (Primary Sponsors); Brock, Daniel, Harrington, Hise, Newton, Rabin, and Sanderson

Link: <http://www.ncga.state.nc.us/gascripts/BillLookUp/BillLookUp.pl?Session=2015&BillID=S297>

SECTION 1. Article 8 of Chapter 14 of the General Statutes is amended by adding a new section to read: "§ 14-34.11. Criminal prenatal narcotic drug use. (a) A woman may be prosecuted for assault under G.S. 14-33 (a) for the illegal use of a narcotic drug as defined in G.S. 90-87, 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. (b) It is an affirmative defense to a prosecution permitted by subsection (a) of this section that the woman actively enrolled in an addiction recovery program before the child was born, remained in the program after delivery, and successfully completed the program, regardless of whether the child was born addicted to or harmed by the controlled substance. (c) This section shall not apply to any lawful act or lawful omission by a pregnant woman with respect to an unborn child with which she is pregnant, or any lawful medical or surgical procedure to which a pregnant woman consents, performed by a health care professional who is licensed to perform such procedure. (d) Nothing in this section shall be construed to amend the provisions of Article 6A or Article 11 of Chapter 14 of the General Statutes."

SECTION 2. This act becomes effective December 1, 2015, and applies to offenses committed on or after that date.

If this bill becomes law it would allow the state to arrest and prosecute women whose babies are "born addicted to or harmed by the narcotic drug." While the intent to protect children from the harms of drug use is important, this bill may have a number of important unintended fiscal, fetal, and child consequences that may make it costly to North Carolina citizens.

What are the Fiscal Consequences?

- As an unfunded mandate, this bill will be costly for the criminal justice system and law enforcement. For example, the average daily cost per inmate in North Carolina's prisons in fiscal year 2014 was \$82.14/day¹. If 475² women are incarcerated (the estimated number of babies with drug withdrawal syndrome hospitalized in North Carolina in 2011) for an average of 105 days (the average number of days between the minimum of 60 days and maximum of 150 days for a Class A1 misdemeanor) 49,875 days of incarceration per year. As a result of this law in the 12 months following enactment of the bill, costs of incarceration in North Carolina would *increase* by \$4,096,732 in the first year alone.
- It is estimated that a crime such as this one has an estimated inflation adjusted total societal cost of \$42,535 per offense³. Thus, using this more comprehensive societal cost of crime figure, if 475 women are convicted of this crime as a result of this law in the 12 months following enactment of the bill, it would *increase* the first-year total societal cost of criminal justice related charges to North Carolina by \$20,204,125.

- Severing the mother-child bond by incarcerating the mother will increase the yearly financial costs of foster care in North Carolina. For example, the reported national average per year, per child cost for foster care maintenance and administration is \$25,782⁴. Thus, if 475 children enter the foster care system as a result of maternal incarceration, this bill will *increase* first-year foster care costs in North Carolina by \$12,657,000.
- *All costs noted above are for first-year costs. These costs would increase on a yearly basis, due both to the effects of inflation and the fact that some unknown proportion of women would be given multi-year sentences.*

What are the Unborn and Born Child Consequences?

- Pro-Life groups are concerned that this type of legislation⁵ will result in an increase in pregnancy terminations. As well, more medical complications and deaths from an increase in illegal medical procedures and home remedy/root medicine alternatives are likely⁶.
- Based on experience during the rise of crack cocaine use in the 1990's, there may be a decrease in the number of prenatal visits by substance-using women and an attendant increase in births outside of hospital settings (for pregnancies that we would all consider to be high risk), and a corresponding increase in North Carolina infant and maternal morbidity and mortality⁷.
- Fewer prenatal visits and an overall drop in these women's involvement with medical and treatment providers will increase the rates of preterm delivery, low birth weight and assisted ventilation⁸.
- Children left behind as a result of maternal incarceration are vulnerable to suffering significant attachment disorders. They are more likely to become addicted to drugs or alcohol, engage in criminal activity, manifest sexually promiscuous behavior, and dangerously lag behind in educational development⁹⁻¹⁶.
- Lawyers have reported that, as a result of Alabama's policies, drug-using and drug-addicted women in Alabama have chosen to drive to another state to give birth or have undergone high risk labors at home in order to avoid being imprisoned and losing their children¹⁷.
- This bill is against medical advice for the health of the child and mother. Every leading health group warns against the use of criminal laws as a way to reduce drug use during pregnancy. These organizations include the American Medical Association, the American Academy of Pediatrics, the American Public Health Association, the American Psychological Association, National Perinatal Association the American Nurses Association, National Association for Perinatal Addiction Research and Education, National Council on Alcoholism and Drug Dependence, Association of Maternal and Child Health Programs, and the American Society on Addiction Medicine¹⁸⁻³⁵. The March of Dimes also states that "targeting substance-abusing pregnant women for criminal prosecution is inappropriate and will drive women away from treatment."

What should be done?

- Support hospitals rooming-in models of care. Rooming-in significantly decreased the need for treatment of neonatal abstinence syndrome compared with both a historical cohort and a concurrent cohort. Rooming-in was also associated with shorter newborn length of stay in hospital compared with both comparison groups³⁶⁻³⁷. Newborns who roomed in were significantly more likely to be discharged in the custody of their mothers than babies in either the historical or concurrent cohort.

Rooming-in has also been shown³⁶ to reduce the occurrence of the neonatal abstinence syndrome from 40-70%³⁸ to 26%³⁹.

- *Make sure that when a woman asks for help she can get it.* Too often women seeking help for addictions are put on waiting lists, told to come back later, given a referral to a program that will not in fact take them, or told that they are ineligible because they do not have the right kind of insurance. The “county of origin issue” with Medicaid is a significant barrier for women being able to access the treatment they need.
- *Remove the barriers to care.* Many parts of North Carolina have limited or no public transportation. Many women, especially those caring for children and trying to support them have trouble getting to the health care they need.
- *Keep families together.* Regardless of the type of addiction treatment, whether it be in-patient care or outpatient care or no specific care, women who can stay connected to all of their children and family members are most likely to improve their health and their lives. Separating mothers and children is traumatic for both.
- *Train judges, health care professionals, child welfare workers and social workers about addiction, treatment, and recovery.* Education about the illness of addiction and its treatment (in pregnant women and all individuals) needs to be provided as a part of the basic curriculum for any degrees or certification in law enforcement, judicial, health care and social service fields. Physicians, nurses, psychologists, counselors, social and outreach workers, Child Protective Service workers, allied health professionals, lawyers, judges, law enforcement agents— anyone who has a professional responsibility that might bring them into contact with women of childbearing age – needs to understand how screening, identification, and treatment of possible opioid abuse or dependence in pregnant women are undertaken and where to refer women for help in their community.
- *Support nurse home-visiting from infancy through the child’s second birthday to facilitate bonding and parenting support to mothers and fathers.* Home visits have shown enduring effects up to 12 years later, including less role impairment owing to alcohol and other drug use, longer partner relationships, and greater sense of parenting mastery. During this 12-year period, government spent less per year on food stamps, Medicaid, and Aid to Families with Dependent Children and Temporary Assistance for Needy Families for nurse-visited than control families (\$8,772 vs \$9,797 yearly costs per family). This difference represents \$12,300 in per-family discounted savings over the 12-year period⁴⁰.

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