July 31, 2019

District Attorney Neal Pinkston
Hamilton County District Attorney’s Office
600 Market Street, Suite 310
Chattanooga, TN 37402

District Attorney Pinkston:

As 168 signatories to this letter, including physicians, health care professionals, public health advocates, legal advocates, faith leaders, experts in reproductive health and gender equality, and many others from Tennessee and around the country, we call on your office to dismiss the charges against Tiffany Roberts, a Chattanooga woman who remains in jail for experiencing a pregnancy loss. While we believe pregnancy, pregnancy outcomes, and attempts to receive medical care should never be the basis for a criminal prosecution or incarceration, it is particularly troubling that this arrest has occurred despite the fact that Tennessee’s legislature has clarified that these laws may not be used to prosecute pregnant women.1

Our commitment to the constitutional and human rights as well as the health and welfare of pregnant people requires us to speak out against this callous, dangerous and counterproductive prosecution of Ms. Roberts related to her pregnancy loss.

The arrest in this case assumes the impossible -- that pregnant women can guarantee healthy birth outcomes and they should be held criminally liable if they do not. Increasingly, research shows that pregnancy outcomes have far more to do with the economic and social conditions a woman has experienced in the course of her life, rather than with anything she does or does not do while pregnant.2 We also know that 15 to 20 percent of all pregnancies end in miscarriages.

1 Pursuant to § 39-13-214(c), pregnant women specifically may not be prosecuted for homicide regarding their own embryo or fetus. Pursuant to § 39-13-107(c) “Viable Fetus as a Victim,” pregnant women specifically may not be prosecuted under the assault section regarding their own embryo or fetus. Pursuant to § 39-15-402, “Aggravated Child Abuse or Neglect,” caselaw is clear that fetuses are not within the definition of “child.” Finally, under § 39-13-102 the “First-Degree Murder” statute, application of the law is only appropriate when there is an act resulting in death during "aggravated child abuse/neglect" for which there is none in Ms. Roberts case.
2 See World Health Organization, Social Determinants of Health, 2017, http://www.who.int/social_determinants/sdh_definition/en/ (“social determinants of health are the conditions in which people are born, grow, live, work and age.”); Kim Krisberg, American Public Health Association,
and stillbirths, whether or not a pregnant woman smokes cigarettes, drinks alcohol, uses controlled or prescription substances or engages in many of the life activities popularly thought to impact pregnancy outcomes. These economic and social conditions can also be heavily influenced by the criminal system. Women who find themselves subject to punitive treatment are disproportionately women of color and poor white women. Prosecutions of health-related matters like pregnancy, will only increase the number of women who find themselves part of a carceral system instead of a supportive and rehabilitative one.

Every leading medical organization that has addressed the issue of drug use and pregnancy, including the American Medical Association, the American College of Obstetricians and Gynecologists, The American College of Nurse-Midwives, the American Academy of Pediatrics, and the March of Dimes, has concluded that this issue is best addressed through education and evidence-based treatment when necessary for substance use disorder, not through the criminal legal system.

More specifically with regard to drug use, evidence-based research does not support the contention that any of the drugs Ms. Roberts is alleged to have used causes a miscarriage or stillbirth. Like other medical and behavioral health conditions, when someone does have a substance use disorder it is best addressed through treatment. Medical knowledge about dependency and treatment demonstrates that patients do not and cannot simply stop their drug use as a result of threats of arrest or other negative consequences. In fact, threat-based approaches and criminal charges do not protect fetuses, embryos, fertilized eggs or children. Instead, these practices and policies have been shown to deter pregnant and parenting people from seeking health care rather than from using drugs. This is especially counterproductive since studies overwhelmingly demonstrate that pregnancy is a time when women are most motivated to seek treatment because of their concern about the effect of substance use on their pregnancies.

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Transforming Public Health Works: Targeting Causes of Health Disparities, 46 The Nation’s Health, July 2016 (“at least 50% of health outcomes are due to the social determinants . . .”).

3 Id.

4 See Medical and Public Health Statements, attached.

5 See Mishka Terplan et al., The Effect of Cocaine and Amphetamine Use During Pregnancy on the Newborn: Myth versus Reality, 30 Journal of Addictive Diseases 1, 3 (2011); see also American College of Obstetricians and Gynecologists, Information About Methamphetamine Use In Pregnancy (March 2006); Claudia Malacrida, Complicating Mourning: The Social Economy of Perinatal Death, 9 Qualitative Health Res. 504, 505 (July 1999).


7 See e.g., Mishka Terplan et al., Pregnant and Non-Pregnant Women with Substance Use Disorders: The Gap Between Treatment Need and Receipt 31 J. Addictive Diseases 342-409 (2013); Polly Taylor et al., Prenatal
Unfortunately, many people with alcohol or drug use disorders find it difficult to obtain the help they need and want. There are significant structural and social barriers to obtaining care including stigma and fear of prosecution, forcible detention, and removal of their children.8 Concern about such consequences discourages women from seeking prenatal and other health care, including treatment for drug dependency.9 In addition, those women who do seek treatment often have difficulty accessing it: many treatment providers do not serve pregnant women, and Tennessee, unlike many other states, has not created or funded drug treatment programs that address the specialized needs of pregnant women who use drugs.10

The prosecution of Ms. Roberts follows in the footsteps of Tennessee’s embarrassing enactment of the fetal assault law, which made the state the first to openly criminalize pregnancy. Two years after its enactment and enforcement, it became clear that the law did not deter drug use nor did it reduce rates of opioid withdrawal symptoms in newborns – the law’s stated purpose.11 As a result of the law, in fact, women avoided prenatal care and drug treatment and avoided delivering their babies in hospital settings.12 Based on clear evidence that the law permitting the arrest of pregnant women for drug use had failed to achieve any of the law’s stated goals, the legislature allowed it to sunset.

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9 Id.

10 Sister Reach, Ibis Reproductive Health & National Advocates for Pregnant Women, Tennessee’s Fetal Assault Law: Understanding its impact on marginalized women, available at https://bit.ly/2J31JB6. See also, Substance Use During Pregnancy, Guttmacher Institute, https://www.guttmacher.org/state-policy/explore/substance-use-during-pregnancy (last visited July 31, 2019) (establishing that health care providers have certain requirements to encourage and facilitate pregnant women to receive counseling only, and are pregnant women are given priority in general treatment centers, none that are specifically focused on pregnancy).


We ask you not to repeat the same shameful history of prosecuting women related to pregnancy and its outcomes. We call on you, in the interests of maternal, fetal, and child health, to drop the charges against Ms. Roberts and the dangerous and counterproductive prosecution of pregnant women that the laws of Tennessee clearly do not allow.

Signed,

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Interfaith Voices for Reproductive Justice
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