

**CRIMINAL PROSECUTIONS AGAINST
PREGNANT WOMEN**

NATIONAL UPDATE AND OVERVIEW

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**REPRODUCTIVE FREEDOM PROJECT
AMERICAN CIVIL LIBERTIES UNION FOUNDATION**

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INTRODUCTION

Criminal Prosecutions Against Pregnant Women: National Update and Overview

documents the cases of an estimated 167 women who have been arrested on criminal charges because of their behavior during pregnancy or because they became pregnant while addicted to drugs.¹ The cases are from twenty-four states.² A disproportionate number of these cases come from just two states, Florida and South Carolina, and are concentrated in two counties in each of those states.

No state creates special or additional statutory penalties for becoming pregnant while addicted to drugs. Although such bills have been proposed, so far none have passed.³ In every one of these cases, individual prosecutors have taken a statute intended for another purpose and attempted to extend its coverage to pregnant women.

¹ All but three of these cases have been brought within the last five years. See pre-1980 cases: *Reyes v. Superior Court*, 75 Cal. App.3d 214 (Ct. App. 1977); *State v. Stewart*, No. M508197 (Municipal Court, County of San Diego, Feb. 26, 1987); *Wyoming v. Osmus*, 276 P.2d 469 (Wyo. 1954). In estimating the number of prosecutions, we have excluded the cases of Brenda Vaughn of Washington, D.C. and Lee Ann Moore of Illinois who were incarcerated because of their alleged drug use without ever being officially charged, tried, or convicted for drug possession or prenatal abuse. These women were convicted of other unrelated charges. But for her alleged drug use while pregnant, Vaughn would have been given probation following her conviction on the unrelated charge, and Moore might not have been found in violation of her probation had she not become pregnant while using drugs. Our estimate does not include the cases where judges have attempted to control pregnant women through purely civil proceedings like child removal, or through involuntary commitment, see e.g., *Cox v. Court of Common Pleas*, No. 88AP 856 (Ct. App. for Franklin County, Dec. 13, 1988) (Ohio), or where they used their sentencing discretion to obstruct women's access to abortion, see "Pregnancy as Punishment," *New York Times*, Nov. 1, 1989.

² Alaska, California, Connecticut, Florida, Georgia, Idaho, Illinois, Indiana, Kentucky, Massachusetts, Michigan, Mississippi, Missouri, Nevada, New York, North Carolina, North Dakota, Ohio, South Carolina, South Dakota, Texas, Virginia, Washington, and Wyoming.

³ K. Moss, G. Guorrcro, K. Kolbert, "Legislative Update on Drug Use During Pregnancy," September 16, 1991, *ACLU Memorandum*.

Women have been charged under criminal child support statutes as well as for child abuse, child neglect, contributing to the delinquency of a minor, causing the dependency of a child, child endangerment, delivery of drugs to a minor, drug possession, assault with a deadly weapon, manslaughter, homicide, and vehicular homicide.

Despite the fact that these cases are brought under statutes never intended to be applied to situations involving a woman's prenatal behavior, most attorneys fail to challenge the validity of the charges. Instead, women plead guilty or arrange a plea bargain in which the charges are reduced.⁴ As a result many women in America are serving jail terms or are on probation for non-existent crimes. In some instances the charges are held in abeyance while the woman is diverted into a prosecution sponsored treatment alternative.⁵ One newspaper reported that in addition to the eighty-seven women prosecuted in South Carolina, an additional forty-three were forced to undergo some kind of treatment or face criminal charges.⁶

⁴ See e.g. Graybiel, G. "Prosecuting Cocaine Mothers Frustrates State," *Pensacola News Journal*, April 28, 1991 at IA, 1OA (documenting cases in which women pled guilty).

⁵ See e.g., McAuliffe, J., Cooperative Rehabilitation Abuse Contract (Sanford Police Dept.).

⁶ Coady, E., "South Carolina Prosecutors Force Mothers to Seek Treatment," *Atlanta Journal and Constitution*, June 5, 1991 at A10.

Nearly all the prosecutions involve allegations of illegal drug use. However, women have also been prosecuted for engaging in legal activity during their pregnancies. For example, Pamela Rae Stewart's alleged failure to obtain necessary medical care involved legal behavior. According to the declaration in support of the arrest warrant, the primary basis for Pamela Rae Stewart's arrest was that she ignored her doctor's advice to get bedrest, to stay off her feet, to refrain from having sexual intercourse, to take medication to suppress labor, and to go immediately to the hospital if she experienced any bleeding.⁷ No law prohibits or requires any of these activities.

In two cases, women have been arrested for drinking while pregnant. In *State v. Pfannestiel*, Wyoming officials brought criminal charges against a pregnant woman for drinking on the grounds that her activity, while itself legal, constituted child abuse because it endangered her fetus. The charges were dismissed on the narrow legal grounds that the state could not prove harm from the alcohol to the fetus while it was still *in utero*.⁸ In Missouri, Lisa Pindar was charged with second-degree assault and child endangerment after her son was born, allegedly with signs of fetal alcohol syndrome?⁹ In addition, at least one judge has commented approvingly on such prosecutions.¹⁰

⁷ *People v. Pamela Rae Stewart*, Declaration in Support of Arrest Warrant Case No. M508 197 (August 28, 1986); see also Konon, "Data Access in Fetus Case Put on Hold," *San Diego Tribune*, October 24, 1986 at B1, B12; Annas, "Pregnant Women as Fetal Containers," *Hastings Center Report* (December 1986).

⁸ *Wyoming v. Pfannestiel*; No. 1-90-8CR (Co. Ct. of Laramie, Wyoming, February 1, 1990) (dismissing case for lack of probable cause).

⁹ Joan Little, "Woman Jailed After Baby Born Intoxicated," *St. Louis Post Dispatch*, November 26, 1991 at 3A.

¹⁰ In *Vaughn*, the judge rejected claims that his was a "terrifying" decision that would lead to jailing mothers who smoke or drink while pregnant. He acknowledged that "[a]lcohol and smoking, which can also harm a fetus, are not yet illegal substances[.]" but went on to observe that it "is illegal to sell or provide alcohol or cigarettes to minors," and concluded that "[p]erhaps someday those substances will be similarly regulated for pregnant women

Surveys of these prosecutions indicate that despite evidence that illegal drug use is the same across race and class lines, women of color, and poor women are the ones who are being prosecuted.¹¹ Of the cases in which the race of the woman could be identified, approximately 70% involve women of color.¹²

A significant number of the women arrested for their actions during pregnancy were in abusive relationships. Studies show that drug addicted pregnant women are also likely to have been sexually abused as children and to be in battering relationships as adults.¹³ The women who have been singled out for prosecution are no different. Indeed in several cases the woman's alcohol or drug use during her pregnancy came to

¹¹ See Chasnoff, et. al., "Illicit Drug and Alcohol Use During Pregnancy," 322 *New England Journal of Medicine*, 17, April 26, 1990; Kolota, "Racial Bias Seen on Pregnant Addicts," *New York Times*, July 20, 1990 at 13; Roberts, "Punishing Drug Addicts Who Have Babies: Women of Color, Equality, and the Right of Privacy," 104 *Ha, v. L. Rev.* 1419, 1451 (1991).

¹² See Kolder, Gallagher, & Parsons, "Court-Ordered Obstetrical Interventions," 316 *New England Journal of Medicine*, 1192-96 (May 7, 1987) (finding in a national survey of court-ordered obstetrical interventions, including forced cesarean sections, that 81% of the women involved were African-American, Asian, or Hispanic).

¹³ A history of victimization is a key predictor for a woman's substance abuse. D. Kilpatrick, "Violence as a Precursor to Women's Substance Abuse: The Rest of the Drug-Violence Story," *American Psychological Association*, 98th Ann. Cony., August 1990, at 7; see also L. Walker, "Abused Mothers, Infants, and Substance Abuse: Psychological Consequences of Failure to Protect," 12 (January 19-20, 1990) (report to the American Psychological Association Division on Clinical Psychology and Georgetown University Child Development Mid-Winter Conference on Mothers, Infants and Substance Abuse, Scottsdale, Arizona). Incest, sexual abuse, rape, and battering, which threaten all women, are disproportionately present in the lives of women who are drug dependent. Indeed, women are often pressured to use drugs in the first instance by the same men who physically abuse them. The Women's Drug Research Project found that over 85% of the women who used drugs were living with a male spouse or partner who were drug abusers. United States Department of Health and Human Services Publication No. (ADM) 87-1177, *Treatment Services for Drug Dependent Women*, 32-38 (1981); see also N. Finkelstein, S. Duncan, L. Derman & J. Smeltz, *Getting Sober, Getting Well: A Treatment Guide for Caregivers Who Work with Women* at 302 (1990). In one study, up to 74% of alcohol and drug dependent women reported incidents of sexual abuse. N. Finkelstein, et. al., *supra*, at 244 (citing from S. Wilsnack, "Drinking, Sexuality, and Sexual Dysfunctions in Women" in *Alcohol Problems in Women* (S. Wilsnack & L. Beckman, eds. 1984). In another study of pregnant addicted women, 19% were severely beaten as children, 15% were raped as children, and 21% were raped as adults. This was in addition to the 70% who reported that as adults they were also beaten. L. Walker, *supra* at 8 (citing Regan, Erlich & Finnegan, "Infants of Drug Addicts: At Risk for Child Abuse, Neglect and Placement in Foster Care," 9 *Neurotoxicology & Teratology* 315 (1987). These studies are consistent with anecdotal reports from the few programs nationwide that specialize in treating pregnant addicted women, suggesting that 80-90% of their clients have been victims of rape or incest. Leff, "Treating Drug Addiction with the Woman in Mind," *Washington Post*,

the prosecution's attention because the women had been battered by a husband or boyfriend.¹⁴

It is important to remember that prosecutions that go unchallenged do not set legal precedent for future prosecutions or for the validity of criminalizing prenatal conduct or the birth of substance-exposed newborns. Significantly, in virtually every case in which a woman and her attorney have vigorously challenged the prosecution, all or most of the charges have been dismissed. Written opinions or orders exist in eighteen cases, and are discussed in the Summary of Written Opinions and Orders. These cases *do* set precedent and establish that these prosecutions are illegal and unconstitutional.¹⁵ The effect of these decisions goes beyond the individual women defendants. In all but one state where the prosecutions have been successfully challenged, the prosecutions have stopped.¹⁶ This represents a major political victory against criminal prosecutions of women, as well as a legal one.

March 5, 1990 at E1, E4; *cf.* Martin, "Big Bribe Helps Mothers Fend Off Allure of Crack," *New York Times*, March 7, 1990 at B1.

¹⁴ *Alaska v. Gubbs*, No. 4FA S89 415 Criminal (Sup. Ct. August 25, 1989); *Wyoming v. Pfannenstiel*, No. 1.90-8CR (Laramie County Ct. complaint filed January 5, 1990); *Georgia v. Jackson*, Indictment No. 1B9-1CR371M (Sup. Ct. of Bulloch Co. Georgia. August 6, 1991); Levendosky, "Turning Women into 2-legged Petri Dishes," *Sunday Star Tribune*, January 21, 1990 at A8; *Commonwealth v. Peigrini*, No. 87970 (Super. Ct. of Mass filed August 21, 1989); Tom Coaldey, "Suspect is Said to be Battered, Frightened," *Boston Globe*, August 23, 1989 at 22; *State of California v. Stewart*, No. M508197 (Municipal Court, County of San Diego, February 26, 1987); Angela Bonavoglia, "The Ordeal of Pamela Rae Stewart," *Ms.*, August 1987 at 92, 95; *State v. Jackson*, Indictment 1B9 1CR 371M, (Sup. Ct. of Bulloch Cty. Georgia, August 6, 1991); *State v. Young*, No. C569593 (Charleston Ct. Gen. Sess., November 15, 1989); *State v. Christenson*, No. CRI.90-(S.D. Cir. Ct. March 12, 1990). *See also* State-by-State Case Summary.

¹⁵ For a discussion of the legal arguments against prosecutions, *see* L. Paltrow, "When Becoming Pregnant is a Crime," 9 *Criminal Justice Ethics* 41 (Winter/Spring 1990).

¹⁶ In California no new criminal prosecutions were brought against pregnant women after the Pamela Rae Stewart decision in 1987 until homicide charges were filed in 1992 against Rosann Mercedes Juarigue.

Undoubtedly the courts have been influenced by the numerous *amicus* briefs and policy statements filed in many of these cases documenting the fact that every leading public health organization has found prosecutions to be counterproductive and contrary to public health. This overview also includes a summary of the public health policies opposing criminal prosecutions of pregnant women.

STATE-BY-STATE CASE SUMMARY OF CRIMINAL PROSECUTIONS AGAINST PREGNANT WOMEN

ALASKA

State v. Grubbs, No. 4FA S89-415 (Ala. Super. Ct. October 2, 1989). Geraldyn Grubbs, a twenty-three year-old white woman, allegedly used cocaine during her pregnancy and was sentenced in October, 1989 to six months in jail and five years probation for criminally negligent homicide in the death of her two week-old son. An autopsy performed on the baby stated that the infant died from a heart attack caused by prenatal cocaine use. Grubbs was originally charged with manslaughter but pled no contest to the lesser charge. According to one source, Grubbs's boyfriend beat her, forced her to work as an exotic dancer, and supplied her with drugs.

Contact: Paul Canarsky, attorney for Ms. Grubbs, Fairbanks Public Defender's Office, (907) 452-1621.

Source: David Cannella, "Debate Raised Over Prenatal Police Patrols," *Arizona Republic*, December 17, 1989 at C2.

CALIFORNIA

Reyes v. Superior Court, 75 Cal.App.3d 214, 141 Cal. Rptr. 912 (1977). Margaret Velasquez Reyes, a Latina, allegedly used heroin and gave birth to twin boys who were both allegedly addicted. She was subsequently prosecuted under the criminal child endangerment statute, which carries a maximum sentence of ten years in prison. The action was dismissed by the appeals court which held that the statute was not intended to apply to prenatal conduct.

Contact: Paul Hoffman, ACLU of Southern California, 1616 Beverly Blvd., Los Angeles, California 90026, (213) 977-9500.

People v. Stewart, No. M508 197 (San Diego Mun. Ct., February 26, 1987). Pamela Rae Stewart, a white woman who had been battered, was arrested under a criminal child support statute and charged with "failing to follow her doctor's advice to stay off her feet, to refrain from sexual intercourse, refrain from taking street drugs, and seek immediate medical attention, if she experienced difficulties with the pregnancy." The only illegal act alleged was the use of "street drugs." This was never proven and the prosecutors later admitted that illegal drug use was not a significant issue in the case. The San Diego Municipal Court dismissed the charges after defendant's attorneys brought a demurrer and motion to dismiss. The court found that California's criminal child support statute was not intended to apply to the actions of a pregnant woman and does not create a legal duty of care owed by a pregnant woman to her fetus.

Contact: Lynn Paltrow, ACLU Reproductive Freedom Project, 132 W. 43rd Street, New York, New York 10036, (212) 944-9800. Briefs are available from the Project.

Source: Angela Bogonvaglia, "The Ordeal of Pamela Rae Stewart," *Ms.*, August, 1987.

People v. Juarigue, No. 23611 (San Benito Cty. Ct. filed February 5, 1992). Rosann Mercedes Juarigue, a Latina, is the first woman to be charged under a California murder statute that includes feticide. Juarigue allegedly killed her fetus by ingesting cocaine during the course of her pregnancy. Juarigue allegedly failed to appear at the hospital for a scheduled induced delivery two days prior to giving birth to a stillborn infant. During this missed appointment, the District Attorney claims Juarigue ingested cocaine which caused the placenta to separate from the uterus, cutting off blood and oxygen to the fetus. The autopsy report concluded that maternal cocaine use caused the separation of the placenta from the uterus.

Contact: Maggie Crosby and Ann Brick, ACLU of Northern California, 1663 Mission Street, Suite 460, San Francisco, California 94103, (415) 621-2493; Roberto Pinto, San Benito County Public Defender, 345 Fifth Street #6, Hollister, California 95023, (408) 637-8897.

CONNECTICUT

State v. Baez, No. CR089-0104414 (Super. Ct. of Middletown filed July 31, 1989). Nellie Baez, a twenty year-old Latina, allegedly swallowed a quarter ounce of cocaine as police moved in to arrest her. Baez was subsequently charged with drug possession, tampering with evidence, and risk of injury to a child; police indicated that the charges would be elevated to manslaughter if the fetus died. The possession and child endangerment charges were later dropped. Baez pled no contest to the tampering with evidence charge and received a one year sentence.

Contact: William Grady represented Ms. Baez, (203) 349-7021

Source: Don Singleton, "Mom-To-Be Is Held," *Daily News*, August 11, 1989 at 23; Suzanne Sataline, "State To Drop Drug Count Against Pregnant Woman," *Hartford Courant*, August 29, 1989 at 1.

DISTRICT OF COLUMBIA

Related Case

United States v. Vaughn, No. F-2172-88B (Super. Ct. of D.C., August 23, 1988). Brenda Vaughn, an African-American woman, pled guilty to a charge of second-degree theft and was sentenced to prison rather than given probation because she was seven months pregnant. Suspecting that Vaughn used cocaine, Judge Peter Wolf ordered a drug test in connection with the sentencing proceeding. The judge was "horrified" to learn that she tested positive for cocaine, and explicitly said that he was sentencing Vaughn to "a long enough term in jail to be sure she would not be released until her pregnancy was concluded." There was no trial or conviction on the allegations of illegal drug use. In an opinion explaining his decision to impose a prison term, Judge Wolf commented that after the sentence was initially handed down "many of [hisi colleagues reported . . . having similarly sentenced or otherwise incarcerated pregnant drug abusers [W]hile Ms. Vaughn's case may be the first to have achieved publicity, she is not the first to have been given similar treatment."

Contact: Jeffrey Lewis, attorney for the defendant, (202) 737-2473.

Source: Tamar Lewin, "Drug Abuse in Pregnancy: A Conflict Over Rights," *New York Times*, January 9, 1989; Victoria Churchville, "D.C. Judge Jails Woman as Protection for Fetus," *Washington Post*, July 23, 1988 at A1.

FLORIDA

State v. Johnson, No. E89-890-CFA (Fla. Cir. Ct. July 13, 1989), *aff'd*, 578 So. 2d 419 (Fla. 5th Dist. Ct. App. 1991), *appeal docketed*, No. 77,831 (Fla. Sup. Ct. May 7, 1991). Jennifer Clarice Johnson, a twenty-three year-old African-American woman, was found guilty on two counts of delivery of a controlled substance to a minor and sentenced to one year in the treatment program she had voluntarily started, and fourteen years of probation. Johnson is the first woman to be convicted under a drug trafficking statute for delivering drugs to her infant through the umbilical cord. Both of the children, who tested positive for cocaine at birth, are healthy. She must perform 200 hours of community service, must undergo court supervised prenatal care if she becomes pregnant again, and is forbidden to use drugs or alcohol, go to bars, or associate with people who use drugs or alcohol. The court found Johnson *not* guilty of child abuse due to lack of evidence. Johnson appealed her delivery conviction, but it was affirmed in a split opinion by the mid-level appellate court. However, the court certified the question presented by the case to the Florida Supreme Court which accepted the case for review. The case was argued on March 6, 1992 and is currently under submission.

Contact: Lynn Paltrow, ACLU Reproductive Freedom Project, 132 W. 43rd Street, New York, New York 10036, (212) 844-9800; Louise Melling, Emergency Civil Liberties Committee, (212) 254-1111. Briefs available from the ACLU Reproductive Freedom Project.

State v. Hudson, No. K88-3435-CFA (Ela. Cir. Ct. July 26, 1989). Toni Hudson, a thirty year-old African-American woman from Seminole County, was charged with possession, distribution to a minor, and child endangerment when she gave birth to a baby with cocaine in its blood stream. Hudson pled guilty to the possession charge and the distribution and endangerment charges were dropped. She was sentenced to 150 days in jail, five years probation, and a \$225 fine. Included among the conditions of probation is that she obtain prenatal care if she becomes pregnant. There are no provisions, however, for how that care would be paid for.

Contact: Office of the Public Defender, Intake Division, (407) 322-6814; ACLU of Florida, (305) 576-2336.

State v. Gethers, No. 89-4454 CF10A (Fla. Cir. Ct. November 6, 1989) *affid*, 585 So.2d 1140 (4th Dist. Ct. App. 1991). Cassandra Gethers, a twenty-three-year-old African-American woman from Bravard County, was arrested in February, 1989 after she and her newborn daughter tested positive for cocaine. Judge Robert B. Carney dismissed criminal charges brought against Gethers who allegedly used drugs during her pregnancy, ruling that the fetus was not a legal person for purposes of the child abuse statute. The state appealed the decision. On September 18, 1991, the Florida District Court of Appeals upheld the lower court opinion finding that application of Florida's child abuse law to a pregnant woman who uses drugs misconstrues the purpose of the law and violates Florida's public policy of preserving family life.

Contact: Russell Adler, attorney for the defendant, 200 South Andrews Avenue, Suite 300, Fort Lauderdale, Florida, 33301, (305) 782-3939; Charles M. Auslander, Fine Jacobson Schwartz Nash Block & England, One Centrust Financial Center, 100 S.E. Second Street, Miami, Florida 33131, (305) 5774000 for the ACLU of Florida.

Source: "Fetal Abuse Case Thrown Out in Fla.," *Boston Globe*, November 8, 1989.

State v. Nelson, Complaint No. 89-536 17 (Fla. Cir. Ct. December 1, 1989). Frances Arlene Nelson, a twenty-eight-year-old African-American woman of Escambia County, was arrested after she allegedly gave birth to a cocaine-exposed baby in November, 1989. The arrest report included charges of delivery of cocaine and contributing to the dependency of a minor. Charges against Nelson have since been dropped.

State v. Carter, No. 89-6274 (Fla. Cir. Ct. July 23, 1990), *appeal docketed*, No. 90-226 1 (Fla. 1st Dist. Ct. App., July 23, 1990). Ethel Carter, an African-American woman, was charged with unlawful delivery of a controlled substance when her baby tested positive for cocaine. When physicians at Sacred Heart Hospital learned that Carter had used cocaine during her pregnancy, they notified the Department of Health and Rehabilitative Services which in turn notified the Pensacola Police Department. The trial court dismissed the delivery of an illegal substance charge, concluding that as a matter of law the defendant could not at the time she ingested cocaine have had the intent to deliver the substance through the umbilical cord. The State has appealed the dismissal and oral argument before the First Judicial Circuit was heard on June 4, 1991.

Contact: Ethel Carter is represented on appeal by Assistant Public Defender Carl S. McGinnes, (904) 488-2458 and Charlene Carres, ACLU Florida, 225 NE 34th Street, Suite 102, Miami, Florida 33137 with Lynn Paltrow, ALCU Reproductive Freedom Project, 132 W. 43rd Street, New York, New York 10036, (212) 944-9800.

Source: Michael Burke, "Cocaine Moms Are Not Coddled in Pensacola," *Pensacola News Journal*, March 4, 1990 at 1A; Burke, "Legal Issues Complicate Crack Moms' Prosecution," *Pensacola News Journal*, March 4, 1990 at 12A.

State v. Dawson, Complaint No. 90-24-EE (Fla. Cir. Ct. January 16, 1990). Shelia Dawson, a twenty-five-year-old African-American woman from Escambia County, was charged with delivery of cocaine on January 10, 1990. She pled no contest and was sentenced to eighteen months probation.

Contact: Tony Tick, Escambia Public Defender's Office, (907) 436-5400.

Source: Ginny Graybiel "Prosecuting Cocaine Mothers Frustrates State," *Pensacola News Journal*, April 28, 1991 at 1A, 10A.

State v. Copeland, Complaint No. 90-1432-K (Fla. Cir. Ct. March 23, 1990). Joycelyn Copeland, an African-American woman from Escambia County, was charged with delivery of cocaine on March 23, 1990. She pled no contest to possession of cocaine and was sentenced to two years probation.

Contact: Terry Terrell, Escambia Public Defender's Office, Felony Division, (907) 436-5400.

Source: Ginny Graybiel "Prosecuting Cocaine Mothers Frustrates State," *Pensacola News Journal* April 28, 1991 at 1A, bA.

State v. Blankenship, Complaint No. 90-1658-F (Fla. Cir. Ct. April 9, 1990). Pamela R. Blankenship, an African-American woman from Escambia County, was charged with possession of cocaine. The charges were subsequently dropped.

Contact: Terry Terrell, Escambia Public Defender's Office, Felony Division, (907) 436-5400.

Source: Ginny Graybiel "Prosecuting Cocaine Mothers Frustrates State," *Pensacola News Journal*, April 28, 1991 at 1A, 1OA.

State v. Lindsey, Complaint No. 90-1692-E (Fla. Cir. Ct. April 10, 1990). Carolyn Rene Lindsey, an African-American woman from Escambia County, was charged with delivery of cocaine. She pled no contest and was sentenced to thirty months in prison.

Contact: Terry Terrell, Escambia Public Defender's Office, Felony Division, (907) 436-5400.

Source: Ginny Graybiel "Prosecuting Cocaine Mothers Frustrates State," *Pensacola News Journal*, April 28, 1991 at 1A, 1OA.

State v. Schroeder, Complaint No. 90-1761-J (Fla. Cir. Ct. April 11, 1990). Lisa Schroeder, a white woman from Escambia County, was charged with delivery of cocaine and causing dependency of a child. She pled no contest to both charges and was sentenced to six months house arrest followed by two and one-half years probation on the condition that she serve three months in jail.

Contact: Terry Terrell, Escambia Public Defender's Office, Felony Division, (907) 436-5400.

Source: Ginny Graybiel "Prosecuting Cocaine Mothers Frustrates State," *Pensacola News Journal*, April 28, 1991 at 1A, bA.

State v. Davis, Complaint No. 90-1924-C (Fla. Cir. Ct. April, 23 1990). Chirstal Davis, an African American woman from Escambia County, was charged with delivery of cocaine, possession of cocaine, and contributing to the delinquency of a minor. She pled no contest and was sentenced to three years probation.

Contact: Terry Terrell, Escambia Public Defender's Office, Felony Division, (907) 436-5400.

Source: Ginny Graybiel "Prosecuting Cocaine Mothers Frustrates State," *Pensacola News Journal*, April 28, 1991 at 1A, bOA.

State v. Thrower, Complaint No. 90-2400-K (Fla. Cir. Ct. May 21, 1990). Trina D. Thrower, a white woman from Escambia County, was charged with delivery of cocaine. She pled no contest to possession of cocaine and was sentenced to three years probation.

Contact: Terry Terrell, Escambia Public Defender's Office, Felony Division, (907) 436-5400.

Source: Ginny Graybiel "Prosecuting Cocaine Mothers Frustrates State," *Pensacola News Journal*, April 28, 1991 at 1A, 10A.

State v. Forde, Complaint No. 90-2410-E (Fla. Cir. Ct. May 5, 1990). Tonya Jean Forde, a white woman from Escambia County, was charged with delivery of cocaine and possession of cocaine. She pled no contest to possession of cocaine and was sentenced to eighteen months probation.

Contact: Terry Terrell, Escambia Public Defender's Office, Felony Division (907) 436-5400.

Source: Ginny Graybiel "Prosecuting Cocaine Mothers Frustrates State" *Pensacola News Journal* April 28, 1991 1A, bA.

State v. Rivers, Complaint No. 90-2865-K (Fla. Cir. Ct. June 19, 1990). Berlinda Rivers, an African-American woman from Escambia County, was charged with delivery of cocaine. She pled no contest to possession of cocaine and was sentenced to two years probation. She was rearrested on March 1, 1991, Complaint No. 91-989-K (Fla. Cir. Ct. March 1, 1991), and charged with delivery of cocaine. Her case is now pending.

Contact: Terry Terrell, Escambia Public Defender's Office, Felony Division, (907) 436-5400.

Source: Ginny Graybiel "Prosecuting Cocaine Mothers Frustrates State," *Pensacola News Journal*, April 28, 1991 at bA, bOA.

State v. Johnson, Complaint No. 90-3570 (Fla. Cir. Ct. July 25, 1990). Jacquelyn Johnson, an African-American woman from Escambia County, was charged with delivery of cocaine and possession of cocaine. She pled no contest to possession of cocaine and was sentenced to eighteen months probation.

Contact: Terry Terrell, Escambia Public Defender's Office, Felony Division, (907) 436-5400.

Source: Ginny Graybiel "Prosecuting Cocaine Mothers Frustrates State," *Pensacola News Journal*, April 28, 1991 at 1A, bA.

State v. Jones, Complaint No. 90-3880-K (Fla. Cir. Ct. August 16, 1990). Deborah Jones, an African-American woman from Escambia County, was charged with delivery of cocaine and possession of cocaine. She pled no contest to possession of cocaine and was sentenced to eighteen months probation.

Contact: Terry Terrell, Escambia Public Defender's Office, Felony Division, (907) 436-5400.

Source: Gmny Graybiel "Prosecuting Cocaine Mothers Frustrates State," *Pensacola News Journal*, April 28, 1991 at 1A, bOA.

State v. Scott, Complaint No. 90-4730-D (Fla. Cir. Ct. October 8, 1990). Brenda R. Scott, an African-American woman from Escambia County, was charged with delivery of cocaine, possession of cocaine, and causing dependency of a child. She pled no contest to possession of cocaine and causing dependency of a child, and was sentenced to two years house arrest.

Contact: Terry Terrell, Escambia Public Defender's Office, Felony Division, (907) 436-5400.

Source: Gmny Graybiel "Prosecuting Cocaine Mothers Frustrates State," *Pensacola News Journal*, April 28, 1991 at 1A, bOA.

State v. Brown. Cynthia Brown, a white woman from Escambia County, was charged with delivery of cocaine, possession of cocaine, and culpable negligence by inflicting an injury on a child on November 2, 1990. She pled no contest as charged and was sentenced to eighteen months house arrest followed by eighteen months probation.

Contact: Terry Terrell, Escambia Public Defender's Office, Felony Division, (907) 436-5400.

Source: Ginny Graybiel "Prosecuting Cocaine Mothers Frustrates State," *Pensacola News Journal*, April 28, 1991 at 1A, bOA.

State v. Head, Complaint No. 90-5369-C (Fla. Cir. Ct. November 20, 1990). Valerie R. Head, an African-American from Escambia County, was charged with delivery of cocaine and possession of cocaine. She pled no contest to possession of cocaine and was sentenced to two years probation.

Contact: Terry Terrell, Escambia Public Defender's Office, Felony Division, (907) 436-5400.

Source: Ginny Graybiel "Prosecuting Cocaine Mothers Frustrates State," *Pensacola News Journal*, April 28, 1991 at 1A, 10A.

State v. Hollingsworth, Complaint No. 90-5520-E (Fla. Cir. Ct. December 2, 1990). Debra Hollingsworth, a white woman from Escambia County, was charged with delivery of cocaine and possession of cocaine. She pled no contest to possession of cocaine and was sentenced to three years in state prison.

Contact: Terry Terrell, Escambia Public Defender's Office, Felony Division, (907) 436-5400.

Source: Ginny Graybiel "Prosecuting Cocaine Mothers Frustrates State," *Pensacola News Journal*, April 28, 1991 at 1A, bOA.

State v. Richardson, Complaint No. 91-408-D (Fla. Cir. Ct. January 25, 1991). Donna Faye Richardson, an African-American woman from Escambia County, was charged with delivery of cocaine, possession of cocaine, and causing dependency of a child. Her case is pending.

Contact: Terry Terrell, Escambia Public Defender's Office, Felony Division, (907) 436-5400.

Source: Ginny Graybiel "Prosecuting Cocaine Mothers Frustrates State," *Pensacola News Journal*, April 28, 1991 at bA, bA.

State v. McCorvey, Complaint No. 90-5946-C (Fla. Cir. Ct. December 27, 1990). Linda McCorvey, an African-American from Escambia County, was charged with delivery of cocaine and possession of cocaine. Her case is pending.

Contact: Terry Terrell, Escambia Public Defender's Office, Felony Division, (907) 436-5400.

Source: Gmny Graybiel "Prosecuting Cocaine Mothers Frustrates State," *Pensacola News Journal*, April 28, 1991 at bA, bOA.

State v. Hardy, Complaint No. 91-760-F (Fla. Cir. Ct. February 19, 1991). Tonya Hardy, an African-American woman from Escambia County, was charged with delivery of cocaine and possession of cocaine. Her case is pending.

Contact: Terry Terrell, Escambia Public Defender's Office, Felony Division, (907) 436-5400.

Source: Ginny Graybiel "Prosecuting Cocaine Mothers Frustrates State," *Pensacola News Journal*, April 28, 1991 at 1A, bOA.

State v. Rodgers, Complaint No. 90-5372-D (Fla. Cir. Ct. November 20, 1990). Carrie Mae Rodgers, an African-American woman from Escambia County, was charged with delivery of cocaine. Her case is pending.

Contact: Terry Terrell, Escambia Public Defender's Office, Felony Division (907) 436-5400.

Source: Ginny Graybiel "Prosecuting Cocaine Mothers Frustrates State" *Pensacola News Journal* April 28, 1991 1A, 10A.

State v. Watson, Complaint No. 91-1135-A (Fla. Cir. Ct. March 13, 1991). Araminta Watson, an African-American woman from Escambia County, was charged with delivery of cocaine and possession of cocaine. Her case is pending.

Source: Gmny Graybiel "Prosecuting Cocaine Mothers Frustrates State," *Pensacola News Journal*, April 28, 1991 at 1A, 10A.

State v. Jerez, No. 90-0075-CF-F (16th Cir. Ct. Monroe County July 31, 1990). Dolka Jerez, a twenty-four year-old African-American woman, was charged with delivery of a controlled substance to a minor and child abuse. On July 31, 1990, she agreed to a plea bargain which dropped the child abuse charge and knocked down the delivery charge from a first- to a second-degree felony of delivery of cocaine. Jerez was sentenced to three and a half years imprisonment in accordance with the Florida guideline sentencing system.

Contact: Gerald Birnesser, Monroe County Public Defender's Office, (305) 294-2501.

Source: Dan Keating, "Woman Faces Charges of Abuse of Unborn Child," *Miami Herald*, January 13, 1990 at B1.

State v. Black, No. **89-5325** (Fla. Cir. Ct. January 3, 1990). Beverly Black, a thirty-two year-old African-American woman, has been sentenced to eighteen months in prison and three years probation for allegedly passing cocaine to her baby through the umbilical cord. Police claim that Black admitted to using cocaine twice during her pregnancy in efforts to induce labor. Black pled no contest to delivery of cocaine in the second degree and contributing to the delinquency of a minor. Black is the first woman to have been imprisoned in Florida under these charges.

Contact: Dennis Shuman, Escambia Public Defender's Office, (904) 436-5400.

State v. Maxwell, Complaint No. 90-344-CF (Fla. Cir. Ct. April, 1990). Rhonda Maxwell, a twenty-four year-old African-American woman from Escambia County, pled no contest to delivery of cocaine in the second degree and to contributing to the delinquency of a minor. She was sentenced to eighteen months probation.

Contact: Peter France, Escambia Public Defender's Office, (904) 436-5400.

State v. Lee, Complaint No. 89-5830-K (Fla. Cir. Ct. October 25, 1989). Denise Lee, a twenty-five year-old African-American woman, pled no contest to possession after violation of her probation. She was sentenced to thirty months in state prison.

Contact: Ron Davis, Escambia Public Defender's Office, (904) 436-5400.

State v. Gorman, No. CTC89-O1613MMAWS (order of dismissal) (Fla. Cir. Ct. January 31, 1991). Nancy Gorman, a twenty-eight year-old white woman from New Port Richey, Florida, was charged with misdemeanor child abuse for her one-time cocaine use prior to delivery. The state agreed to dismiss the charges pursuant to a "deferred prosecution agreement" if Gorman successfully completed a one year non-residential treatment program, which she subsequently did. On January 31, 1991 the charges were dismissed.

Contact: David Siar, Assistant Public Defender, West Pasco County, (813) 847-8155.

State v. Jenkins. Bobbie Ann Jenkins a twenty-three year-old white woman from Seminole County, was arrested on October 3, 1991 for delivery of a controlled substance to a minor and for violation of probation after she allegedly admitted to smoking crack cocaine prior to the birth of her son on September 1, 1991. Jenkins has apparently signed a "cooperative rehabilitation abuse contract" in which she agrees to a twenty-four month treatment and incarceration plan designed by the office of the state attorney for the Eighteenth Judicial Circuit of Florida. If she successfully completes the three-part program, according to the agreement the charges will be dismissed.

Contact: ACLU of Florida, 225 NE 34th Street, Suite 102, Miami, Florida 33137, (305) 576-2336.

Source: "3 Moms Jailed - Babies Test Positive for Cocaine," *Orlando Sentinel*, Sunday, October 6, 1991.

State v. Perdue. Patricia Ann Perdue, twenty-seven, an African-American woman, was arrested in Seminole County on October 4, 1991 for delivery of a controlled substance to a minor and for violation of probation after she admitted using cocaine during her pregnancy. Perdue has apparently signed a "cooperative rehabilitation abuse contract" in which she agrees to a twenty-four month treatment and incarceration plan designed by the office of the state attorney for the Eighteenth Judicial Circuit of Florida. If she successfully completes the three part program, according to the agreement, the charges will be dismissed.

Contact:

ACLU of Florida, 225 NE 34th Street, Suite 102, Miami, Florida 33137, (305) 576-2336.

Source:

"3 Moms Jailed - Babies Test Positive for Cocaine," *Orlando Sentinel*, Sunday, October 6, 1991.

State v. Williams. Lavashes Shadale Williams, a twenty year-old African-American woman, was arrested in Seminole County on October 4, 1991 for delivery of a controlled substance to a minor after she admitted using cocaine during her pregnancy. Williams has apparently signed a "cooperative rehabilitation abuse contract" in which she agrees to a twenty-four month treatment and incarceration plan designed by the office of the state attorney for the Eighteenth Judicial Circuit of Florida. If she successfully completes the three-part program, the charges will be dismissed.

Contact:

ACLU of Florida, 225 NE 34th Street, Suite 102, Miami, Florida 33137, (305) 576-2336.

Source:

"3 Moms Jailed - Babies Test Positive for Cocaine," *Orlando Sentinel*, Sunday October 6, 1991.

State v. Whitfield, No. R913670AF1 (Fla. Cir. Ct. filed October 31, 1991). Elouise Whitfield, a thirty-nine year-old African-American woman from Leon County, was charged with delivery of cocaine to a minor by an adult after she gave birth to a son who tested positive for cocaine. A police officer arrived at the hospital with an outstanding warrant for Whitfield for the sale of cocaine. Whitfield signed a waiver for the officer to collect the medical records documenting the presence of cocaine in her system and in her son's. Whitfield had previously given birth to two other children who tested positive for cocaine; all three infants were taken from her custody at birth. The state dropped the charges, however, stating that Florida law is unsettled in the application of the delivery statute to these facts and that nationally the trend is not to apply criminal charges for the transfer of cocaine through the umbilical cord seconds after birth. Citing *State v. Gethers*, 585 So.2d 1140 (Fla. 4th Dist. Ct. App. 1991), which affirmed the dismissal of child abuse charges for cocaine transferred prior to birth, the state concluded a likelihood for conviction did not currently exist.

Contact:

Randolph P. Murrell, Public Defender's Office for the Second Judicial Circuit of Florida, Leon County Courthouse, 4th Floor North, 301 S. Monroe Street, Tallahassee, Florida 32301, (904) 488-2458.

Related Cases

Pamela Forney. In October, 1989, in New Port Richey, a Pasco County judge denied Pamela Forney's request for time to get an abortion before going to jail for a Driving While Under the Influence probation violation. Forney, who is white, single, and employed part-time, was entering her third month of pregnancy at the time of sentencing. Prosecutors and defense attorneys had agreed to a ten-day postponement of Forney's sixty-day sentence to enable her to obtain an abortion. Judge Dan C. Rasmussen refused to allow the postponement, arguing that abortion is "murder" and that Forney "want[s] a continuance so [she] can murder [her] baby." Once in jail, however, Forney was able to arrange for an abortion.

Contact: Rachael Reback, attorney for defendant, (813) 224-9660.

Source: "Pregnancy as Punishment," *New York Times*, November 1, 1989; David Sommer, "Groups Criticize Judge for Stopping Pasco Woman From Getting Abortion," *Tampa Tribune*, October 27, 1989 at B3.

GEORGIA

State v. Coney, No. 14/403-404 (Super. Ct. of Crisp County, filed November 6, 1989). Doris Coney, a twenty-one year-old African-American woman from Cordile, was indicted for distribution of cocaine to her fetus because of her alleged drug use during pregnancy. The local prosecutor offered to drop the drug distribution charge if Coney pled to possession. Ms. Coney did not accept the plea bargain. A motion to dismiss was filed on her behalf; however, no response had been issued from the court as of April, 1992. The charges may be dropped, in part because the Georgia legislature has been reluctant to enact statutes criminalizing the birth of a drug-exposed infant.

Contact: Seth Kirschenbaum, attorney for the defendant, (404) 688-2000.

State v. Tanner, Criminal Warrant No. 91W0003535, Cobb County Superior Court (Marietta, Ga.). Deborah Tanner, an African-American woman, was arrested on March 8, 1991 and charged with possession and distribution of cocaine and cruelty to children because her child allegedly tested positive at birth for cocaine. Tanner allegedly admitted to a social worker at Kennestone Hospital in Cobb County that she had used cocaine a few days before entering the hospital. The child was released to the grandmother and appears to be healthy. The local prosecutor has since stated he would not pursue the distribution and cruelty to children charges if Tanner agreed to go to a twenty-eight day rehabilitation program. Tanner agreed but subsequently was asked to leave the rehabilitation program, allegedly for violating its rules. Tanner's attorney has tried to place her in a different program, but the Judge refused to order Tanner into a longer program. Tanner is also facing probation revocation for a felony shoplifting sentence.

Contact: Alice C. Stewart, 100 Peachtree Street, NW, Suite 200, Atlanta, Georgia, (404) 688-4488.

State v. Luster, No. 91-9-1803 (Ga. Super. Ct., August 16, 1991); *aff'd*, No. A92A0233 (Ga. Ct. App. April 23, 1992). Darla Michelle Luster, a twenty-eight year-old African-American woman from Cobb County, was indicted for possession of cocaine and delivery of cocaine to her infant daughter. Under the Georgia Controlled Substances Act, delivery means the actual, constructive, or attempted transfer from one person to another of a controlled substance, whether or not there is any agency relationship. The State claimed that Luster delivered cocaine to her fetus between January 1 and March 3 of 1991, and argued that the fetus was "not a person as such in the womb, but was a legal entity" and thus fell within the statutory definition of person which is defined as "an individual, corporation, government ... trust, partnership, or association, or any other legal entity." Judge P. Harris Hines dismissed the delivery charges holding the statute's application in this case deprived the defendant of due process and notice of the crime charged, and that describing a person as a legal entity was a "strained construction." On April 23, 1992 a unanimous panel of the Court of Appeals affirmed the dismissal of the delivery charges, agreeing with the trial court's determination that the statute failed to give notice of the crime charged, and could not be read so as to construe a "legal entity" as a "person."

Contact: Mary Wyckoff, ACLU Southern Regional Office, 44 Forsyth Street, Suite 202, Atlanta, Georgia 30303, (404) 523-2721; Lynn Paltrow, ACLU Reproductive Freedom Project, (212) 944-9800; Charles M. Taylor, 1718 Peachtree Street Suite 1080, Atlanta, Georgia 30309, (404) 523-2721.

State v. Jackson. Indictment # 1B9 1CR371M, (Ga. Super. Ct., August 6th, 1991). Sylvia Jackson, a twenty-one year old African-American with four children, was indicted for possession of cocaine pursuant to O.C.G.A. § 16-13-30 based on the positive drug test of her stillborn infant. Two days prior to giving birth, she was hospitalized after sustainmg abdominal trauma as a result of being beaten by her boyfriend. This investigation began as an investigation of the alleged beating. To date, no charges have been filed against the boyfriend. Her public defender has filed motions to suppress and to dismiss.

Contact: Mary Wyckoff, ACLU Southern Regional Office, 44 Forsyth Street, Suite 202, Atlanta, Georgia 30303, (404) 523-2721; Michael Classens Public Defender, (912) 764-6292.

IDAHO

State v. Davis. Darlene Davis, a twenty-nine year-old woman in Pocatello, was asked by her physicians during labor whether she had ingested any drugs or alcohol in the past twenty-four hours. Davis responded that she had taken cocaine. Her infant was taken by social services as a neglected child under Idaho statutes, and in June, 1990 Davis was criminally charged with injury to a child and possession of a controlled substance. The last available information from her public defender was that Davis was in a twenty-eight day, in-patient drug treatment program and that she had been offered a plea bargain, part of which involved dropping the injury to child charge.

Contact: Steven Pevar, Mountain States Regional ACLU Office, 6825 E. Tennessee Avenue, Building 2, Suite 262, Denver, Colorado 80224, (303) 321-4828

ILLINOIS

People v. Green, No. 88-CM-8256 (Ill. Cir. Ct. filed May 8, 1989). Melanie Green, a twenty-four year-old African-American woman, was arrested on charges of involuntary manslaughter and delivery of a controlled substance to a minor when her baby's death was linked to her alleged cocaine use while pregnant. Green was the first woman in the country to be charged with manslaughter for the death of a child allegedly resulting from drug use during pregnancy. If convicted, Green could have faced a five-year prison term for the manslaughter charge and fourteen years for delivery. The charges were dropped, however, after a grand jury refused to indict her.

Contact: Colleen Connell, Harvey Grossman, and JoAnn Wolfson; ACLU of Illinois, 20 East Jackson Blvd., Suite b600, Chicago, Illinois 60604, (312) 427-7330.

Source: Patrick Reardon, "Grand Jury Won't Indict Mother In Baby's Drug Death," *Chicago Tribune*, May 27, 1989.

Related Cases

People v. Moore. LeeAnn Moore was convicted of prostitution in December of 1990 and served three months in the county jail. She was released on probation in early March. Shortly after her release the county probation office received information that Moore was continuing to use cocaine. In April of 1991 she was charged with disorderly conduct for allegedly propositioning a man on a Rockford street. The prosecutor made drug treatment a condition of her release without bond. When she failed to appear for treatment, State Attorney Paul Logli obtained a court order putting Moore under twenty-four hour guard in the Al-care drug treatment center in Rockford. Moore, pregnant and due to give birth at the end of April, was being held on \$10,000 bond for alleged violation of the conditions

under which she was freed without bond the preceding week. This case, like the *Vaughn* case from Washington, D.C., does not involve a criminal prosecution. Rather it raises the question of a court's power to find that a drug addict's pregnancy violates probation or release conditions established for other, unrelated cases. The order in this case issued by Winnebago County Circuit Court Judge Harris Agnew made no mention of Moore's pregnancy or a threat to the health of the fetus. But according to the *Washington Post*, the county's chief prosecutor, State Attorney Paul Logli confirmed that those were the reasons his office sought the court order forcing the woman into the treatment center.

Source: Edward Walsh, "Illinois Court Orders Pregnant Woman Confined to Drug Treatment Center," *Washington Post*, Friday, April 12, 1991 at A3.

INDIANA

State v. Yurchak, No. 64D01-8901-CF-181B (Ind. Super. Court filed October 2, 1989). Brenda Yurchak, a twenty-eight year-old, African American woman from Porter County, was charged with possession of cocaine based on findings that her baby was born addicted to cocaine. Yurchak was arrested and released on a \$2500 bond. Hospital officials said they followed procedures of the new state law that requires *notification* if a newborn shows drug or alcohol addiction. The case was dismissed on July 29, 1991 when prosecutors withdrew the action at oral argument.

Contact: Kary Moss, Joan Bertin, Women's Rights Project, ACLU, 132 W. 43rd Street, New York, New York 10036, (212) 944-9800, ext. 524; Allison Marshall, of Miller, Canfield, Paddock & Stone, attorney for defendant, (202) 429-5575; Rich Waples from Indiana Civil Liberties Union; Fred Grady, local attorney.

Source: "Woman Charged After Giving Birth to Addict," *Indianapolis Star*, October 7, 1989.

KENTUCKY

Commonwealth v. Welch No. 90-CR-006 (Boyd Circuit Ct. March 15, 1990) *r&d* in part and *aff'd* in part, No. 90-CA-1189-MR (Ky. Ct. App. February 7, 1992). Connie Welch O'Neal, a thirty-three year-old white woman who had been addicted to percodin and hydromorphone since age sixteen, was arrested on November 7, 1989 and charged with possession of drug paraphernalia and percodin. On December 1, 1989, she gave birth to a six-pound boy by cesarean section. The child allegedly suffered from "neonatal abstinence syndrome" and was treated with phenobarbital. Following the birth, the indictment was amended to include a charge for criminal child abuse. At trial, the prosecution focused on defendant's refusal to obtain treatment. The defense noted that the hospital gave her percodin, and argued that

addiction is a disease and may not be subject to criminal punishment. O'Neal was found guilty on all charges and received a sentence of seven years.

On February 7, 1992, a Kentucky Court of Appeals reversed the conviction for criminal child abuse, affirmed the two possession charges and remanded for resentencing. The Court of Appeals reversed the criminal abuse conviction because the statute does not refer to a fetus or an unborn child and the court refused to presume legislative intent to expand the class of persons who could be treated as victims under the statute. The state is appealing the decision.

Contact: Kary Moss, Joan Bertin, Women's Rights Project, ACLU, 132 W. 43rd Street, New York, New York 10036 for appeal, (212) 944-9800 ext. 524; Michael Curtis, local counsel, (606) 324-5435.

MASSACHUSETTS

Commonwealth v. Levey, No. 89-2725-2729 (Mass. Super. Ct. December 4, 1989). Elizabeth Levey, a twenty-seven year-old white woman, was charged with motor vehicle homicide when she miscarried at eight months and two weeks of pregnancy as a result of her alleged drunk driving. She ultimately pled guilty to reduced charges of driving while intoxicated. The court ordered her to attend a fourteen-day treatment program and suspended her license for five years. Upon completion of the drug treatment program, the charges against Levy were dropped.

Contact: Nancy Gertner, Dwyer, Collora & Gertner, 400 Atlantic Avenue, Boston, Massachusetts 02110, (617) 357-9202.

Commonwealth v. Pellegrini, No. 87970, slip op. (Plymouth Super. Ct., October 15, 1990). Josephine Pellegrini, a twenty-three year-old white woman, from Brockton, was the first woman in Massachusetts to be charged under the state's drug trafficking statute for "distributing" cocaine to her fetus after her infant tested positive for cocaine. Her family and friends describe Pellegrini as "a battered woman who was terrified of her live-in boyfriend, the father of her three children." In October of 1990, the judge dismissed the drug charges as violating the right to privacy, principles of statutory construction, due process of law, and separation of powers.

Contact: Nancy Gertner, attorney for *amicus*, (617) 357-9202; or Lynn Paltrow, ACLU Reproductive Freedom Project, 132 W. 43rd Street, New York, New York 10036, (212) 944-9800. *Amicus* brief available from the Reproductive Freedom Project.

Source: John Kennedy, "Cloudy Future After Infant-Cocaine Case," *Boston Globe*, August 23, 1989 at 1.

MICHIGAN

People v. Hardy, No. 89-2931-FY (60th Dist. Ct. for Muskegon Cty. filed December 5, 1989), *rev'd*, 188 Mich. App. 305, 469 N.W.2d 50 (1991), *lv. app. den.*, 471 N.W.2d 619 (1991). Kimberly Hardy, a twenty-two year-old African-American woman, was charged with delivery of a controlled substance and child abuse after her newborn child tested positive for cocaine. Subsequent to Hardy's arrest, all three of her children were placed in foster care. On April 11, 1990, Ms. Hardy moved to quash the felony charges. The Circuit Judge granted the motion to quash the child abuse charge but denied the motion to quash the delivery of cocaine charge. On appeal, the Michigan Court of Appeals reversed the lower court's decision and quashed the delivery of cocaine charge. On July 16, 1991, the Supreme Court of Michigan denied the State leave to appeal the Court of Appeals decision. The recent Court of Appeals decision in *Hardy* is especially significant in light of the Michigan Supreme Court's Administrative Order 1990-6, Resolution of Conflicts in Court of Appeals Decisions, which states that a prior published decision issued on or after November 1, 1990 of a panel of the Court of Appeals remains controlling authority unless reversed or modified by the Supreme Court or a Special Panel of the Court of Appeals.¹⁷

Contact: Paul Dennenfeld, Legal Director, ACLU of Michigan, (313) 961-4662; Lynn Paltrow, ACLU Reproductive Freedom Project, 132 W. 43rd Street, New York, New York 10036, (212) 944-9800; Walter Connolly, Jr. and Allison Marshall, of Miller, Canfield, Paddock & Stone, (202) 429-5575.

Source: Medendorp & Walsh, "Mother of 'Crack Baby' Located, Arrest is Delayed," *Muskegon Chronicle*, October 21, 1989. *Amicus* brief available from ACLU Reproductive Freedom Project, (212) 944-9800.

People v. Cox, No. 89-2588-FY (Dist. Ct. Cty of Jackson January 29, 1990); *rev'd*, No. 90-53545-FH (Mich. Cir. Ct., Jackson Cty, July 9, 1990) (granting motion to quash information), *appeal docketed*, No. 13 1-999 (Mich Ct. App., August 21, 1990). Cheryl Cox, a twenty-six year-old African-American woman, was charged with delivery of cocaine and first-degree child abuse. On January 29, 1990, Judge Charles J. Falahee, Jr. dismissed the child abuse charge but bound the defendant over to the Circuit Court for trial on the charge of delivery of cocaine after birth but before the umbilical cord was severed. On July 9, 1990, Circuit Court Judge Alexander C. Perlos granted the defendant's motion to quash the drug delivery charge and stated "[i]t is at best remote, as to the possibility of the Legislature even considering that a 'delivery' could occur in such a matter." The State is currently appealing the circuit court's decision to quash the charges.

¹⁷ Meanwhile Tony Tague, the prosecutor in the *Hardy* case, has embarked on his own personal 'war on drugs' and has written and distributed in Muskegon County a pamphlet outlining his "Multi-Disciplinary Approach of Prosecution and Treatment." This approach asserts that the prosecutor's office will immunize from prosecution any pregnant addict who engages in meaningful prenatal care. Although Mr. Tague views his "carrot and stick" approach optimistically, there is currently no crime from which these women can be immunized and appropriate treatment services are still unavailable in Muskegon County.

Contact: Paul Dennenfeld, Legal Director, ACLU of Michigan, 1249 Washington Blvd., Suite 2910, Detroit, Michigan 48226-1822, (313) 961-4662; Wendell Jacobs, attorney for the defendant, (517) 782-9459.

People v. Bremer, No. 90-32227-FH (Mich. Cir. Ct. Muskegon Cty., January 31, 1991) *appeal docketed*, No. 137-619 (Mich. Ct. Ap., February 5, 1991). Lynn Ellen Bremer, a thirty-three year-old white attorney, was reported to authorities by her doctor after she admitted to him that she was using cocaine during her pregnancy. She has been charged with delivery of cocaine through the umbilical cord and was bound over for trial. Subsequently, she filed a motion to quash, which was granted on January 31, 1991. The court concluded that the Michigan delivery statute could not be interpreted to apply to a woman's prenatal behavior, relying on Fourteenth Amendment due process guarantees, the right to privacy, statutory construction rules, and the fact that an unborn fetus is not a person.

Contact: James Oslund, 500 Comercia Bank Bldg., P.O. Box 1176, Muskegon, Michigan 49443, (616) 722-2206.

MISSISSIPPI

State v. Hart. Oneaver McGruder Hart, a thirty-one year-old African-American woman, was indicted in Madison County for manslaughter after she gave birth to a stillborn girl whose death was, according to the autopsy report, a result of cocaine. Hart is facing a maximum penalty of twenty years in prison and a \$10,000 fine. Madison County Assistant District Attorney has stated that he believes the conviction could set a precedent for other prosecutors to file charges against mothers for ingesting substances that kill or handicap their children while in the womb. Hart accepted a plea bargain of three years probation for the felony of possessing cocaine.

Contact: Dierdre Janney, Mississippi ACLU, 921 N. Congress Street, Jackson, Mississippi 39202, (601) 355-6464.

Source: "Mother of Drug-Affected Stillborn Charged With Manslaughter," *Clarion Ledger*, Jackson, Mississippi, July 31, 1991.

MISSOURI

State of Missouri v. Lisa Pindar. Lisa Pindar, age twenty-four, of Waynesville, was charged with second-degree assault and child endangerment after her son was born allegedly with signs of fetal alcohol syndrome.

Contact: Joyce Armstrong, ACLU of Eastern Missouri, 4557 Laclede Avenue, St. Louis, Missouri 63108, (314) 361-2111; Catherine Albisa, ACLU Reproductive Freedom Project, 132 W. 43rd Street, New York, New York 10036, (212) 944-9800.

Source: Joan Little, "Woman Jailed After Baby is Born Intoxicated," *St. Louis Post Dispatch*, November 26, 1991 at 3a.

NEVADA

State v. Bloxham, No. CR90-1115 (Dist. Ct., Washoe Cty., June 7, 1991). Regina Mae Bloxham, a white woman, was charged with possession of a controlled substance and child abuse after giving birth to an infant who tested positive for the presence of methamphetamine. Bloxham successfully completed a one-year treatment program and the charges were dismissed.

Contact: Robert P. Fanendorf, Attorney at Law, P.O. Box 3677, Reno, Nevada 89505, (702) 348-7775.

Source: Steve Timko, "More Moms Prosecuted for Delivering Drugs -- Tainted Babies," *Reno Gazette Journal*, May 12, 1990.

State v. Peters, No. 90-241 (Sparks Justice Court filed February 2, 1990). Sharon Peters was charged with possession of a controlled substance and child abuse after her infant tested positive for cocaine metabolites and marijuana. Peters pled guilty to the possession charge and the child abuse charges were dropped. Judge Roy Torvinen gave Peters a suspended one-year prison sentence, eighteen months probation, and ordered her to attend a parental counseling program.

Contact: Bob Witek, Public Defender's Office, (702) 328-3486.

Source: Martha Miller, "3 Washoe Cases Now Filed Alleging Substance Abuse While Pregnant," *Reno Gazette Journal*, February 13, 1990 at 1A.

State v. Ratclzffe, (Dist. Ct. Washoe Cty). Gertrude Ratcliffe, a thirty-four year-old woman, was charged with two counts of child abuse and one count of supplying a controlled substance to her child through the umbilical cord. Her son was allegedly born with one partial finger and a head proportionately larger than the rest of his body. The charges were dismissed when Ratcliffe pled guilty to using drugs without prescription. Despite what was described as marked improvement in Ratcliffe's personality and behavior after receiving special counseling and completing a drug rehabilitation program, the judge sentenced her to nine months in jail against the District Attorney's and Probation Division's recommendations.

Contact: Charles Diaz, Public Defender, (702) 328-3464.

Source: Phil Barber, "Child Born Dead; Woman Arrested," *Reno Gazette Journal*, August 16, 1991.

State v. Flintroy. Gloria Jean Flintroy, a thirty-four year old African-American woman, was arrested on charges including involuntary manslaughter, child endangerment, and drug possession subsequent to her child's stillbirth allegedly caused by Flintroy's cocaine use. Because

there was no evidence that the cocaine caused the stillbirth, all charges except drug use were dropped. Flintroy was convicted of drug possession and put into an experimental diversion program using acupuncture.

Contact: Mary Boetxch, (702) 322-8746.

Source: Phil Barber, "Child Born Dead; Woman Arrested," *Reno Gazette*, August 16, 1991.

State v. Sutton, (Dist. Ct. Washoe Cty., 1990). Lillie Lynn Sutton admitted using cocaine and marijuana during the last three months of her pregnancy. After her son tested positive for cocaine at birth, Sutton pled guilty to a charge of possession of a controlled substance. Judge William Forman sentenced her to three years in state prison, then suspended the sentence and placed her on probation. In addition, she is to serve 100 hours of community service, be enrolled in a drug counseling program, and is to maintain a drug-free home.

Source: Mike Henderson, "Woman Gets Probation for Drug Use While Pregnant," *Reno Gazette Journal*, May 19, 1990.

State v. Dutton, (Dist. Ct., Washoe Cty., 1990). Kathleen Marie Dutton admitted to smoking rock cocaine within several hours of her son's birth. Dutton pled guilty to using a controlled substance and was sentenced to eighteen months in prison.

Source: Steve Tiruko, "More Moms Prosecuted for Delivering Drug-Tainted Babies," *Reno Gazette Journal*, May 12, 1990.

NEW YORK

People v. Morabito, (Geneva City Ct. January 28, 1992). Melisa Morabito, a white woman, was charged by information with endangering the welfare of a child, P.L. § 260.10(1), a class A misdemeanor, because she allegedly smoked cocaine while she was pregnant. The charges were brought four months after Morabito gave birth to her daughter. The information was dismissed by Judge David H. Bind in a decision holding that the child endangerment statute did not apply to an unborn child. To hold otherwise, Judge Bind stated, would deny the defendant her constitutional right to due process as guaranteed by both the federal and state constitutions.

Contact: Christine M. Cook, Attorney for Defendant, P.O. Box 1162, 32 Castle Street, Geneva, New York 14456, (315) 781-2998; Sara Mandelbaum, Paul, Weiss, Rifkind, Wharton & Garrison, 1285 Sixth Avenue, New York, New York 10019-6064, (212) 373-2037.

NORTH CAROLINA

State v. Inzar, No. 90 CRS 960 & 61 No. 91165C778 (Super. Ct. of Robeson County April 9, 1991), ***appeal dismissed***, No. 91-1SC778 (N.C. Ct. App., August 30, 1991). Sandra Inzar, a twenty-four year-old African-American woman who allegedly smoked crack cocaine the day

before she gave birth to a brain-damaged child, was indicted on charges of assault with a deadly weapon and delivery of cocaine to a minor. The Court dismissed both causes of action because it declared a fetus is not a person within the meaning of the two statutes relied upon by the prosecution. Although the state filed a notice of appeal, that notice was withdrawn and the appeal dismissed.

Contact: James Shields, ACLU of North Carolina, P.O. Box 28004, Raleigh, North Carolina 27611, (919) 834-3390.

NORTH DAKOTA

State v. Greywind. Martina Greywind, a twenty-eight year-old woman, was charged on February 10, 1992 with endangering her fetus. Twelve days later she obtained an abortion despite widely publicized efforts by abortion opponents to persuade her to carry the fetus to term. According to a news report, Assistant Cass County Prosecutor, Steve Dawson, said that since Greywind had the abortion, it was "no longer worth the time or expense to prosecute her."

Contact: Mark Beauchene, Fargo, North Dakota; Simon Heller, ACLU Reproductive Freedom Project, 132 W. 43rd Street, New York, New York 10036.

Source: "Charge Dropped in Paint-Sniffing," *Argus Leader*, March 10, 1992; "To Stop Abortion by Addict, Her Brother Steps In," *New York Times*, February 23, 1992 at 16.

OHIO

State v. Andrews, No. JU 68459 (Ct. C.P. of Stark County, June 19, 1989). Tina Andrews, an African-American woman, was charged with child endangerment for her alleged cocaine use during her pregnancy. The trial court held that Ohio's child endangerment statute applies only to children born at the time the endangering activity occurs and dismissed the charges.

Attorney: Richard L. Henning, Canton, Ohio, (216) 452-6668.

State v. Gray, No. CR88-7406 (Ct. C.P. of Lucas County, Ohio, July 13, 1989); *aff'd*, No. L89-239 (Lucas Cty Ct. App. August 31, 1990), *aff'd*, 62 Ohio St. 3d 514, 584 N.E.2d 710 (1992)). Tammy Gray, a twenty-seven year-old African-American woman, was charged with child endangerment for her alleged cocaine use during her pregnancy. Relying on *Reyes*, the trial court refused to extend the Ohio child endangerment statute to include a fetus and dismissed the charges against Gray. The state appealed the trial court decision and the Court of Appeals affirmed the lower court's decision to dismiss the charges. The Supreme Court of Ohio affirmed the dismissal holding that the plain meaning of Ohio's child endangerment statute does not extend to fetuses or prenatal conduct. In its decision the Supreme Court pointed out that the Ohio legislature was considering the problem of substance abuse and pregnancy. In light of the

pending bill, the Supreme Court refused to place a "tenuous construction" on an existing statute to address a problem which the legislature is currently investigating and debating.

Contact: Julia Davis, attorney for the defendant, (614) 224-3168; Elinor Alger, Ohio ACLU, 360 South Third Street, Suite 310, Columbus, Ohio 43215, (614) 228-895 1.

State v. Edwards, No. 91-1433/062891. Carla Edwards, a nineteen year-old white woman, was indicted on July 1, 1991, on two counts of criminal conduct: 1) violating Ohio Revised Code, Title 29 § 2919.22, a felony in the fourth degree, by creating "a substantial risk to the health or safety" of her baby "by ingesting cocaine and supplying the same to said unborn child transplacentally violating a duty of care, protection, or support..., resulting in serious physical harm" to the baby; and 2) Violating Ohio Revised Code Title 29 § 2925.11 because she knowingly used cocaine and/or crack cocaine, a schedule 4 controlled substance. An affidavit written by the detective in the case states that the case came to police attention when Edwards told nursing staff at Lake West Hospital that she was using crack cocaine and "prostituted herself to obtain money for drugs." Edwards stated the police approached her while she was in labor. The police allegedly threatened to take her to jail unless she made a statement on tape admitting that she was using drugs. Edwards was placed in a rehabilitation program upon her attorney's request at the time of arraignment because there was no evidence of harm to the baby. The judge indicated that he would drop the charge of child endangerment if her doctor confirms in writing that the baby is healthy.

Contact: Paul LaPlante, Lake County Public Defender's Office, (216) 357-5777; Cecilia Bonaccio, Cleveland, Ohio ACLU, 360 South Third Street, Suite 310, Columbus, Ohio 43215, (216) 781-6277.

Source: Karen Sandstrom, "Jailing Pregnant Drug-Users Opposed," *Plain Dealer Reporter*, see also Maggi Martin, "Pregnant Woman Accused of Using Crack Pleads Not Guilty," *Plain Dealer Reporter*.

Related Case

Cox v. Court of Common Pleas, No. 88AP 856 (Ct. App. for Franklin County December 13, 1988). In Ohio, Franklin County prosecutors persuaded a juvenile court to issue an order placing Janet Cox, a white woman in her seventh month of pregnancy, in "a secure drug treatment facility" to protect the fetus from Cox's alleged drug use. The Court of Appeals overturned the order, holding that the trial court had no jurisdiction over an adult woman for the purpose of controlling her conduct during her pregnancy. No case thus far has gone to trial.

Contact: Thomas G. Shanahan, (614) 864-8602.

SOUTH CAROLINA

Since August, 1989, more than eighty-seven women in Greenville and Charleston, South Carolina who allegedly took drugs during their pregnancy have been charged with either criminal neglect of a child or distribution of drugs to a minor, and at least forty-three others were forced to undergo treatment or face charges. Most of the women are African-American. No case thus far has gone to trial.

Contacts: Steven Bates, ACLU of South Carolina, Suite 104 Middleburg Plaza, 2712 Middleburg Drive, Columbia, South Carolina 29204, (803) 799-5151; Efia Nwangaza, 202 Livinia Avenue, Greenville, South Carolina, 29601, (803) 242-303 9.

Sources: Bob Piazza, "Addicted Baby's Mother Charged," *Piedmont News*, August 16, 1989; Jeff Zogg, "3 Charged With Neglect of Drug-Addicted Infants," *Piedmont News*, August 17, 1989; Martin Melendy, "Addicted Newborn Case Sent to Grand Jury," *Spartanburg Herald Journal*, October 19, 1990; Ceci

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Connolly, "Judge Sets Privacy Rights for Pregnant Woman," *Spartanburg Herald Journal*, October 21, 1990; Elizabeth Coady "South Carolina Prosecutors Force Mothers to Seek Treatment," *Atlanta Journal & Constitution*, June 5, 1991 at AIO.

Below are listed those cases on which we have been able to obtain any specific information.

State v. Young, No. C569593 (Charleston Ct. Gen. Sess. November 15, 1989). Young, an eighteen year-old African-American woman, tested positive for drugs when she went to the hospital after being kicked in the abdomen. The hospital did a urine test which tested positive for cocaine and, unknown to Young, reported the findings to the police. The police came to her hospital room to arrest her. Two days later she was charged in Charleston with possession of cocaine and distribution of drugs to a person under eighteen. She was arrested in her sixth month of pregnancy and forced to spend the time up to her delivery under house arrest. She later gave birth to a healthy baby and was offered a "deal" -- if she finished drug counseling, charges would be dropped.

Contact: Patricia A. Kennedy and Coming B. Gibbs, Jr., attorneys for defendant, Gibb & Holmes, 171 Church Street, Suite 270, P.O. Box 1512, Charleston, South Carolina, (803) 722-0033.

Source: David Ruben "Motherhood on Trial" *Parenting* June/July 1990.

State v. Griffin, Arrest Warrants # C569255 and C569256 (October 10, 1989). Lori Griffin, an African-American woman, was charged in Charleston with possession of cocaine and

distribution of cocaine to a person under eighteen. She was arrested in her ninth month of pregnancy after allegedly taking cocaine and going into false labor. She was immediately sent to jail and remained there for two to three weeks after her arrest.

Contact: Patricia A. Kennedy, attorney for defendant, Gibb & Holmes, 171 Church Street, Suite 270, P.O. Box 1512, Charleston, South Carolina, (803) 722-0033; Michael O'Connor, 2114 Melbourne Avenue, North Charleston, South Carolina 29405, (803) 740-5750.

State v. Williams. Patricia Williams from Greenville, was charged with criminal neglect when her baby tested positive for cocaine. The child was placed in a foster home. The Department of Social Services later found the child neglect report to be unfounded.

Contact: Margaret Mills, Federal Station Drawer 10193, 202 Lavinia Avenue, Greenville, South Carolina 29601, (803) 242-3039.

State v. Taylor. Tanya Taylor was arrested in Charleston in September of 1989, after her baby tested positive for cocaine at labor. A detective stood at the hospital room door and the Medical University of South Carolina hid the infant under a pseudonym. Taylor was sent to jail while still recovering from her episiotomy. The Department of Social Services took the child and after a home study was done the baby was returned. Taylor agreed to certain conditions in exchange for dropping criminal charges.

Contact: Ashley Pennington, Deputy Public Defender, P.O. Box 72065, Charleston, South Carolina 294 15-2063.

State v. Woolery. Candice Woolery was charged in August of 1989 with criminal negligence to which she pled guilty.

Contact: Steve Bates, ACLU of South Carolina, Suite 104 Middleburg Plaza, 2712 Middleburg Drive, Columbia, South Carolina 29204, (803) 799-5151.

State v. Doe, Doe, a white woman, was travelling to Georgia when she went into labor in Greenville. The day Doe and the infant were to be released from the hospital, the baby was taken by Child Protective Services. Doe was arrested the next day in her hotel room for child neglect; the authorities told Doe that cocaine had been found in the baby's urine. The infant was placed in foster care.

Contact: Margaret Mills, Federal Station Drawer 10193, 202 Lavinia Avenue, Greenville, South Carolina 29601, (803) 242-3039.

State v. Graffled. Betty and Melvin Graffied, of Greenville, were arrested in Greenville in the Fall of 1989 for criminal neglect of their daughter and granddaughter. They are parents of a minor who allegedly used cocaine while pregnant. There is no indictment as yet.

Contact: Ned Miller, Assistant Public Defender, P.O. Box 10345, Greenville, South Carolina 29603, (803) 232-5832.

State v. Doe

Contact: Richard Warder, 15 Primrose Street, Greenville, South Carolina 29601, (803) 271-9955.

State v. Singleton. Laverne Singleton was arrested in Charleston and charged with criminal abuse or neglect. Allegedly she had had no prenatal care and had been arrested for some illegal activity involving food stamps. She delivered her child prematurely and the infant tested positive for cocaine. Ms. Singleton was put in jail the day after giving birth and was separated from her child for two weeks. The child was returned to its mother from foster care by the judge pending a Department of Social Services home study. Ms. Singleton is required to get treatment, testing, and monitoring.

Contact: Michael O'Connell, Public Defender's Office 2114 Melbourne Avenue, North Charleston, South Carolina 29405; Don Clark, Box 893, 45 Broad Street, Charleston, South Carolina, (803) 577-6726.

State v. Powell. Sandra Powell was arrested in Charleston.

Contact: Bobby Howe (803) 723-1661.

State v. Doe

Contact: Sally Young (803) 242-4228.

State v. Brown

Contact: Public Defender.

State v. Barr

Contact: Public Defender.

State v. Gathers

Contact: Bruce Marshall, Public Defender.

State v. Knight

Contact: Public Defender.

State v. Anderson

Contact: Jana Salinger, Public Defender.

State v. Whitlock

Contact: Jana Salinger, Public Defender.

State v. Bruce. Marcella Denice Bruce was arrested in Greenville on August 18, 1989. She was charged with felony criminal neglect.

State v. Woody. Susan Woody was arrested on August 17, 1989 and charged with neglect.

State v. Ross. Theresa Denise Ross, a white woman, was arrested in Greenville on September 14, 1989 and she was charged with child neglect. Opiates were found in Ross' urine at labor and the baby was allegedly born addicted. The Department of Social Services wants a conviction in order to terminate parental rights. Ross was indicted for criminal child neglect on October 10, 1990 after Spartanburg County Chief magistrate, Edward H. Overcash, Jr. ruled that child neglect can be applied to the case of a substance exposed newborn.

Contact: Billy Hahs, Office of the Public Defender, Spartanburg County Courthouse, Spartanburg, South Carolina 29301.

Source: Martin Melendy, "Addicted Newborn Case Sent to Grand Jury," *Spartanburg Herald Journal*, October 19, 1990 at C1, C2.

State v. Tolliver. Rosena Tolliver refused court-appointed counsel and pled guilty to child neglect after her infant tested positive for cocaine at birth. Tolliver was sentenced to ten years imprisonment.

Contact: Ashley Pennington, Deputy Public Defender, P.O. Box 72065, Charleston, South Carolina 294 15-2065.

Source: Ceci Connoly, "Judge Sets Privacy Right for Pregnant Women," *Spartanburg Herald Journal*, October 21, 1991.

SOUTH DAKOTA

State v. Christenson, No. CR1. 90- (S.D. Cir. Ct. March 12, 1990). Roberta Christenson, a twenty-eight year-old Native American woman, was sentenced to six months in jail for giving birth to a baby with cocaine in its bloodstream. Christensen gave birth prematurely after being severely beaten by her boyfriend and allegedly using cocaine. When hospital tests indicated that Christensen's infant had traces of cocaine in its system, the baby was taken from her and she voluntarily entered a treatment program. Christensen was extremely successful and had been drug and alcohol free for seven months when she was arrested in March, 1990, and charged with contributing to the dependency of a minor and ingestion of a toxic substance. On the advice of her attorney Christensen pled guilty to the ingestion charge.

Magistrate Judge Joseph Neiles, indicating that he wanted to "send a strong message" to other pregnant addicts, sentenced Christensen to the maximum possible sentence despite evidence of her rehabilitation. The judge emphasized that Christensen had made one unsuccessful attempt to complete a treatment program before satisfactorily completing a second program, and also noted that the defendant had "from time to time been uncooperative" with social service workers. Judge Neiles also denied Christensen visitation with her children, saying that he didn't "really intend to get in the way of getting you back together with your child if that is appropriate; but . . . I am not convinced that that is appropriate." Christensen's child is still in foster care. Her attorneys plan to appeal the visitation ruling.

On May 10, 1990, Christensen was arrested again after police officers found her with her baby at a motel where they (the police) were making a drug arrest. Christensen was seen going in and out of two rooms where they seized \$12,000 in cash; three-quarters of a gram of cocaine, and a small amount of marijuana. The state is alleging that Christensen is in violation of the terms of her sentence, which requires her to give urinalysis samples to the Department of Social Services and the Court.

Source: Sara Rios, Center for Constitutional Rights, (212) 614-6464; Professor Kathleen Corley, Sioux Falls College, 1501 South Prairie, Sioux Falls, South Dakota 57105, (605) 332-7639; Steve Binger, attorney for the defendant, (605) 336-8234.

South Dakota ACLU has reported that Tribal Courts have been incarcerating pregnant women for drinking while pregnant. Judge Robert GreyEagle is the main proponent of this tactic. Judge GreyEagle holds court at Pineridge Reservation in Pineridge, South Dakota.

TEXAS

State v. Rodden, No. 0373625R (Dist. Ct. for Tarrant County filed June 1, 1989). Radeana Love Rodden, a twenty-six year-old white woman from Tarrant County, was indicted on a felony charge for injury to a child when her baby was born allegedly addicted to cocaine. The charges were dismissed when officials learned that Rodden was taking medically prescribed methadone, and it was thus unclear whether the infant's withdrawal was caused by legal or illegal drugs.

Contact: B.C. Cornish, Fort Worth, Texas, (817) 870-9159.

Source: Selwyn Crawford, "Legal System Grapples With Newborn Addicts," *Dallas Morning News*, July 19, 1989 at 1A.

State of Texas v. Jackson, No. 563222 (Harn's Cty. Dist. Ct. filed May 17, 1990); *appeal docketed*, No. 14-91-00634-CR (Tex. Ct. App. March 1992). Traci Jackson, an eighteen yearold African-American woman, was indicted for possession of cocaine and using a deadly weapon after drug tests on her stillborn infant showed traces of cocaine. The prosecutor, however, dropped the deadly weapon charge mid-trial. Jackson was convicted of possessing cocaine based

on the positive drug test on her stillborn infant and was sentenced to twelve years imprisonment. The conviction is on appeal.

Contact: Mary Wyckoff, ACLU Southern Regional Office, 44 Forsyth Street, NW, Suite 202, Atlanta Georgia 30303, (404) 523-2721; Lynn Paltrow ACLU Reproductive Freedom Project, 132 W. 43rd Street, New York, New York 10036 (212) 944-9800; Alexander Bunin (713) 880-9900 and Bruce Griffiths (713) 666-7700, attorneys for defendant.

Source: John Makeig, "Cocaine Found in Dead Baby," *Houston Chronicle*, May 18, 1990 at 25A.

VIRGINIA

Commonwealth v. Smith, No. CR91-05-4381 (Franklin Cty Cir. Ct. September 23, 1991). Britta C. Smith, a twenty-four year-old African-American woman, was prosecuted under the state's recently amended Felony Child Neglect statute. The statute makes criminal the causing of serious injury to a child under eighteen years of age. Included within the definition of "serious injury" is "forced ingestion of dangerous substances." A false labor led Ms. Smith to the local hospital where she confided in her doctor that she had been using crack. The doctor notified the Department of Social Services which proceeded to appoint a Guardian Ad Litem who, in turn, prodded the local prosecutor's office to initiate this proceeding. Attorneys for Smith filed a motion to dismiss and won. Judge Davis concluded that the legislature did not intend to include fetuses within the statute's purview or to apply the statute to prenatal conduct by a pregnant woman. No appeal may be taken under Virginia law.

Contact: Catherine Albisa and Lynn Paltrow, ACLU Reproductive Freedom Project, 132 W. 43rd Street, New York, New York 10036, (212) 944-9800; Steven Pershing, Virginia ACLU, 6 N. 6th Street, Suite 400, Richmond, Virginia 23219-2419, (804) 649-8140.

Commonwealth v. Turner, No. 91-054382 (Franklin Cty. Cir. Ct., Sept 23, 1991). Sabrina Turner, a twenty year-old white woman, was charged with felony child neglect when she allegedly gave birth to a child with traces of cocaine in its bloodstream. These charges were filed by the same Commonwealth attorney as those against Britta Smith and charges were dismissed against Turner based on the arguments made in the *Smith* case. No appeal may be taken under Virginia law.

Contact: Michaux Raine, III, Esq., Raine & Perdue, 106 Main Street, Rocky Mount, Virginia 24151, (703) 483-9269.

Commonwealth v. Wilcox, No. A-44116-01 (Norfolk Juvenile and Domestic Relations District Court, October 9, 1991). Toni Wilcox, a twenty-three year-old African-American woman, was charged with felony child abuse for ingesting cocaine during her pregnancy.

The charges were reduced to a misdemeanor, Virginia Code § 18.2-37 1, which prohibits contributing to the delinquency or abuse of a child. The charges were dismissed because the Virginia General Assembly did not intend this statute to encompass the facts of this case. No appeal may be taken under Virginia law.

Contact: Barton Daniels, 431 Grandby Street, Norfolk, Virginia 23510, (804) **624-5858**.

WASHINGTON

State v. Housden. Kerry D. Housden, a thirty-three year-old, was arrested for delivery of drugs to her unborn child and possession of cocaine after she allegedly went to the Brewster Hospital suffering from an overdose. Still pregnant, Housden was put in jail until she was appointed court counsel.

Contact: Scot Stuart, defense attorney, 243 Pine Street, W. Okaugan, Washington 98840, 509-422-0800 or Catherine Albisa, ACLU Reproductive Freedom Project, 132 W. 43rd Street, New York, New York 10036, (212) 944-9800.

WYOMING

State v. Pfannenstiel, No. 1-90-8CR (County Ct. of Laramie, WY, complaint filed January 5, 1990). Diane Pfannenstiel, a twenty-nine year-old white woman who was pregnant, entered a hospital for treatment for injuries inflicted by her abusive husband and was tested for alcohol, arrested, jailed, and charged with criminal child abuse for endangering her fetus. Pfannenstiel, the mother of two children, had been married three years to a man who abused her before she finally walked out in January. When she left, Pfannenstiel had bruises on her neck, arms, and back from her husband's beatings and she was concerned that her fetus might have been injured. Pfannenstiel was arrested while she waited in the hospital emergency room. On February 1, 1990, the court found no probable cause to continue the case.

Contact: Mary Elizabeth Galvan, attorney for the defendant, (307) 745-7091.

Source: Charles Levendosky, "Turning Women into 2-Legged Petri Dishes," *Star-Tribune*, January 21, 1990 at A8.

State v. Osmus, 276 P.2d 469 (Wyo. 1954). Over thirty-five years ago, in the context of an infanticide case, a Wyoming woman was charged with endangering the life of her fetus under the state child abuse statute. The Wyoming Supreme Court found that the statute was not intended to apply to prenatal conduct and dismissed the charges.

SUMMARY OF WRITTEN COURT OPINIONS AND ORDERS

A. State Supreme Court Decisions

State of Wyoming v. Osmus, 276 P.2d 469 (Wyo. 1954) (reversing both manslaughter and criminal neglect convictions of young woman whose infant was found dead a few days after its birth, finding insufficient evidence of the live birth necessary to support the manslaughter charge, and concluding that the criminal neglect statute could not be applied to the woman's prenatal conduct).

2. *State v. Gray*, No. 90-1986 (Ohio February 12, 1992) (a divided panel with the majority affirming the dismissal of charges against a woman who was addicted to cocaine while pregnant, finding that the plain meaning of Ohio's child endangerment statute does not extend to fetuses or prenatal conduct).

B. Appellate Court Decisions

Reyes v. Superior Court, 75 Cal. App. 3rd 214 (1977) (unanimous panel opinion holding that California's felony child endangering statute did not refer to an unborn child or include a woman's prenatal conduct) (no further appeal taken).

2. *People v. Hardy*, No. 128458, (Mich. Ct. App., April 1, 1991) (unanimous ruling that Michigan did not intend its statute prohibiting delivery of cocaine to children to apply to pregnant drug users), *appeal denied*, No. 9 1-346 (Mich. Sup. Ct. July 16, 1991).
3. *Johnson v. State*, 578 So.2d 419 (Fla. Fifth D.C.A., 1991) (a divided panel with the majority finding that Florida's statute prohibiting delivery of controlled substances to a minor may be applied to the transfer of a cocaine metabolite through the umbilical cord after the baby is born but before the cord is severed. The court certified the question to the Florida Supreme Court, and the Supreme Court accepted the case for review No. 77,831 Briefing Schedule (May 7, 1991); oral argument was held on March 6, 1992).
4. *State v. Gethers*, 585 So.2d 1140 (Fla. Fourth D.C.A. 1991) (dismissing charges because application of Florida's child abuse law to a pregnant woman who uses drugs misconstrues the effect of the law and violates Florida's public policy of preserving family life).

5. *Welch v. Commonwealth*, No. 90-CA-1189-MR (Ky. Ct. App., February 7, 1992) (a divided panel reversed criminal child abuse conviction of woman who allegedly used drugs during her pregnancy because the statute does not make any reference to a fetus and the court refused to presume a legislative intent to expand the class of persons who could be treated as victims under the statute).
6. *State v. Luster* A92A0233 and *Luster v. State*, No. A92A04 15, slip op. (Ga. Ct. App. April 23, 1992) (unanimous ruling affirming the trial court's dismissal of drug delivery charges on the grounds that Georgia did not intend its drug delivery statute to apply to the transfer of cocaine from a pregnant woman to her fetus).

C. Trial Court Decisions

- People v. Stewart*, No. M508197 (San Diego Mun. Ct. February 26, 1987) (finding criminal child support statute that explicitly covered "a child conceived but not yet born" was not intended to impose additional legal duties on pregnant women) (no appeal taken).
2. *State v. Andrews*, No. JU 68459 (Ohio C.P. June 19, 1989) (holding that Ohio's child endangering statute was not intended to apply to any other situation than that of a living child placed at risk by actions that occurred after its birth).
 3. *Commonwealth v. Pellegrini*, No. 87970, slip op. (Mass. Sup. Ct., October 15, 1990) (the right to privacy and principles of statutory construction, due process of law, and separation of powers do not permit extension of Massachusetts' drug delivery statute to women who give birth to substance exposed newborns) (No appeal taken).
 4. *State v. Carter* No. 89-6274, slip op. (Fla. Cir. Ct., Escambia County, July 23, 1990), (dismissing charges of delivery of an illegal substance because as a matter of law defendant could not at the time she ingested cocaine have had the intent to deliver cocaine through the umbilical cord to a person. The Trial Court did not dismiss the child abuse and possession charges), *appeal docketed*, No. 90-226 1 (Fla. App. 1 Dist. App., July 23, 1990).
 5. *State v. Bremer*; No. 90-32227-FH (Mich. Cir. Ct., Muskegon County, January 31, 1991) (dismissing drug delivery charges on principle of statutory construction, due process and privacy, holding that interpreting the drug delivery law to cover

ingestion of cocaine by a pregnant woman would be a radical incursion upon existing law), *appeal docketed*, No. 137-619 (Mich. Ct. App., February 5, 1991).

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6. *State v. Inzar*, No. 90CR56960, 90CRS6961 (Gen. Ct. of Justice, Superior Court Div., Robeson Cty., N.C., April 9, 1991) (dismissing charges under statute prohibiting assault with a deadly weapon and delivery of a controlled substance against a pregnant woman who allegedly used crack during her pregnancy, because a fetus is not a person within the meaning of the statutes), *appeal dismissed*, No. 91-15C778, slip op. (N.C. Ct. App. August 30, 1991).
7. *People v. Cox*, No. 90-53454 FH, slip op. (Mich. Cir. Ct. Jackson County, July 9, 1990) (granting motion to dismiss, finding that Michigan's drug delivery statute was not intended to regulate prenatal conduct nor would prosecution be in the best interest of public health, safety, and welfare), *appeal docketed*, No. 13 1-999 (Mich. Ct. App., August 21, 1990).
8. *Commonwealth v. Smith*, No CR-91-05-4381, slip op. (Va. Cir. Ct., Franklin County, September 16, 1991) (granting motion to dismiss finding that Virginia's child abuse statute was not intended to apply to fetuses or prenatal conduct) (no appeal taken).
9. *Commonwealth v. Turner*, No. 9 1-054382, slip op. (Va. Cir. Ct., Franklin County, September 16, 1991) (granting motion to dismiss finding that Virginia's child abuse statute was not intended to apply to fetuses or prenatal conduct) (no appeal taken).
10. *Commonwealth v. Wilcox*, No. A-44116-01 (Va. Norfolk Jur. & Dom. Rel. Dis. Ct. October 9, 1991) (dismissing misdemeanor child abuse charges against a woman who allegedly used cocaine during her pregnancy finding that its application to these facts would extend the statute by means of creative construction to encompass acts not intended by the General Assembly) (no appeal taken).
11. *People v. Morabito*, (N.Y. Mun. Ct. January 28, 1992) (dismissing endangering welfare of child charges against woman who allegedly smoked cocaine during her pregnancy because legislature has excluded unborn children from the statute, and finding that interpreting "child" to include a fetus would deny defendant her constitutional right to due process).

**PUBLIC POLICY STATEMENTS CONCERNING PROSECUTIONS
OF PREGNANT WOMEN**

American Medical Association . "Criminal sanctions or civil liability for harmful behavior by the pregnant woman toward her fetus are inappropriate... Therefore be it... resolved that the AMA oppose legislation which criminalizes maternal drug addiction.. .American Medical Association Board of Trustees Report, *Legal Interventions During Pregnancy*, 264 J.A.M.A. 2663 (1990).

American Academy of Pediatrics . "The public must be assured of nonpunitive access to comprehensive health care which will meet the needs of the substance-abusing pregnant woman and her child." American Academy of Pediatrics, Committee on Substance Abuse, *Drug-Exposed Infants*, Pediatrics, 639 (1990).

American Nurses Association . "ANA opposes any legislation that focuses on the criminal punishment of the mothers of drug-exposed infants. ANA recognizes alcohol and other drug problems as treatable illnesses. The threat of criminal prosecutions is counterproductive in that it prevents many women from seeking prenatal care and treatment for their alcohol and other drug problems." ANA, New Position Statement, *Opposition to Criminal Prosecution of Women for Use of Drugs While Pregnant* (1991).

American Public Health Association . "The APHA believes that no punitive action should be taken against pregnant users of illicit drugs when no other illegal acts, including drug-related offenses, have been committed." APHA Policy Statement No. 9020, *illicit Drug Use by Pregnant Women*, 8 Am. J. Pub. Health 240 (1990).

American Society of Addiction Medicine Inc., "The imposition of criminal penalties solely because a person suffers from an illness is inappropriate and counterproductive.

Criminal prosecution of chemically dependent women will have an overall result of deterring such women from seeking both prenatal care and chemical dependency treatment, thereby increasing rather than preventing, harm to children and society as a whole." ASAM, Inc., Public Policy Statement, *Chemically Dependent Women and Pregnancy* (1989).

Center for the Future of Children . "A woman who uses illegal drugs during pregnancy should not be subject to special criminal prosecution on the basis of allegations that her illegal drug use harms the fetus. Nor should states adopt special civil commitment provisions for pregnant women who use drugs." Center for the Future of Children, *Recommendations*, 1 *The Future of Children* 8 (1991).

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Coalition on Alcohol and Drug Dependent Women and Their Children . "The coalition believes that the interests of women and their children are best served through the health care and social service systems. Women should not be singled out for punitive measures based solely on their use of alcohol and other drugs during pregnancy." Coalition on Alcohol and Drug Dependent Women and Their Children, *Statement of Purpose* (January 1990).

The March of Dimes . "The March of Dimes..., opposes the criminalization of substance abuse by pregnant women and advocates treatment on demand for such women." March of Dimes, News Release, *March of Dimes Opposes Criminal Sanctions Against Pregnant Women Who Use Drugs* (December 1990).

National Association for Perinatal Addiction Research and Education . Criminalization of prenatal drug use "will deter women who use drugs during pregnancy from seeking the prenatal care which is important for the delivery of a healthy baby... The prospect of criminal prosecutions..., also places health care practitioners in a conflict position, forcing them to choose between maintaining their patient's confidentiality or reporting them, ultimately to the police, a position many doctors and nurses find intolerable ...[these women] do not want or intend to hurt their unborn children by using drugs. But, they need help, not threats, to overcome their problems ...The key to intervention will be

access to health care for high risk women, not the threat of criminal prosecution." NAPARE Policy Statement, Policy Statement No. 1 *Criminalization of Prenatal Drug Use: Punitive Measures Will Be Counter-Productive* (July 1, 1990).

National Association of Public Child Welfare Administrators . "If a jurisdiction elects to mandate drug testing of pregnant women, such testing must be universal (i.e., testing would be conducted on all pregnant women and newborns at all medical facilities and not targeted at specific populations.) Test results should be used only to identify families in need of treatment and make referrals. Positive test results should not be used for punitive action." NAPCWA, *Guiding Principles For Working With Substance-Abusing Families and Drug-exposed Children: The Child Welfare Response* (January 1991).

National Council on Alcoholism and Drug Dependence . "[A] punitive approach is fundamentally unfair to women suffering from addictive diseases and serves to drive them away from seeking both prenatal care and treatment for their alcoholism and other drug addictions. It thus works against the best interests of infants and children... Moreover, there is increasing evidence of disparities regarding the screening and reporting of positive toxicologies of newborns, with women of color, poor women and women receiving care in public hospitals having the greatest likelihood of being subject to drug testing and subsequent reporting to legal authorities." NCADD, Policy Statement, *Women, Alcohol, Other Drugs and Pregnancy*, (April 29, 1990).

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Southern Legislative Summit on Healthy Infants and Families . "States should adopt, as preferred methods, prevention, intervention, and treatment alternatives rather than punitive actions to ameliorate the problems related to perinatal exposure to drugs and alcohol." SLSHF, Sponsored by the Southern Regional Project on Infant Mortality, Policy Statement, subsection *High Risk Pregnancies! Substance Abuse* (October 4-7, 1990).

STATE PROSECUTION CHART

STATES	CASES
Alabama	None
Alaska	<i>State v. Grubbs</i>
Arizona	None
Arkansas	None
California	<i>Reyes v. Superior Court</i> <i>People v. Stewart</i> <i>People v. Juarigue</i>

Colorado	None
Connecticut	<i>State v. Baez</i>
Delaware	None
Florida	<i>State v. Johnson</i>
	<i>State v. Hudson</i>
	<i>State v. Gethers</i>
	<i>State v. Neison</i>
	<i>State v. Carter</i>
	<i>State v. Dawson</i>
	<i>State v. Copeland</i>
	<i>State v. Blankenship</i>
	<i>State v. Lindsey</i>
	<i>State v. Schroeder</i>
	<i>State v. Davis</i>
	<i>State v. Thrower</i>
	<i>State v. Forde</i>
	<i>State v. Rivers</i>
	<i>State v. Johnson</i>
	<i>State v. Jones</i>
	<i>State v. Scott</i>
	<i>State v. Brown</i>
	<i>State v. Head</i>
	<i>State v. Hollingsworth</i>
	<i>State v. Richardson</i>
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Coney
Tanner
Luster
Jackson
 Illinois Indiana
 Iowa
 Kansas
 Kentucky
 Louisiana
 Maine
 Maryland
 STA T1~

 Florida, cont'd
 Georgia

(~A~1~)

Hawaii

State v. McCoivey

State v. Hardy

State v. Rodgers

State v. Watson

State v. Jerez

State v. Black

State v. Maxwell

State v. Lee

State v. Gorman

State v. Jenkins

State v. Perdue

State v. Williams

State v. Whitfield

State v.

State v.

State v.

State v.

None

State v. Davis

Idaho

State v. Green

State v. Yurchak

None

None

Commonwealth v. Wekh

None

None

None

Massachusetts

Commonwealth v. Levy Commonwealth v. Pellegrini

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STATES

Michigan

Minnesota

Mississippi

Missouri

Montana

Nebraska

Nevada

New Hampshire

New Jersey

New Mexico

New York

North Carolina

North Dakota

Ohio

Oregon

Pennsylvania

CASES

People v. Hardy
People v. Cox
People v. Bremer

None

State v. Hart

State v. Pinder

None

None

State v. Bloxham
State v. Peters
State v. Ratclzffe
State v. Flintroy
State v. Sutton
State v. Dutton

None

None

None

People v. Morabito

State v. Inzar

State v. Greywind

Cox v. Court of Common Pleas
State v. Andrews
State v. Gray
State v. Edwards

None

None

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~TAT1-Q
Rhode Island

CASES

None

South Carolina

South Dakota

Tennessee

Texas

Utah

Vermont

Newspapers report more than eighty-seven women prosecuted and at least forty-three threatened with prosecution

State v. Young

State v. Gnffin

State v. Williams

State v. Taylor

State v. Wooleiy
State v. Doe
State v. Graffied
State v. Doe
State v. Singleton
State v. Powell
State v. Doe
State v. Brown
State v. Bair
State v. Gathers
State v. Knight
State v. Anderson
State v. Whitlock
State v. Bruce
State v. Woody
State v. Ross
State v. Tolliver

State v. Christenson

None

State v. Rodden
State v. Jackson

None

None

Commonwealth v. Smith
Commonwealth v. Turner
Commonwealth v. Wilcox
Virginia
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STATES

Washington

West Virginia

Wisconsin

Wyoming

Washington, D.C.

TERRITORIES

Guam

Puerto Rico

Virgin Islands

CASF~

State v. Housden

None

None

State v. Pfannenstiel State v. Osmus

None

CAS1~

None

None

None

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