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A WOMAN'S RIGHTS: PART 2 **The Feticide Playbook, Explained**

BY THE EDITORIAL BOARD

Katherin Shuffield was five months pregnant when she was shot in 2008. She survived, but she lost the twins she was carrying. The gunman, Brian Kendrick, was charged with murdering them.

Bei Bei Shuai was eight months pregnant and depressed when she tried to kill herself in 2010. She was rushed to the hospital and survived, but her baby died a few days later. Ms. Shuai was charged with murder.

Both cases are tragedies. But are Ms. Shuai and the man who shot Ms. Shuffield really both murderers?

Ms. Shuai is one of several hundred pregnant women who have faced criminal charges since 1973 for acts seen as endangering their pregnancies, according to National Advocates for Pregnant Women, which has completed the only peer-reviewed study of arrests and forced interventions on pregnant women in the United States. In many cases, the laws under which these women were charged were ostensibly written to protect them. Ms. Shuai, for instance, was charged under a law that was stiffened after the attack on Ms. Shuffield.

These criminal statutes are results of a tried-and-true playbook, part of a strategic campaign to establish fetal rights, reverse *Roe v. Wade* and recriminalize abortion. The sequence begins with anti-abortion groups seizing upon a tragic case in which a woman loses her pregnancy because of someone else's actions. Public outcry then helps to strengthen a state feticide law that recognizes such lost pregnancies as murder or manslaughter. It's a backdoor way of legally defining when life begins.

Here's what that playbook looked like in Indiana, the first state to convict a pregnant woman of feticide:

Feticide laws redefine when life begins

In March, Indiana expanded its feticide law, originally passed in 1979, to include pre-viable fetuses — those that

would not survive outside of the womb. Indiana Right to Life applauded the passage of the bill, S.B. 203. The group's president, Mike Fichter, called for "doubling down" on efforts to "dismantle *Roe*" and said, "The recognition of the worth of a child killed during a felony further places *Roe v. Wade* on a collision course with law and history."

Much like Mr. Fichter's statement, many feticide laws use carefully chosen language to legitimize fetal rights, providing grounds for the state to intervene and control pregnant women for the sake of the fetus.

Twenty-nine states now have feticide laws that recognize the ending of any stage of pregnancy, from fertilization onward, as equivalent to murder, except in cases of legal abortion.

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Nine states recognize feticide only in later periods of a fetus's development, such as when it could survive outside the womb. In 2004, Congress passed the first federal statute to give victim status to fertilized eggs, embryos and fetuses, in cases of violent crime against pregnant women.

These laws have meant that pregnant women who were addicted to drugs, were suicidal, were in car accidents, fell down stairs, delivered at home, refused C-sections or went about their lives in ways that were perceived to harm their pregnancies have been detained and jailed for a variety of crimes, including murder, manslaughter, neglect, criminal recklessness and chemical endangerment.

Feticide laws embolden prosecutors

The reason lawmakers often make an exception to prevent pregnant women themselves from being charged under fetal protection laws is to win broader support for the measures. Staunch conservatives can pass laws that are said to protect "unborn life" while more centrist lawmakers can think they're protecting pregnant women from legal overreach.

But such laws nevertheless often put the rights of pregnant women at risk. Take Texas, for instance: In 2003, three weeks after an expansive fetal protection act passed, the Potter County district attorney, Rebecca King, used the law to begin pursuing pregnant women who used narcotics, even though this was clearly not the Legislature's intent.

Women of color and the poor are immediately targeted. In reality, women charged with pregnancy-related crimes are often poor and nonwhite, without adequate access to education, health care and job opportunities. About seven out of 10 women charged cannot afford a lawyer to defend them, according to National Advocates for Pregnant Women.

Black women made up 52 percent of the cases recorded from 1973 to 2005 by National Advocates for Pregnant Women. Many of these women were arrested during the crack epidemic of the 1980s and 1990s.

The punitive response to pregnant black women who used cocaine set a standard for treating addiction while pregnant as a criminal matter, rather than a public health concern. In recent years, the opioid epidemic — and the spike in methamphetamine addiction before it — has begun to change the racial makeup of those arrested, since white Americans more often use both drugs.

All of this is avoidable

Eight of the 12 states that do not have feticide laws instead require harsher punishment for crimes against pregnant women than against other victims. These states preserve women's rights by considering harm to a fetus as harm to the pregnant woman.

In Colorado, after the murder of a pregnant woman, state legislators chose not to adopt a law that would treat the fetus as a victim separate from the pregnant woman, the approach sought by anti-abortion groups. Instead, they passed a bill in 2003 that punishes anyone who injures a woman in a way that harms her pregnancy, while simultaneously declining to recognize fetal personhood. This crime of "unlawful termination of a pregnancy" carries a maximum punishment of 32 years in prison.

Since then, Colorado voters and legislators have rejected fetal homicide bills multiple times, arguing that the law already provides justice and recognition for the loss of a

fetus while affirming a woman's right to determine her own pregnancy and health care.

Anti-abortion activists have patiently been working to pass fetal protection laws not only in hopes of establishing that a fetus is a person entitled to full rights, but also to create a vehicle for overturning *Roe v. Wade*. Many of these activists are hoping that the new conservative majority on the Supreme Court is prepared to take that step.

Alabama, which has prosecuted more pregnant women in the name of fetal protection than almost any other state in the nation, last month became the only state to amend its Constitution to give "unborn children" the right to life, a guarantee that conflicts with the legal protections enshrined in *Roe*.

Alabama and other states would better serve the interests of children by putting less energy into manufacturing legal fights and more into ensuring the dignity and protection of women.