



What The Tennessee Law Permitting Arrests of Pregnant Women Actually Says

Under Tennessee's law, women can be punished for the crime of fetal assault if they intentionally, knowingly, or recklessly (no intent needed) cause bodily injury to eggs, embryos, or fetuses as a result of an "unlawful act" or an "unlawful omission." But what is an unlawful omission? Is it refusing a doctor's recommendation of cesarean surgery? See e.g. [USF obstetrician threatens to call police if patient doesn't report for c-section](#) See also cases reported in our study: ["Arrests of and Forced Interventions on Pregnant Women in the United States, 1973– 2005: Implications for Women's Legal Status and Public Health."](#)

Moreover, because it is not in fact *unlawful* to use or be addicted to controlled substances in Tennessee (possession not use is what is criminalized), the law also had to be amended to make it a special crime for pregnant women to use narcotics so that they would be covered by the expanded fetal assault law.

The law will sunset (go out of effect) on July 1, 2016 if it is not reenacted.

The statute adds the following language in red to the "Fetus as Victim" provisions of the assault sections of the criminal code.

T.C.A. § 39-13-107. Fetus as victim.

(a) For the purposes of this part, "another," "individuals," and "another person" include a human embryo or fetus at any stage of gestation in utero, when any such term refers to the victim of any act made criminal by this part.

(b) Nothing in this section shall be construed to amend the provisions of § 39-15-201, or §§ 39-15-203 -- 39-15-205 and 39-15-207. [Provisions related to abortion.]

*(c)(1) Nothing in subsection (a) shall apply to any **lawful act or lawful omission** by a pregnant woman with respect to an embryo or fetus with which she is pregnant, or to any lawful medical or surgical procedure to which a pregnant woman consents, performed by a health care professional who is licensed to perform such procedure. [The crimes here are not limited to assault under § 39-13-101 and therefore carry penalties higher than a year.]*

(2) Notwithstanding subdivision (c)(1), nothing in this section shall preclude prosecution of a woman for an assault under § 39-13-101 for the illegal use of a narcotic drug while pregnant, if her child is born addicted to or harmed by the narcotic drug and the addiction or harm is a result of her illegal use of a narcotic drug taken while pregnant.

(3) It is an affirmative defense to a prosecution permitted by subdivision (c)(2) that the woman actively enrolled in an addiction recovery program before the child is born,

remained in the program after delivery, and successfully completed the program, regardless of whether the child was born addicted to or harmed by the narcotic drug.

This Amendments make a series of Tennessee crimes including but not limited to "Assault," "Aggravated Assault" and "Reckless Endangerment" applicable to pregnant women in relationship to the eggs, embryos, or fetus she carries and sustains.

39-13-101. Assault.

(a) A person commits assault who:

- (1) Intentionally, knowingly or recklessly causes bodily injury to another;

As a result of T.C.A. § 39-13-107 the law now should be read this way:

39-13-101. Assault.

(a) A **pregnant woman** commits assault who:

- (1) Intentionally, knowingly or recklessly causes bodily injury to **an, embryo or fetus while engaged in any [un]lawful act or [un]lawful omission;**

39-13-102. Aggravated assault.

(a) A person commits aggravated assault who:

- (1) Intentionally or knowingly commits an assault as defined in § 39-13-101 and:
 - (A) Causes serious bodily injury to another; or . . .

As a result of T.C.A. § 39-13-107 the law should now be read this way:

39-13-102. Aggravated assault.

(a) **A pregnant woman** commits aggravated assault who:

- (1) Intentionally or knowingly commits an assault as defined in § 39-13-101 and:
 - (A) Causes serious bodily injury to **an, embryo or fetus while engaged in any [un]lawful act or [un]lawful omission.**

39-13-103. Reckless endangerment.

(a) A person commits an offense who recklessly engages in conduct that places or may place another person in imminent danger of death or serious bodily injury.

(b) Reckless endangerment is a Class A misdemeanor; however, reckless endangerment committed with a deadly weapon is a Class E felony.

As a result of T.C.A. § 39-13-107 the law should now be read this way:

39-13-103. Reckless endangerment.

(a) A **[pregnant woman]** commits an offense who recklessly engages in conduct that places or may place **an embryo or fetus** in imminent danger of death or serious bodily injury **while engaged in any [un]lawful act or [un]lawful omission;**

(b) Reckless endangerment is a Class A misdemeanor; however, reckless endangerment committed with a deadly weapon is a Class E felony.