Should pregnant women be punished for behavior that could potentially harm the fetus?

The idea of punishing a pregnant woman for actions or inactions that could harm the fetus is a confusing one. There are many factors to consider, and many points of view that could be taken. The rights and freedoms of the mother and fetus need to be considered, as well as external factors. Two court cases are also presented in which women were punished for harm done to a fetus through drug use, though neither seems to prove that punishment was the best course of action.

A pregnant woman can be considered two patients or one. In the hospital and by the woman’s doctor, the woman is considered one patient until a live birth occurs and a birth certificate is issued. However, in some states, fetal death certificates can be issued when the fetus reaches a certain size or age. Also, in cases of the homicide of a pregnant woman, the criminal is often charged with double homicide. If the argument is made that the fetus is a separate patient, then it has certain rights. This is shown by fetal homicide laws that are in place in many states. These cover not only murder of the fetus but injuries or other harm caused. However, in 1999, the Unborn Victims of Violence act was passed, which includes exceptions for the mother and doctors, enforcing the woman’s right to have an abortion. This shows that the pregnant mother has rights of her own. The mother is not prohibited from obtaining legal substances like alcohol that are known to cause harm to the fetus, presumably because it is her right to use these substances.

To be able to punish the pregnant woman, we must be able to make a case that her actions really harmed the child. Unfortunately, if the fetus is born with some defect, it is very difficult to determine what caused it. Even for substances known to harm the fetus, there is no concrete data available as to how much of it is “too much.” Inherited defects could also be mistaken for defects caused by the mother’s behavior. We should also consider whether we can even punish the mother if there is no intent to harm. Much of the most severe damage done to a fetus by the mother’s use of drugs is done during the first trimester, before the woman knows that she is pregnant. She may not know that her actions are harmful. Addictions are powerful
diseases, and an expectant mother may not be able to escape one even if she tries. In one survey, 74% of pregnant women using drugs had experienced sexual abuse, and 70% had been abused in some form as adults. These women may see drugs as the safest route, because they are a form of self-medication, preventing them from doing even worse harm to themselves or the fetus.

Besides the mother and fetus themselves, there are other external factors that need to be considered. Poverty plays a big role in this discussion, as it can prevent women from receiving adequate medical care, education, or treatment for an addiction. In a 1989 study of New York City treatment programs, 67% refused pregnant women on Medicaid. In fact, the lack of treatment programs in itself is a large factor. In the same study, 54% of the programs refused any pregnant women!

All people have the right to privacy, including pregnant women. Requiring that doctors report drug abuse to law enforcement agencies would violate that privacy. Patients need to trust their doctor enough to tell them intimate details such as drug abuse or sexual history, and if the doctor will not be able to keep that information confidential, women will avoid seeking health care and possibly cause more harm to themselves and their fetuses than they would otherwise. However, the right to privacy is conditional. If a person is suspected of a crime, a certain amount of privacy is surrendered. If a woman causing harm to the fetus is a crime, then law enforcement has every right to know her medical history.

In South Carolina in 1999, a woman named Cornelia Whitner pled guilty to criminal child neglect for using cocaine in the third trimester of her pregnancy, after it was discovered in the baby’s bloodstream. She was sentenced to 8 years in prison and did not appeal. This court case should raise some important issues. Is the fetus able to be considered a child under the law? Is there a difference between a drug addict becoming pregnant, perhaps unintentionally, and a non-addict who is pregnant and decides to start using drugs? Why is cocaine more important than other substances? For instance, the leading cause of mental retardation in South Carolina is alcohol exposure before birth, but that is not normally prosecuted.

The Whitner case set a precedent for another South Carolina case in 2001, that of the state vs. McKnight. After delivering a stillborn child, McKnight tested positive for cocaine use. She was convicted of homicide by child abuse. Pathologists for the state testified that the cocaine had contributed to the death. However, similar amounts of cocaine had been non-lethal in other cases. McKnight also had syphilis and hyperthyroidism, which can be dangerous to an
unborn child. The child was also found to have two types of infections upon birth, funisitis and chorioamnionitis. Yet more questions are raised by this case. Does the causality need to be proven, or can the actions of the woman be prosecuted even if they didn’t harm the fetus? Also, what diseases or actions are able to be prosecuted? Surely an inherited condition like hyperthyroidism can’t be grounds for a criminal charge, but if a woman knows that she has syphilis and gets pregnant, is that worthy of prosecution?

In conclusion, it is difficult to determine how and when a pregnant woman would be punished for inflicting harm on the fetus. It is admirable to try to protect unborn children, but it may not be possible to do so without infringing on the rights of the mother.
References: