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

Bioengineering and Bioinformatics Summer Institute
Ethics Forum Presentation

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Should a pregnant woman be considered two patients or one?

- Until live birth occurs and birth certificate is issued, fetus is not officially a person
- However, fetal death certificates can be issued once fetus reaches certain size and age limit.
- Legal precedent for two people, which is explicitly demonstrated in cases of homicide.
Does the fetus have its own rights?

- 15 states (incl. PA) exercise fetal homicide laws at any stage of its development.
- 12 states implement fetal homicide laws at only certain stages of its development.
- 7 other states use these laws only in cases of miscarriages or abortions.
- Fetal Homicide Laws – also take into account harm done to fetus, not just death.

Does the mother have rights over her own body?

- In 1999, Unborn Victims of Violence act (which contains exceptions for mother, doctor, abortion) was passed.
- There are no explicit laws that state that a pregnant woman has prohibited access to substances such as alcohol.
Can we quantify how much of a substance is harmful?

- Hard to determine exactly what substance caused harm to the fetus
- Must define specific harmful levels
- No concrete data available
- Difficult to distinguish between genetic defects and the result of an addiction

Can you punish someone when there is no conscious intent to harm?

- Legal vs illegal substance use
- Damage done before a woman knows she is pregnant
- Ignorance that a behavior can endanger the fetus
- Lack of control over addiction
- Drug abuse to escape abusive situations
  - 74% of addicted pregnant women surveyed in one study had experienced sexual abuse
  - 70% physically abused as adults
How can we weigh in external factors?

- Poverty
  - In a 1989 study of NYC treatment programs, 67% refused pregnant women on Medicaid
- Access to medical care
- Availability of treatment programs
  - In the same study as above, 54% of programs refused any pregnant women
- Education
- Religion

Would punishment violate rights to privacy?

- Tension between law enforcement agencies and health care professionals (publishing of medical records and drug history)
  - Federal Drug Treatment Confidentiality Act
- Patient and Doctor trust
- Provided there is reason to suspect crime, privacy is surrendered
Whitner v. State of South Carolina

1996

Facts

- Cornelia Whitner pled guilty to criminal child neglect
- Baby was born with cocaine in system
- Ingested crack cocaine during third trimester
- Eight year sentence
- No appeal
Issues

- Is a fetus a child?
- Addicts that become pregnant vs. pregnant women who become addicts
- Treatment vs. Jail
- Leading preventable cause of retardation in SC is prenatal alcohol exposure
- Regardless precedent was set ie. McKnight V. South Carolina

McKnight v. South Carolina

2001
Case Basis

- In 2001 McKnight was convicted of the death of her stillborn child by "homicide by child abuse."
- She tested positive for cocaine after delivery.

Proving Causality

- Pathologists for the state testified that cocaine contributed to fetal demise
- Said that similar amounts of cocaine were non-lethal
- Certain conditions typical to cocaine miscarriage were not found.
- Other factors involved:
  - Syphilis
  - Hyperthyroidism
  - Funisitis (fetal condition)
  - Chorioamnionitis (fetal condition)
Questions

Does causality need to be proven, or should the actions themselves be prosecuted?

What diseases/actions should be prosecuted?

References