

**Pregnant
substance abusers
face challenges
and charges that
others don't**

Illustration © Joe Saxe

Pregnant, HOOKED & Booked

By Eileen Moon

Anna Smith (not her real name), a 32-year-old California resident, received some bad news on the day she was to leave the hospital where she had just given birth to a daughter. Traces of marijuana had been found in her placenta during routine hospital testing. The state immediately took custody of the child.

Had Anna Smith been a South Carolina resident, things

could have been much worse. She might well be serving a jail sentence right now.

That's what happened to Cornelia Whitner, 34. Six years ago, Whitner, a resident of Seneca, South Carolina, lost custody of her newborn son after hospital tests detected cocaine in his bloodstream.

Four days after the birth, she was arrested—one of more than 40 new mothers in South Carolina who were taken from their hospital beds by police to face charges of child neglect and abuse. She is now serving an eight-year prison sentence.

South Carolina is the only state in the union whose highest court has sanctioned the criminal prosecution of pregnant substance abusers under child abuse statutes. Although as many as 30 states have had similar

cases brought to their highest court, only South Carolina has upheld the legality of using child abuse statutes to prosecute women for their behavior while pregnant.

As state Attorney General Charlie Condon has said, "Every viable fetus is a fellow South Carolinian." In his prior role as a prosecutor in Charleston, Condon was the first to launch a legal attack on pregnant addicts.

"The attorney general has made his career prosecuting these women," said Lynn Paltrow, a reproductive rights attorney now affiliated with the Women's Law Project in New York City, noting that the only women targeted in Condon's initiative were economically disadvantaged and minority women. "He started arresting only black women, taking them out in chains and shackles, and not offering any treatment."

If South Carolina's aim is to end substance abuse through criminal prosecution, Paltrow says, they should be expanding their arrests to include all levels of society. They don't, she says, because the policy is inherently racist and elitist. "There is no question that there is an incredible targeting of race and class."

An attorney with the New York City-based Center for Constitutional Rights, a national, nonprofit, public-interest law firm, Paltrow fought Whitner's conviction all the way to the state Supreme Court. Whitner's attorneys have now petitioned the U.S. Supreme Court to review her case and others like it.

Aftershock

Criticized by medical and mental health professionals nationwide, the precedent-setting decision in South Carolina has had repercussions throughout the addiction treatment field.

The American Society of Addiction Medicine has called the criminal prosecution of pregnant women "counterproductive," noting that the policy inevitably will deter women from seeking prenatal care and treatment for chemical dependency. Dozens of other public health organizations and advocacy groups—including the American Medical

Association, the American Nurse's Association, the American Public Health Association and the Association of Family and Conciliation Courts—have expressed similar concerns.

The practice of using punishment to attack the problem of addiction is not new. For decades, judges and lawmakers have favored punitive measures over efforts at rehabilitation, and in doing so have held pregnant women to a higher standard.

"Can you believe they've come up



"For decades, judges and lawmakers have favored punitive measures over efforts at rehabilitation, and in doing so have held pregnant women to a higher standard."

with another thing to punish women for?" said Jackie Hudak, a psychotherapist practicing in Red Bank, New Jersey. "This is a sickness, not a crime."

As Paltrow points out, the South Carolina policies that require the reporting of pregnant women suspected of substance abuse are in direct conflict with federal confidentiality statutes that protect the privacy of anyone seeking addiction treatment. "It absolutely puts treatment providers in conflict over their state obligation to report, and their federal obligation not to," she said.

"These are patients that a lot of people don't want to work with because of the potential lawsuits," said New York City psychotherapist Esther Miller. "They go from treatment center to treatment center without getting the help they need."

Catharine Christophillis, the head of South Carolina's Drug Prosecution Unit, does not argue with those who say that treatment is obviously the best remedy for the problem of substance abuse in pregnancy. But she is convinced that the law can be a very persuasive tool in persuading women who are pregnant and addicted to enter treatment.

"It's treatment with a stick," she said. "You have to do both. I would love to

have these women just come in voluntarily, but that isn't going to happen."

South Carolina's initiatives in handling the problem of pregnant addicts have been revised substantially since the first headline-making incidents in which poor women in a Charleston hospital were charged under child abuse statutes before going home with their newborns. Those incidents were exaggerated and, in some cases, mischaracterized by the media, Christophillis says, noting that few women actually went to jail.

The state's approach has been modified and screening policies have been revised so that women at all economic levels, whether they seek medical care in public facilities or with personal physicians, are subject to the same criteria for maternal and newborn drug screening.

According to state protocol, "newborn drug screens for cocaine, LSD, heroin, amphetamines, and marijuana may be ordered at the discretion of the physician based on the totality of the circumstances surrounding an individual patient's history and medical condition on presentation. The chart should appropriately document the reasons why the testing was ordered."

"You have to be really careful about even having the appearance of discrimination, Christophillis says.

The state has adopted a system of "layers and intervention" that utilize a team approach in determining what options are appropriate in dealing with a substance-abusing mother.

Christophillis says the protocol is treatment-oriented, and adds that the state's involvement may begin with a referral to the Department of Social Services, as well as with attempts to persuade the woman to seek voluntary treatment. Pregnant women who don't

cooperate may face a hearing in family court. "It's a perfect vehicle to use to get a court order for treatment," she said. "We're using that criminal approach as a very last resort."

South Carolina has increased its treatment facilities for addicted mothers, but Christophillis admitted that the state is still in desperate need of more. "We've gone forward a big step in that we have created more residential options," she said. "The bottom line is that treatment is cheaper than jail, but you have to have

drugs are also mistaken, Barry says.

"It is extremely naïve for policymakers to maintain that prisoners with substance abuse problems are cut off from the sources of their addiction by incarceration," Barry wrote in an article entitled, "Pregnant, Addicted and Sentenced (ABA Criminal Justice, Winter, 1991). "In some instances, illegal substances are even more readily available in correctional facilities than on the streets."

While many policymakers cling to the idea that imprisoning pregnant drug

Substance-abusing women who are economically disadvantaged, typically have a myriad of problems associated with their addiction. "The majority of these women have had histories of physical and sexual abuse from early childhood. They also have emotional problems. They may live with a current batterer."

In order for their addiction treatment to be effective, Brown says, they also need help with a constellation of practical problems. Who will watch their children while they are in treatment? What will they use for transportation? How will they pay their bills?

"The answer to those problems is to provide all the treatment services these women need in one location, where the women can address their problems in a supportive environment while living with their children," Brown said. "They need parenting training; they need vocational training. What we've done is bring everything onto the campus."

Prototypes has 85 women and 50 children in residence, with another 50 families receiving outpatient services. The families may remain in residence at Prototypes for up to 18 months as they take the steps necessary to become sober and self-sufficient.

"We are always filled," Brown said. "We always have a waiting list."

At every level

Although the pregnant substance abuser is commonly stereotyped as urban, crack-addicted, and poor, the fact is that pregnant women at all levels of society frequently use drugs (both legal and illicit), alcohol and tobacco.

"Lots of people are drinking while they are pregnant," says U.S. Public Health Nurse Dr. Genevieve Monahan, PhD, a research associate with the UCLA Drug Abuse Research Center in Los Angeles. "I think tobacco and alcohol are far worse problems... than crack cocaine. That's not the thing that's affecting 90 percent of America."

The difference between the middle-class addict using prescription drugs, alcohol, or marijuana, and the "street-level" addict taking heroin or smoking

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How will they pay their bills?"

some form of the arm of the law involved with it."

Prescription for disaster

Those who propose imprisoning pregnant women, as a means of forcing them into treatment or keeping them from continuing their substance abuse, are dangerously naïve about the realities of life behind bars, say many experts.

According to San Francisco attorney Ellen Barry, founder and director of Legal Services for Women with Children, and an advocate for women prisoners for more than 20 years, few prisons offer effective drug and alcohol treatment. Women are often forced to withdraw from drugs "cold turkey," endangering their own health and that of their unborn children as they go through withdrawal.

"It's a prescription for disaster," said Barry. "We've had cases where women in jail have lost their babies very late term."

Nor do women prisoners receive adequate maternity care, Barry says. In fact, a statewide study in California concluded that prenatal care for inmates in the state's two largest prisons and one large urban county jail was "drastically inadequate." Other studies came to the same conclusion, Barry said.

Those who believe that putting women in prison cuts off their access to

abusers is the only option, Barry strongly supports the expansion of model programs that open the doors of recovery for these women, instead of close them. Two programs she cited are Mandela House in Oakland, California, and Jeleni House in San Francisco, both of which offer intensive, long-term, residential treatment.

"It is, in fact, possible to create a setting where women can safely detox and stay clean away from drugs, [so they can] rebuild their lives and give birth to healthy infants," Barry said. "They've actually taken women who were crack dependent, who have gone into recovery and turned their lives around. Without those types of programs, there are really not a lot of options."

Anna Smith is currently rebuilding her life and working on her recovery at a similar intensive residential treatment program, the Prototypes facility in Pomona, California. The facility's director, Dr. Vivian A. Brown, PhD, called the practice of imprisoning pregnant women "archaic and brutal."

"I think the ruling should be that women should be given treatment on demand," Brown said, noting that the demand for such all-encompassing treatment centers far exceeds the supply. "We have not even come close to providing the slots necessary."

crack, often comes in her ability to conceal her disease, and escape the attention of those who believe that arrest is the answer.

What they have in common is that they are all endangering the developing fetus. As a result of their continued substance abuse, they may suffer a psychic crisis, says Helen McGivney Glassman, coordinator of the Addiction Recovery Program at the Postgraduate Center for Mental Health in New York City, and a therapist in private practice.

"Most women cherish this life inside them. They want their children to be happy and healthy, and they bond with them. They don't want to hurt them. There is a very, very deep conflict about wanting to love this child and not wanting to hurt it. I think what is going on inside them is terrible."

Early intervention is the only answer that makes sense when it comes to treating pregnant substance abusers, Glassman says. That means access not only to addiction services but also to free and nonjudgmental prenatal and

obstetrical care.

Santa Monica counselor Laurie Tanner, author of *The Mother's Survival Guide to Recovery*, says that the first thing she does for a pregnant addict who seeks help is offer her understanding "The number one thing that works for women is to have a one-on-one relationship with a nurse, a counselor, or a therapist. All they need is one person, who says, 'You can do this. I am here for you.'"

"The main thing I say to her is, 'I know you don't mean to hurt your baby, and I know you are using and drinking. There is not a woman on earth who would have chosen this path.'"

A former perinatal counselor working with poor women in the Santa Monica area, Tanner said women who take that first step toward recovery will confront a number of obstacles as they journey toward sobriety. Husbands and boyfriends may endanger their recovery. They may have to leave those relationships and stand on their own two feet for the first time in their lives. They need an

opportunity to learn how to live in a new way.

Tanner advocates for more treatment centers for pregnant/addicted women that can provide the intensive care these women need for recovery.

"Once-a-week outpatient treatment for an hour doesn't work when you have screaming kids," she says. "These women need help. These suffering families can't wait."

After all, she said, the disease that gets women arrested in South Carolina is exactly the same as "alcohol and pills in Beverly Hills. Their disease is the same as Betty Ford's. It's the same as any movie star's. The disease isn't worse because it's a Native American alcoholic or a cocaine user. ■



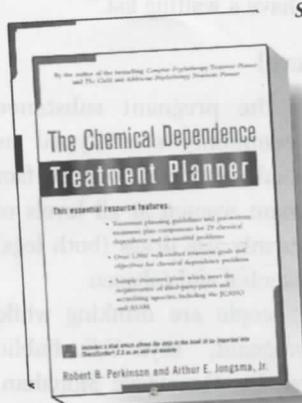
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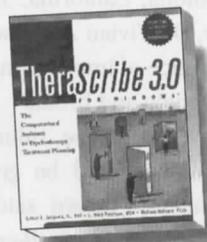


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