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Cocaine baby cases reversed

Md. high court rejects reckless endangerment convictions for drug use by pregnant women

By **Stephanie Desmon**

Sun staff

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Maryland's highest court yesterday threw out the convictions of two Eastern Shore women who were sent to prison after their babies were born with cocaine in their systems, likening the prosecutions to going after mothers who smoked, failed to exercise or even went horseback riding while pregnant.

While social workers regularly get involved when newborns test positive for drugs, Talbot County appears to be the only place in Maryland - and just one of a few in the nation - where police and prosecutors were putting mothers in prison for it.

Within hours of the court's opinion yesterday, Talbot County State's Attorney Scott G. Patterson said in a statement that his office disagreed with the decision but would cease the practice of charging such mothers with reckless endangerment.

"The court said quite clearly and forcefully that was improper, illegal and can't be done," said David Rocah, an attorney with the American Civil Liberties Union of Maryland, which represented one of the women. "The long and short of it is, the prosecutor was trying to twist a statute that was never intended to cover this condition and the court said, 'No, you can't do that.'"

In its unanimous ruling, the Maryland Court of Appeals noted that although a pregnant woman may be prosecuted for drug possession, the legislature has consistently rejected efforts to impose additional criminal penalties for the effect her drug use might have on the child. The court agreed with the argument of ACLU attorneys that such a tactic could deter women from seeking prenatal care.

The General Assembly "obviously gave credence to the evidence presented to it that criminalizing the ingestion of controlled substances - in effect criminalizing drug addiction for this one segment of the population, pregnant women - was not the proper approach to the problem and had, in fact, proved

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ineffective in other States in deterring either the conduct or addiction generally on the part of pregnant women," the judges wrote.

Jill Morrison, an attorney with the National Women's Law Center, which wrote a brief in the case on the side of the two mothers, said that while few people condone drug use by pregnant women, prosecutions of this type could keep drug-addicted women from seeking proper medical care. Such care can mitigate the potentially harmful effect drugs have on a baby, she said.

"You're driving women deeper underground, women who are sick essentially," she said.

Other states made similar attempts to criminalize drug use by pregnant women during the crack scare of the late 1980s and early 1990s. But in dozens of cases, courts struck down criminal convictions as unconstitutional or beyond lawmakers' intent. An exception remains South Carolina.

Both Talbot County women - Regina Kilmon and Kelly Lynn Cruz - were charged with reckless endangerment after the birth of their sons. Cruz was convicted a year ago and sentenced to 2 1/2 years in prison. She is out on parole, Rocah said. Kilmon pleaded guilty to the charge in January 2005 and was sentenced to four years in prison before filing an appeal. Neither woman could be reached for comment yesterday. Four other women have also been charged over the past several years in Talbot County, the ACLU said.

"This serves as a rebuke to those activist prosecutors who seek to use the criminal law to advance their own political agendas," Rocah said.

Talbot County attorneys had argued that they were just trying to protect children. "While the office of the state's attorney for Talbot County does not agree with the whole of the opinion of the Court of Appeals in the Kilmon and Cruz cases, we understand the court's reasoning and fully accept its decision as a definitive statement of the law of Maryland on the issues generated by these cases," Patterson said.

Kilmon's case came to the attention of prosecutors soon after the birth of her son on June 3, 2004. The baby tested positive for cocaine through a drug screening at Easton Memorial Hospital, where he was born. On Jan. 13, 2005, Cruz gave birth to her son. She was 29 weeks pregnant, and toxicology tests showed the baby had cocaine in his system - as did she.

Rocah said the court's opinion clearly shows it has no interest in "regulating pregnancy via the criminal law."

The ruling speculates that widening the scope of behavior governed by reckless endangerment statutes could make pregnant women vulnerable to criminal liability for a wide range of activities, depending on "how aggressive, inventive and persuasive any particular prosecutor might be."

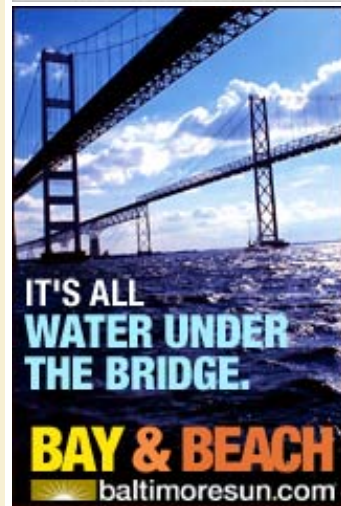
The statute could be stretched, the judges wrote, to include "a whole host of intentional and conceivably reckless activity that could not possibly have been within the contemplation of the legislature - everything from becoming (or remaining) pregnant with the knowledge that the child likely will have a genetic disorder that may cause serious disability or death ... to failing to wear a seat belt while driving ... to exercising too much or too little.

"Such ordinary things as skiing or horseback riding could produce criminal liability."

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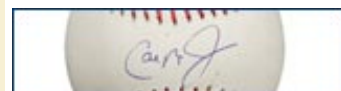
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