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Attitudes & Opinions of Circuit Court Judges on the Issue of Substance Abuse During Pregnancy

Michelle DeGeorge
Western Kentucky University

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DeGeorge,

Michelle L.

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ATTITUDES AND OPINIONS OF CIRCUIT COURT JUDGES
ON THE ISSUE OF SUBSTANCE ABUSE DURING PREGNANCY

A Thesis

Presented to

the Faculty of the Department of Sociology

Western Kentucky University

Bowling Green, Kentucky

In Partial Fulfillment

of the Requirements for the Degree

Master of Arts

by

Michelle L. DeGeorge

May 1992

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ATTITUDES AND OPINIONS OF CIRCUIT COURT JUDGES
ON THE ISSUE OF SUBSTANCE ABUSE DURING PREGNANCY

Recommended March 13, 1992
(Date)

Jean Krenzin
Director of Thesis

Lynn Stewart
Elmer Dray

Approved April 3, 1992
(Date)

Elmer Dray
Dean of the Graduate College

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ATTITUDES AND OPINIONS OF CIRCUIT COURT JUDGES
ON THE ISSUE OF SUBSTANCE ABUSE DURING PREGNANCY

Michelle L. DeGeorge

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Directed by Joan Krenzin, Edward Bohlander, Lynn Newhart

Department of Sociology

Western Kentucky University

The purpose of this study was to determine the attitudes and opinions of circuit court judges in Kentucky concerning the issue of pregnancy and substance abuse. A questionnaire was mailed to all 90 circuit court judges in Kentucky. The questionnaire, consisting of both a Likert scale and open-ended questions, dealt with concerns relating to the criminalization of pregnant substance abusers, fetal rights, state intervention in the case of pregnant substance abusers, and mothers' rights. The ages of the judges, as well as their years of experience on the bench, were used to determine their attitudes on these issues. Results showed that older judges and more experienced judges were more likely to favor criminalization of pregnant substance abusers. Younger judges and less experienced judges, however, were less likely to favor criminalization of pregnant substance abusers.

CHAPTER I
INTRODUCTION

Crime is a serious problem in society today and seems to affect everyone to some degree. Crime may be defined as "a human act that violates the criminal law" (Barlow 1990, p. 7). More specifically:

crime is an intentional act or omission in violation of criminal law (statutory or case laws) committed without defense or justification, and sanctioned by the state as a felony or misdemeanor (Tappan 1960, p. 100).

Traditionally, crime has been thought of as being male-dominated. Females have been, for the most part, omitted from criminological inquiry. This may be due to the fact that female offenders constitute less than 5% of the criminal population. Further, the position of women in society may be a factor. That is, the occupations traditionally held by women often do not lend themselves to criminal behavior. As women enter fields dominated by men, however, more opportunity exists for women to commit crimes. According to the National Crime Survey of 1985 (Siegal 1989), male crime rates are about ten times as high as female rates. The Uniform Crime Report (Federal Bureau of Investigation 1990) concurs with this, indicating that the ratio of male-female arrests is about four male offenders to

one female offender (Siegal 1989). However, although females lag behind males in the number of crimes they commit, two-year trends show a 4% increase in the number of male arrests from 1989 to 1990 and a 6% rise in female arrests for the same period. Arrests of males were up 18 percent and those of females up 24% for the five-year period from 1986 to 1990 (Federal Bureau of Investigation 1990). And, as female crime has increased, so has the study of female crime (e.g. Barlow 1990; Reid 1988).

Beginning with Freda Adler's research in the 1970s, the study of female criminality has increased rapidly (see Simpson 1989 for review). Adler explained the traditionally lower crime rate for women as being a result of women's second-class economic and social positions. As women's social roles change and their lifestyles become more like those of males, their tendency to commit crimes will increase (Siegal 1989). Rita James Simon has taken a similar position. She proposed that these changes in female criminality are occurring but only in certain crimes such as larceny/theft and fraud/embezzlement. Women have more opportunities now than they did before, due mainly to their entrance into the workplace, to engage in these crimes (Adler, Mueller, and Laufer 1991). Although much of Adler's and Simon's work is now discredited, others have emerged in the area of female criminality. For example, Darrell Steffensmeir (Siegal 1989) found that female crime was increasing but mainly in traditionally female areas such as

forgery, shoplifting, and drug abuse. James Messerschmidt (Siegal 1991) argues that in a capitalist society women are dominated by men and have fewer opportunities to engage in typically "male" criminal behavior.

Explaining female crime is important as this paper will focus on women, pregnancy, and drug abuse. Cesare Lombroso (Pollock 1978) was one of the earliest theorists to attempt to explain female criminality. Lombroso, who took a biological approach, believed that criminal women were the most primitive and least evolved of the human race. He argued that criminal women possessed many male characteristics, mental and physical; and, thus, their femininity was suppressed (e.g. Pollock-Byrne 1990; Brown, Esbensen, and Geis 1991). Pollock offers a summary of Lombroso's work:

In brief, Lombroso postulated a biological theory of crime. The criminal was a primitive breed recognizable by physical, atavistic qualities. Women were, on the whole, less inclined to criminality because of constitutional and psychological factors. They were organically conservative. Atavistic qualities had been bred out by sexual selection and feminine qualities such as piety and maternal affection further worked against criminal tendencies. When criminality overcame these factors and "reared its ugly head," it was much worse than criminality as it appeared in the male. The predominate (sic) type of criminal was the less serious occasional offender. They only committed crime under the influence of a male or in a situation of extreme temptation (Pollock 1978, pp. 30-31).

Although Lombroso's theory was eventually rejected, it was a favored theory for some time. Other researchers such as Ernst Kretschmer, William Sheldon, and Ernest Hooten have

replicated his studies, focusing not only on biological traits but psychological traits as well (Siegal 1992). Much of this research has defined women as ruled by these biological and psychological drives, which explains their criminal behavior (Pollock-Byrne 1990).

Other theories have also attempted to explain female criminality. One is the female liberation theory. Otto Pollak (1961), an early proponent of this theory, suggested that women commit crimes because they have gained greater equality with men and are, therefore, freer to become involved in crime. The socialization theory, on the other hand, argues that women are prevented from entering into crime because they are socialized to be passive and conforming (Pollock-Byrne 1990). A combination of socialization theory and opportunity theory has been suggested. According to Hoffman-Bustamante (1973), there are five factors that affect the involvement of females in crime. The first is the differential role expectations for men and women. Next are gender differences in socialization patterns and the application of social control. Third, structurally determined differences in opportunity to commit particular offenses exist. Fourth, differential access or pressure toward criminality is oriented into subcultures and careers. Last, gender differences are built into crime categories (Hoffman-Bustamante 1973, p. 118).

After explaining why females commit crimes, it is important to determine what kind of crimes they commit.

Females very rarely are involved in violent crimes. This may be the result of how women are perceived in society--as weak and not aggressive. Pollak (1961) believes that a woman is often the "mastermind" behind the crime while a man actually carries it out. As social and economic opportunities open for women, however, their positions have allowed them to participate in white-collar crime and other basically "male" crimes. Still, women are arrested mostly for petty offenses such as larceny-theft, drunk driving, fraud, disorderly conduct, drunkenness, prostitution, and drug abuse (Chesney-Lind 1986).

One of the major crimes women are engaging in is drug abuse. Between 1983 and 1985, 14% of all female arrests in the United States were for drug violations (Sheley 1991). Drug abuse in females becomes a more serious problem when something other than the abuser is affected--the unborn fetus. Approximately 375,000 babies are born annually to mothers who use drugs. This figure represents about 11% of all births in the United States. And of these 375,000 babies, 100,000 are thought to have been exposed to cocaine or crack (Humphries, Dawson, Cronin, Keating, Wisniewski, and Eichfeld 1990). The total estimated hospital costs for these infants is \$504 million annually. This figure does not include doctors' fees, later medical bills, or special therapy and schooling ("'Cocaine Babies' Costing..." 1991). The effects of cocaine/crack on fetuses and newborns are traumatic. According to Dr. Ira Chasnoff, President of the

National Association for Perinatal Addiction Research and Education ("Cocaine Babies Run..." 1991), infants exposed to cocaine while in the womb may experience premature birth, retarded physical growth, learning disabilities, and very low birth weight. Moreover, infants with very low birth weight--less than 3.28 pounds--are much more prone to breathing difficulties, bleeding in the brain, heart trouble, liver problems, and sudden death. Research has shown that cocaine-exposed infants are 50% more likely than unexposed babies to require intensive care and more than twice as likely to have very low birth weight ("Cocaine Babies Run..." 1991). Further, some fetuses suffer strokes while still in the womb. Others are born with defects such as missing lungs and deformed hearts. Some of these babies go blind, and many are unable to stop kicking or moving their arms. Perhaps worst of all, some of these infants will die within a few days of their births (e.g. Delattre 1989; Besharov 1990; "Drug Addicted Babies..." 1989).

As a result of giving birth to addicted babies, women are being charged with child abuse and neglect, and many are criminally prosecuted. In cases where the infant dies women may be charged with manslaughter. According to Lynn Paltrow of the American Civil Liberties Union's Reproductive Freedom Project, this is the "criminalization of pregnancy." She argues that these women are not being arrested for "the crime of illegal drug use or possession. Instead, they are being arrested for a new and independent crime, becoming

pregnant while addicted to drugs" (Paltrow 1990, pp. 41-42).

Further, prosecuting pregnant substance abusers leads inevitably down a "slippery slope." Paltrow states that

prosecutions. . . cannot rationally be limited to illegal conduct because many legal behaviors cause damage to developing babies. Women who are diabetic or obese, women with cancer or epilepsy who need drugs that could harm the fetus, and women who are too poor to eat adequately or to get prenatal care could all be categorized as "fetal abusers" (Paltrow 1990, p. 47).

Prosecutors, however, argue that pregnant women who abuse drugs are committing an illegal act and should be punished. Their aim is to stop maternal drug use through incarceration or drug treatment programs (Humphries et al. 1990). This debate has led to other controversies as well. Central to this controversy is the right of a woman to do as she pleases with her body. Some claim that "the fetus is not legally recognized as a person. Technically, a mother can do whatever she wants to that child before it is born" (Davidson 1989, p. 1).

On the other side of the coin, it is argued that if others can be held accountable for the death of an unborn child, then the mother also should be held accountable (Davidson 1989). For example, several states now consider fetuses that have died in utero to be persons under wrongful death statutes. Thus, parents may sue people who harm the fetus and cause its death (McNulty 1988).

Another controversy that has arisen is whether pregnant drug abusers should be incarcerated. Advocates of prison sentences say that women will become drug-free while in

prison and, thus, will give birth to drug-free babies. Some even believe that the incarceration of pregnant drug abusers will encourage others to seek help (e.g. "Punishing Pregnant..." 1989; Davidson 1989; Lewin 1989). Those against incarceration say that by punishing some women others will avoid medical help for fear that they, too, will be detected as well. Instead, those against incarceration say pregnant addicts should be helped through drug treatment programs. With outpatient drug treatment 40% of cocaine-using expectant mothers can get off the drug at a cost of \$5000 to \$7000 each. As quoted in a newspaper article, Chasnoff states:

Three days in the neonatal intensive care unit is going to make up for that (cost) right there. I don't think there is any question that if you can provide these services early on, you're going to save enormous amounts of money later ("Cocaine Babies' Costing..." 1991).

The problem here is the lack of adequate drug abuse programs for pregnant women. According to the March of Dimes Birth Defects Foundation ("Criminalization of..." 1990), drug abuse programs are largely unavailable to pregnant women, and many programs cannot provide pregnancy-related services (e.g. Kolata 1990; Chavkin 1989; Hey 1990). Only about 10,000 openings exist in drug treatment programs for the estimated 250,000 pregnant women who could benefit from them ("Cocaine Babies' Costing..." 1991). This exclusion, along with the financial costs of running such programs, makes treatment for pregnant addicts problematic.

The issue of pregnancy and drug abuse, then, has created many problems. Women are giving birth to babies who are addicted to drugs and who, as a result, may experience such problems as premature birth, heart trouble, birth defects, or even death. The cost of caring for those babies who do survive is extremely high. Additional costs may result as the child grows older and requires special care or schooling.

Another problem that arises as a result of this issue is whether the addicted mother is a criminal and should be prosecuted as such. Advocates on both sides of this issue stand firm in their beliefs, and there seems to be no consensus in sight.

The remainder of this paper looks more closely at the issue of pregnancy and drug abuse. The focus of Chapter II is the labeling perspective and how it relates to drug abuse and pregnancy. Chapter III includes a review of several court cases that have come about as a result of the issue of pregnancy and drug abuse. Also found in Chapter III is the debate between advocates of punishing drug abusing mothers and those opposed to such an act. Chapter IV contains a discussion of the methods used in gathering data for the study, and the results of the study are found in Chapter V. The summary and interpretation of those results are found in Chapter VI.

CHAPTER II
THEORETICAL PERSPECTIVE

The issue of pregnant addicts is one of great controversy. The question of whether these women are criminals also poses a problem. The labeling perspective allows us to examine how these women are defined by society and whose opinion matters in determining their treatment.

Labeling theory has its foundation in symbolic interactionism. Symbolic interactionism assumes that the individual and society are inseparable and interdependent (Manis and Meltzer 1972). Humans are able to shape their own behaviors based on the reactions of others. Charles Horton Cooley states that individuals see themselves through the eyes of others and adjust their behavior accordingly. He called this concept the "looking glass self" (Collins 1988). Symbolic interactionism can be summarized using some basic principles. Human beings, unlike lower animals, have a mind and, thus, have the capacity for thought. This ability to think must be shaped through the process of social interaction. All interaction helps enhance the ability of individuals to think. Meanings and symbols, important concepts in symbolic interactionism, are learned through this social interaction. Through these meanings and

symbols, humans are able to act and interact in society and make choices about the situations and acts they engage in. Finally, they are able to modify and adapt meanings and symbols based on their definition of the situation and choose the course of action that best suits them (e.g. Blumer 1969; Ritzer 1988).

Concerned primarily with deviant behavior, labeling theory focuses not on the actor but on those who make society's rules from which others deviate. Labeling theory, like symbolic interactionism, states that a deviant act, or any social act, is understandable only when it is realized that it involves interaction (Cosser 1977). Deviance, then, is in the eye of the beholder. It is, however, shaped by others through the process of interaction. What is deviant is what people think is deviant (Ericson 1975). This chapter will focus on the labeling perspective and how it relates to drug abuse and pregnancy.

The basis of labeling theory, as related to deviant behavior, is that individuals become deviant when society defines them as such. Thus, deviance always involves the process of social definition (Schur 1971). Clarence Schrag (1971) proposed some basic assumptions of the labeling approach. I will attempt to relate these assumptions to drug abuse. First, no act is intrinsically criminal or deviant. Crime is a label, not an act. Thus, drug abuse is a crime only because of the negative label and laws that are attached to it. Next, criminal definitions are enforced in

the interests of the powerful. Those who have the power can decide whether drug abuse is a crime. Members of society must abide by these rules or face sanctions. The third assumption is that an individual becomes a criminal not by violating a law but by the designation of criminality by authorities. In the case of pregnant addicts once a woman is defined as an addict, her fate is in the hands of the courts. If the courts decide that she is "a criminal," she becomes identified as such. Fourth, the labeling process begins when an individual is caught. The woman is not labeled a criminal until her drug use is detected. Last, labeling is a process that eventually produces identification with a deviant image. Once the label has been applied and the individual identified as deviant, it is often impossible to escape that label.

The negative effects that a label can produce are seen in Frank Tannenbaum's (1938) dramatization of evil.

The process of making a criminal, therefore, is a process of tagging, defining, identifying, segregating, describing, emphasizing, making conscious and self-conscious; it becomes a way of stimulating, suggesting, emphasizing, and evoking the very traits complained of. . . . The person becomes the thing he is described as being (pp. 19-20).

Official reactions to rule breaking, then, tend to enhance deviance rather than lessen it. For example, if a pregnant woman is arrested and treated as a criminal for abusing drugs, other pregnant women may fail to get the proper prenatal care they need for fear of being discovered, turned in to the authorities, and punished for their behavior.

Thus, instead of helping these women, criminal treatment may actually hurt pregnant addicts.

Edwin Lemert (1951) was among the first to discuss what later came to be called labeling theory. He distinguished between what he called primary deviation and secondary deviation. Primary deviation is simply the violation of a norm or an act, which has little effect on the actor. The deviation remains primary as long as it is rationalized or dealt with as a function of a socially accepted role. When the deviant act is repeated and others react to the violation, the deviance is secondary. Now the deviant act becomes internalized by the individual. Lemert proposed a series of steps to explain the development of secondary deviation.

. . . (1) primary deviation; (2) social penalties; (3) further primary deviation; (4) stronger penalties and rejections; (5) further deviation perhaps with hostilities and resentment beginning to focus upon those doing the penalizing; (6) crisis reached in the tolerance quotient, expressed in formal action by the community stigmatizing the deviant; (7) strengthening of the deviant conduct as a reaction to the stigmatizing and penalties; (8) ultimate acceptance of deviant social status and efforts at adjustment on the basis of the association role (Lemert 1951, p. 75).

Thus, through the process of identification--a definition of the situation--the individual is now perceived as deviant. Pregnant substance abusers are engaged in secondary deviation, as are all addicts. Drugs have become a part of their lives. Further, the emergence of this issue has caused people to react to these women, often in a negative way.

Howard Becker (1963) expanded on the ideas of Tannenbaum and Lemert. He sees deviance as created by society:

. . . social groups create deviance by making the rules whose infraction constitutes deviance, and by applying those rules to particular people and labeling them as outsiders. From this point of view, deviance is not a quality of the act the person commits, but rather a consequence of the application by others of rules and sanctions to an "offender." The deviant is one to whom the label has successfully been applied; deviant behavior is behavior that people so label (p. 9).

Becker goes on to state that an individual need commit only one criminal act to be labeled deviant. After that, the individual will be seen by others as deviant and likely to commit future acts of deviance (Becker 1963). Thus, if a woman gives birth to an addicted baby, she may be seen by others (labeled) as one who will give birth to more addicted babies unless something is done.

From the labeling perspective, then, crime is a product of social interactions and encounters. What is important is not what caused the act, but what happens after the act has taken place (Brown et al. 1991). People's perceptions, based on their experiences, knowledge, and feelings, may lead to the definition of some acts as deviant (Barlow 1990). The issue of who has rights--the mother or the fetus--is based on these perceptions. Those who feel the mother has a right to do as she pleases with her body probably will not see the woman as a criminal if she abuses drugs during her pregnancy. Others, however, who believe the woman has a responsibility to protect the fetus she is

carrying, will label the woman a criminal.

Frank Tannenbaum (1938) states that criminals do not differ from the rest of the population. Rather, specific acts that an individual commits are singled out and brought to the attention of the public. Related to this idea is Tannenbaum's concept of legal relativism. Here he states that acts are neither good nor bad but the social audience influences the label placed on behavior. Whether an act is deviant, then, depends on how other people react to it. The social audience, thus, is of the utmost importance. Kai Erikson (1962) states:

The critical variable is the social audience... since it is the audience which eventually decides whether or not any given action or actions will become a visible case of deviation (p. 308).

Three types of audiences can be identified. The first is society at large. This audience involves all the groups and interests from which emerge general reactions to (and, therefore, labeling of) various forms of behavior. The second audience consists of those people with whom the individual has daily contact, including significant others. The individual is labeled constantly by this audience. The last audience is that of official and organizational agents of control. This audience is the most significant because it defines situations through organized procedures (Schur 1971). It is this third audience with which I will be concerned. The courts and law enforcers are the ones dealing with the women; and, thus, their opinions are of greatest concern.

In sum, the labeling perspective leaves to society the decision of whether pregnant drug abusers are criminals. It is up to each individual member of society to decide how he/she wants to define a woman who uses drugs while pregnant. However, agents of social control will still make the final decision. Through the process of social interaction, members can be influenced by one another. This may be especially true when members in authority positions, such as the courts, take a stand on one side or the other.

CHAPTER III

REVIEW OF THE LITERATURE

As the problem of pregnancy and drug abuse increases, states are likely to take some type of legal action. Questions arise as to whether the fetus has rights over those of the mother, and, if so, whether the courts have the responsibility to protect fetal rights. Whether the criminal justice system should punish the mother for her conduct is also a growing concern. Many court cases have resulted from these issues. This section will examine some of these cases and their results.

The right of a woman to make decisions about her body is perhaps best seen in the 1973 decision of Roe v Wade. In this case, the Supreme Court ruled that at no stage of development is the fetus a person with rights separate from the woman. Further, it is only after birth that the child acquires any legal rights independent of those of the mother. A few years later the Court found that child endangerment statutes do not apply to prenatal conduct. In order for an act to be considered child abuse, it must occur after the birth of a live child (Reyes v. Supreme Court 1977).

The two previous decisions, however, have been

challenged. In 1981 (Grodin v. Grodin) a child brought suit against his mother for prenatal injuries that occurred as a result of the mother's negligence in failing to obtain prenatal care. The Court ruled that the mother should be responsible for the injury of a child just as a third party would be. Several states have enacted laws claiming that fetuses that have died in utero are "persons" under wrongful death statutes. Thus, parents may sue a third party for injuries to the fetus (McNulty 1988).

In In re Stevens S. (1981), however, a California Court of Appeals found that an unborn fetus was not a person within the meaning of the child abuse or neglect statutes (Sagatun 1990). In 1988, in the case of Stallman v. Younggist, the Illinois Supreme Court refused to accept that the fetus is a "separate legal person with rights hostile to the woman" (Sagatun 1990, p. 10). It is an invasion of a woman's privacy, the Court ruled, to hold the mother liable for prenatal injuries occurring as a result of her negligence.

In cases dealing directly with fetal abuse as a result of the mother's drug use, there is little consensus. The debate between mothers' rights versus fetal rights rages on. In 1985, Pamela Rae Stewart was charged with fetal abuse under California Penal Code section 270, which requires parents to provide food, clothing, shelter, and medical attention to their child or fetus (e.g. Merlo 1990; Sagatun 1990). Stewart failed to follow her doctor's advice to stay

off her feet, to refrain from sexual intercourse, and to stop using cocaine. As a result of her negligence, the baby was brain-damaged and died shortly after birth (e.g. Paltrow 1990; Humphries et al. 1990). The charges were dismissed by the San Diego Municipal Court because California's criminal child support statute "was not intended to apply to the actions of a pregnant woman and does not create a legal duty of care owed by a pregnant woman to her fetus" (Paltrow, Fox, and Goetz 1990, p. 1).

In Florida, in 1989, Jennifer Johnson was charged with and convicted on two counts of delivering drugs to a minor. Tests showed that the mother's two children, at birth, both had cocaine in their systems as a result of the mother's crack addiction. According to the prosecution, in a state in which abuse can legally occur only after birth, Johnson delivered the drug to the children through the umbilical cord in the 60 to 90 seconds before the cord was cut (e.g. Merlo 1990; Sagatun 1990). Johnson, the first woman to be convicted of such a crime, was sentenced to fifteen years probation, with mandatory drug rehabilitation and a prenatal care program if she were ever to become pregnant again (e.g. Lewin 1989; Logli 1990; Humphries et al. 1990).

In 1989 in Illinois, Melanie Green became the first woman to be charged with involuntary manslaughter for the death of her child due to cocaine use during pregnancy. The charge came after her two-day-old infant, who tested positive for cocaine, died. The Illinois Grand Jury refused

to indict Green and the charges against her were dropped (e.g. Reardon 1989; Logli 1990).

Josephine Pellegrini, while pregnant in 1989, was charged in Massachusetts with possession and distribution of cocaine to a minor. A Plymouth Superior Court judge, however, dismissed the indictment and ruled that the woman's right to privacy had been violated. The judge further recommended treatment instead of prosecution ("Judge Rejects..." 1990).

In 1989 Brenda Vaughn was charged and convicted of forging checks. Because she was pregnant and tested positive for cocaine, the judge sentenced her to 180 days in jail, even though the normal sentence for such a crime is probation. No drug charges were brought against Vaughn, and she was released after twelve weeks (e.g. Lewin 1989; Humphries et al. 1990).

Cases such as these are at the heart of the debate. Is the punishment of pregnant substance abusers discriminatory? Several opposing articles provide very different answers. As noted earlier, Lynn Paltrow of the American Civil Liberties Union and others (e.g. Paltrow 1990; Mariner, Glantz, and Annas 1990) believe that punishment of pregnant substance abusers is discriminatory. First, there are no laws dealing directly with the issue of pregnancy and drug abuse. Instead, existing laws are being amended in order to permit prosecution. Most of these laws deal with child endangerment or delivery of drugs to a

minor. Thus, these women are not being arrested for possession and use of drugs; instead they are being arrested for something completely new and different--becoming pregnant while addicted to drugs. Paltrow (1990) believes this is unconstitutional because it violates a woman's "procreation-related privacy guarantees" to continue her pregnancy without interference.

Another issue cited by Paltrow (1990) is what she calls the "criminalization of pregnancy." She argues that anything the mother does, or does not do, during her pregnancy is potentially harmful to her fetus. For example, failure to follow a doctor's orders or failure to obtain prenatal care at all, smoking, gaining too much or too little weight, and taking medication may endanger the health of the fetus. In other words, "harm can be caused by more than just drug use" (Mariner et al. 1990). And Paltrow adds:

Prosecuting a pregnant woman for actions which allegedly harm the fetus brings us dangerously close to criminalizing pregnancy, for no woman can provide the perfect fetal environment (Paltrow 1990, p. 4).

Last, it is argued that prosecution of pregnant substance abusers is counterproductive. It seems that one of the goals of prosecution is to offer women treatment for their addiction. However, many of the women being prosecuted are the very women who cannot obtain the help they need to stop their addictive behavior. Most drug treatment programs deny treatment to pregnant women. And

the ones that do offer treatment have waiting lists so long that often the women give birth before they are admitted to the program. Further, it is believed that other pregnant addicts will fail to get the prenatal care they need for fear that their drug use will be detected and they, too, will be punished. And, if imprisoned, most women will not receive adequate medical care (e.g. Paltrow 1990; Mariner et al. 1990). Thus, criminalizing pregnant drug abusers serves only to add to a problem that is tragic enough for society already. These women need to be helped, not prosecuted.

Paul Logli, State's Attorney, Winnebago County, Illinois, has a very different opinion. He argues that the prosecution of pregnant substance abusers is not discriminatory. He bases his belief on the fact that at least two of the cases cited earlier (People of the State of Illinois v. Green 1989 and State of Florida v. Johnson 1989) have one important fact in common. In both cases "the child was born alive and exhibited the consequences of prenatal injury" (Logli 1990, p. 25). Further, in several states, the fetus is protected from injury by a third party. Arguably, then, the fetus should be afforded the same protection against harmful acts by a drug-abusing mother.

Logli believes that state intervention is not an unconstitutional intrusion on the mother's life. He notes that, "A child has a right to begin life with a sound mind and a sound body" (1990, p. 25), and any interference with that right should be punishable. Further, once a woman has

decided to continue her pregnancy, society has the right to assure that the baby is born as healthy as possible, through any means necessary.

Finally, Logli addresses the idea that pregnant substance abusers will fail to obtain proper prenatal care for fear of being punished. He believes that this concern does not justify the absence of state action to protect the fetus

. . . The belief that parents can best fulfill their responsibilities to their children if free from intervention is naive in the fetal abuse context. Children have separate and distinct legal rights, and are entitled to the protection of the law, even from their parents. . . . To legitimate this moral and spiritual existence of the unborn child, society must prevent fetal substance abuse by any possible means (Illinois Revised Statute, 1987, Ch. 37, 804-1).

Thus, from his viewpoint, although these women do need professional help, prosecution of pregnant substance abusers is a legitimate societal response to the problem. Something must be done before the problem gets completely out of control.

These are only a few of the issues that have evolved as a result of this controversy surrounding drug abuse by pregnant women. Until laws are enacted dealing with this issue or common ground can be reached, the controversy will continue.

CHAPTER IV
METHODOLOGY

The purpose of this study is to determine the attitudes and opinions of circuit court judges in Kentucky concerning pregnant substance abusers. Because no laws dealing with this issue currently exist, it is important to determine how these women can expect to be treated by the criminal justice system if arrested in the state of Kentucky.

Sample and Data Collection

All circuit court judges in Kentucky were used as the study population for this thesis. A list of these judges was provided by the Administrative Office of the Courts. The list contained the names of 90 judges, 84 male and 6 female. Because there are only 90 circuit court judges in Kentucky, an attempt to survey all of them was made.

A questionnaire was mailed to all circuit court judges in Kentucky (N=90). Of the 90 questionnaires sent 39 were returned, for a response rate of 43.3%. Telephone follow-up procedures yielded no further response. Although there is little consensus as to what constitutes an acceptable response rate, some (e.g. Babbie 1989, Nachmias and Nachmias 1987) agree that a 50% response rate is adequate. This figure is not statistically based, however, and there is no

specific response rate that must be achieved (e.g. Babbie 1989; Nachmias and Nachmias 1987). My response rate of 43.3% falls only slightly short of the commonly agreed upon response rate.

Of the 39 respondents, 31 were male and five were female. Three respondents did not complete the questionnaire; therefore, they were not included in the study. Because of the small number of females in the study, gender was not used as a variable in the analysis. Age, however, was an important variable in this analysis. (See Appendix A, Table 12 for age distribution.) Twenty respondents indicated that they were 50 or under while 14 indicated their age to be over 50. Two respondents did not indicate their ages and were excluded from the crosstabulations dealing with age. (See Chapter V for crosstabulations.) The last demographic variable examined was number of terms served. Eighteen respondents indicated that they were serving their first term in office, seven were serving their second term, three were serving their third term, and four were serving their fourth term or more. (See Appendix A, Table 13 for term distribution.) Four respondents did not indicate their term in office and were excluded from the crosstabulations dealing with term. (See Chapter V for crosstabulations.) A copy of the questionnaire asking for the demographic factors can be found in Appendix B.

A cover letter explaining the purpose of the study

accompanied the questionnaires sent to the judges. Each judge was assured confidentiality and offered a completed copy of the study upon request. A copy of the cover letter can be found in Appendix C.

The questionnaire consisted of both quantitative and qualitative items. Demographic factors--age, gender, and number of terms served--were first solicited from the respondents. A 20-item Likert scale, with a five-point continuum ranging from strongly disagree to strongly agree (with strongly disagree coded "1" and strongly agree coded "5"), was used to measure the degree of favorableness toward criminalization of pregnant substance abusers. The Likert scale is a method designed to measure people's attitudes. This format is useful because of the lack of ambiguity of response categories (Babbie 1989). Because I wanted to determine the attitudes of these judges, this method was selected. The Likert scale in this study sought opinions in the areas of fetal rights versus mothers' rights, the right of the state to intervene in the life of a pregnant woman, and what the best solution is for these women. For example, one of the items in the scale reads: "A pregnant woman addicted to drugs is a criminal." Respondents were then asked to indicate their agreement or disagreement with the statements. (See Appendix A, Table 14 for frequencies of responses to each variables. This table shows more clearly than do mean scores the extremes of agreement or disagreement and, in some cases, the large size of the

undecided population.) A total score on all variables was computed for each judge. For judges who answered all of the questions the lowest possible score was 20 and the highest possible score was 100. (See Appendix A, Table 15 for frequencies.) The higher the score, the more favorable the attitude toward criminalization of pregnant substance abusers.

Five open-ended questions were also included on the questionnaire. For example, respondents were asked, "How do you think the prosecution of pregnant drug abusers will affect other pregnant women who are currently drug abusers?" These questions were used to determine how the judges view pregnant addicts and what they believe is the best response to the problem. The open-ended questions were intended to provide more in-depth answers than could be obtained from the Likert scale. Finding an answer to the question of what should be done with these women (incarceration, treatment, etc.) was of the utmost importance. A copy of these questions can be found in Appendix B.

Using the median score of the frequencies the total score was divided into two categories--low and high--because the number of judges was too small to permit the use of more categories. Age was collapsed into two categories. Those judges who indicated their age to be 50 or younger were placed in the first category. Those judges who indicated their age to be 51 or older were placed in the second category. The number of terms served was also collapsed

into two categories. Those judges serving their first term in office were placed in the first category and those judges serving their second, third, or fourth term in office were placed in the second category. As already noted, gender was not used as a variable because of the small number of females in the study.

In an attempt to determine the attitudes and opinions of circuit court judges in Kentucky on the issue of pregnancy and drug abuse, the following hypotheses were formulated:

- H1: Older judges are more likely to favor criminalization of pregnant substance abusers than are younger judges.
- H2: More experienced judges are more likely to favor criminalization of pregnant substance abusers than are less experienced judges.
- H3: Older judges are more likely to agree that pregnant substance abusers are committing a crime than are younger judges.
- H4: More experienced judges are more likely to agree that pregnant substance abusers are committing a crime than are less experienced judges.
- H5: Older judges are more likely than are younger judges to agree that the fetus has rights.
- H6: More experienced judges are more likely than are younger judges to agree that the fetus has rights.
- H7: Older judges are more likely to agree that the state has the right to intervene in the life of a pregnant woman than are younger judges.
- H8: More experienced judges are more likely to agree that the state has the right to intervene in the life of a pregnant woman than are less experienced judges.

- H9: Older judges are more likely than are younger judges to agree that the mother has few or no rights when the health of the fetus is concerned.
- H10: More experienced judges are more likely than are less experienced judges to agree that the mother has few or no rights when the health of the fetus is concerned.

Analytic Procedure

Data were collected and entered into the SPSS/PC+ program. Crosstabulations were computed to compare the total score of each judge with his/her age group and to compare the total score of each judge with terms served. Further crosstabulations were computed between new variables (created by clustering similar variables into four categories) and age and between the new variables and terms served.

Although I could have looked at total scores or means, I chose to calculate a mean for each variable, showing the extent of agreement with each statement. The means were divided into three categories--low, average, and high.

Variables were then clustered into four categories (V21, V22, V23, and V24). The first cluster (V21) consisted of statements indicating that pregnant substance abusers are committing a crime. The statements included in the cluster are:

- V1 A pregnant woman addicted to drugs is a criminal.
- V3 Drug abuse during pregnancy is child abuse.
- V5 Incarceration is the best treatment for pregnant addicts.
- V7 The killing of a fetus through drug abuse should be considered homicide.
- V13 Mandatory laws should be enacted to punish pregnant substance abusers.
- V20 Drug addiction should be seen as an illness, not as a crime.*

The second cluster (V22) included those statements dealing with fetal rights. The following statements were included in this category:

- V2 The fetus has rights separate from those of the mother.
- V9 Once a woman chooses not to abort, she has a legal and moral duty to bring the child into the world as healthy as is reasonably possible.
- V14 A child has the right to begin life with a sound mind and a sound body.
- V19 The fetus is a part of the mother and should not be thought of as a separate entity.*

The third cluster (V23) consisted of those statements pertaining to state intervention in the case of pregnant substance abusers. The following statements were included in the cluster:

- V4 Doctors and health care workers should be required to report pregnant addicts to criminal authorities.
- V6 The criminal court has the responsibility to protect fetal rights.
- V10 The state has the right to intervene when the actions of a pregnant woman threaten her fetus.
- V17 The criminal justice system should take action to punish pregnant addicts for their conduct.
- V18 The state has the right to control a woman's actions during pregnancy.

The last cluster (V24) concentrated on mothers' rights. The following statements were contained in this category:

- V8 Arresting pregnant women for abusing drugs violates their constitutional, procreation-related privacy guarantees.*
- V11 Prosecuting pregnant women for actions which harm the fetus brings us dangerously close to criminalizing pregnancy itself, for no woman can provide the perfect fetal environment.*
- V15 Jailing women because of their conduct while pregnant infringes fundamental guarantees of reproductive choice and bodily autonomy.*
- V16 Doctors and medical care professionals have an obligation to their patients and should respect their privacy even when the health of the fetus is threatened.*

*The coding of these statements was reversed in the analysis so that all statements read in the same direction.

A reliability analysis was computed for each cluster. Cronbach's alpha, which measures the degree of internal consistency of a set of statements, was computed for each cluster. An alpha of .70 or higher is generally acceptable (Cronbach 1951) and, thus, denotes unidimensionality. The four clusters had alphas of .80, .77, .84, and .78 respectively; therefore, these clusters can be judged to be reliable.

After determining reliability, four new variables were computed from each cluster. These new variables combined similar statements to make analyses easier. Items in the cluster were attempting to look at the same type of attitude. The first variable, V21, was named "Appropriateness of Criminalization." The second variable, V22, was named "Fetal Rights." The third variable, V23, was named "State Intervention." And the last new variable, V24, was named "Mothers' Rights." Frequencies were computed for each new variable. (See Appendix A, Tables 16-19.) Based on the median of the new mean scores, each new variable was divided into two categories--low and high. Fewer categories were used in order to avoid having too few responses in a category. A low mean indicated disagreement with the cluster of statements and a high mean indicated agreement with the cluster of statements. Crosstabulations were then computed between age and each new variable and between the number of terms served and each new variable.

Last, the open-ended questions were analyzed. These questions dealt with issues such as how the judges felt pregnant women should be treated if arrested for abusing drugs and what could be done about the problem of pregnancy and substance abuse. Each response was then discussed in relation to the age group and the experience group.

CHAPTER V

RESULTS

In order to determine the attitudes and opinions of circuit court judges in Kentucky concerning the issue of pregnancy and substance abuse, a total score for each judge was first computed. The scores ranged from 36 to 91 on a possible continuum of 20 to 100 points. The higher the score, the more favorable the attitude of the judge toward criminalization of pregnant substance abusers. The total scores were then divided into two categories--low and high. Those judges who scored 66 (median score) or lower (N=15) were placed in the low category, indicating their responses were less favorable toward criminalization. Those judges scoring 67 or higher (N=14) were placed in the high category, indicating their responses were more favorable toward criminalization. (See Appendix A, Table 15 for frequencies.)

Categorical Analyses

The reader is cautioned that because of the small sample size, these results must be interpreted with caution. Although none of the crosstabulations was significant, they are discussed because of their potential for generation of further research.

A crosstabulation was computed between age and the total score. Age was collapsed into two categories-- 50 and under and 51 and over. The results of the crosstabulation are presented in Table 1.

Table 1. Effects of Age* on Attitudes Favoring Criminalization

Total Score	Age	
	50 and under	51 and over
66 or less	8 (57.1%)	5 (38.5%)
67 or more	6 (42.9%)	8 (61.5%)
Total	14 (100.0%)	13 (100.0%)

Chi-square=.34; df=1; p=n.s.

*Judges failing to respond to all items were dropped from the analysis.

Although the differences were not significant, younger judges (those 50 and under) tend to have lower scores than older judges (those 51 and over). More older judges appeared to favor criminalization of pregnant substance abusers than did younger judges. A majority of the older judges had higher scores (61.5%) while a slight majority of younger judges had lower scores (57.1%).

The crosstabulation computed between the number of terms served and the total score are shown in Table 2. The

total scores were divided into two categories--low (those judges with a score of 66 or lower) and high (those judges with a score of 67 or higher). The number of terms served was also collapsed into two categories. One category consisted of those judges in their first term of office and the other category consisted of those judges in their second, third or fourth term. The results of the crosstabulation are presented in Table 2.

Table 2. Effects of Experience on the Bench* on Attitudes Favoring Criminalization

Total Score	Terms Served	
	One	More Than One
66 or less	7 (53.8%)	5 (41.7%)
67 or more	6 (46.2%)	7 (58.3%)
Total	13 (100.0%)	12 (100.0%)

Chi-square=.04; df=1; p=n.s.

*Judges failing to respond to all items were dropped from the analysis.

Judges in their first term of office are slightly more likely to have lower scores (53.8%) while judges who are more experienced are slightly more likely to have higher scores (58.3%). Although the differences were very slight, the judges who have served more than one term appear to

favor criminalization of pregnant substance abusers slightly more than do less experienced judges.

The mean score was calculated for each variable to determine the overall attitude toward each statement. Each variable and its mean may be seen in Table 3. The responses ranged from 1.0 to 5.0. The means were divided into three categories for easier reference. Those variable with the lowest means--or the least amount of agreement with the statement--are found in the first column. The second column contains those variables with average means. The variables with the highest means--or the most agreement with the statement--are in the last column.

Table 3. Mean Agreement of Judges with Statements Relating to Criminalization of Pregnant Substance Abusers

Statement	Mean Response		
	low	average	high
V1 A pregnant woman addicted to drugs is a criminal.	2.389		
V2 The fetus has rights separate from those of the mother.			3.914
V3 Drug abuse during pregnancy is child abuse.			3.778
V4 Doctors and health care workers should be required to report pregnant addicts to criminal authorities.		3.000	
V5 Incarceration is the best treatment for pregnant addicts.	2.056		
V6 The criminal court has the responsibility to protect fetal rights.		3.114	
V7 The killing of a fetus through drug abuse should be considered homicide.		3.029	
V8 Arresting pregnant women for abusing drugs violates their constitutional, procreation-related privacy guarantees.*			3.833

Table 3. Mean Agreement of Judges with Statements Relating to Criminalization of Pregnant Substance Abusers (cont.)

Statement	Mean Response		
	low	average	high
V9 Once a woman chooses not to abort, she has a legal and moral duty to bring the child into the world as healthy as is reasonably possible.			4.222
V10 The state has the right to intervene when the actions of a pregnant woman threaten her fetus.			3.629
V11 Prosecuting pregnant women for actions which harm the fetus brings us dangerously close to criminalizing pregnancy itself, for no woman can provide the perfect fetal environment.*		3.528	
V12 Fear of prosecution will deter women from seeking the proper prenatal care they need.*	2.861		
V13 Mandatory laws should be enacted to punish pregnant substance abusers.	2.429		
V14 A child has the right to begin life with a sound mind and body.			4.200
V15 Jailing women because of their conduct while pregnant infringes fundamental guarantees of reproductive choice and bodily autonomy.*		3.514	

Table 3. Mean Agreement of Judges with Statements Relating to Criminalization of Pregnant Substance Abusers (cont.)

Statement	Mean Response		
	low	average	high
V16 Doctors and medical care professionals have an obligation to their patients and should respect their privacy even when the health of the fetus is threatened.*		3.444	
V17 The criminal justice system should take action to punish pregnant addicts for their conduct.		2.889	
V18 The state has the right to control a woman's actions during pregnancy.	2.444		
V19 The fetus is a part of the mother and should not be thought of as a separate entity.*			3.824
V20 Drug addiction should be seen as an illness, not as a crime.*	2.583		

*The coding of these statements was reversed in the analysis so that all statements read in the same direction.

These variables were then clustered into four categories based on attitudes measured--crime, fetal rights, state intervention, and mothers' rights. By clustering the variables, it is easier to determine if the means are consistent with one another in each category. All items

within a cluster addressed the same issue.

The first cluster consisted of those statements which indicated that pregnant substance abusers are committing a crime. The statements included the following: V1 (mean=2.389), V3 (mean=3.778), V5 (mean=2.056), V7 (mean=3.029), V13 (mean=2.429), and V20 (mean=2.583). (See Table 3.) All but two of the variables--V3 and V7--suggest disagreement on the issue of pregnant substance abusers becoming criminalized. The responses of the judges suggest agreement with V3, that drug abuse during pregnancy is child abuse. The judges' responses indicate they were undecided about whether the killing of a fetus through drug abuse should be considered homicide (V7). Further, all of the variables, with the exception of V3 and V7, fall into the first column (low mean category) in Table 3. Thus, the mean responses fell in a fairly consistent pattern.

The next set of statements pertained to fetal rights. The following statements were included in this category: V2 (mean=3.914), V9 (mean=4.222), V14 (mean=4.200), and V19 (mean=3.824). (See Table 3.) Each of these statements has a fairly high mean. All of the variables in this category are contained in the last column (high mean category) of Table 3, again indicating similarity of mean responses.

The third cluster consisted of those statements relating to state intervention in the lives of pregnant women. The statements included in this category are: V4 (mean=3.000), V6 (mean=3.114), V10 (mean=3.629), V17

(mean=2.889), and V18 (mean=2.444). (See Table 3.) Each of the variables, with the exception of V10 (high mean) and V18 (low mean), has an average mean. That is, the judges appeared undecided about the issue of state intervention in the lives of pregnant women. The three variables with average means--V4, V6, and V17--all fall in the second column (average mean category) of Table 3. The judges were in greater agreement on V10, that the state has the right to intervene when the actions of a pregnant woman threaten her fetus. They disagreed with the statement that the state has the right to control a woman's actions during pregnancy (V18). When the health of the fetus is concerned, the judges appeared to favor state intervention.

The last cluster concentrated on mothers' rights. The following statements are included: V8 (mean=3.833), V11 (mean=3.528), V15 (mean=3.514), and V16 (mean=3.444). (See Table 3.) The coding of these statements was reversed in the analysis to allow all statements to read in the same direction. Each of these means indicates agreement on the part of the judges. V11, V15, and V16 are located in the second column (average mean category) of Table 3, and V8 falls in the last column (high mean category). The judges seemed to agree that a mother has few or no rights when it comes to the health of the fetus.

The variables in each cluster were then combined to form four new variables--V21, V22, V23, V24. Means were computed for each new variable, which were then divided into

two categories based on median scores--low and high. Crosstabulations were computed between each variable and age and also between each variable and the number of terms served. (See Tables 4-11.)

The first cluster consisted of V1, V3, V5, V7, V13, and V20, which indicate that pregnant substance abusers are committing a crime. These statements were combined to form V21, which was termed "Appropriateness of Criminalization." The means for V21 ranged from 1.33 to 4.33. The median of the means for V21 was 2.67. Any mean falling between 1.33 and 2.67 was considered to be a low mean. Any mean falling between 2.68 and 4.33 was considered to be a high mean. A low mean indicated disagreement with the cluster of statements, and a high mean indicated agreement with the cluster of statements. Age was again collapsed into two categories. A crosstabulation was then computed between age and V21. The results are presented in Table 4.

Table 4. Effects of Age* on Attitudes Toward Appropriateness of Criminalization

Attitude Toward Appropriateness of Criminalization	Age	
	50 and under	51 and over
Less Agreement (low mean)	14 (70.0%)	5 (35.7%)
More Agreement (high mean)	6 (30.0%)	9 (64.3%)
Total	20 (100.0%)	14 (100.0%)

Chi-square=2.66; df=1; p<.10

*Two judges did not indicate age.

Of the younger judges 70% had a low mean, which indicates less agreement with the cluster of statements that pregnant substance abusers are committing a crime. The older judges, however, tended to have a higher mean (64.3%) indicating greater agreement with the idea that pregnant substance abusers are committing a crime. In fact, for the younger judges, fewer than one-third were in agreement with the idea of criminalization. It would appear that if the N were larger, we might expect to see a significant difference in the responses to this item.

A crosstabulation was also computed between V21 and the number of terms served by the judges. Again, V21 was divided into two categories--low (those means of 2.67 or less) and high (those means of 2.68 or more). The number of terms served was also collapsed into two categories. The

first category consisted of those judges serving their first term of office. The second category consisted of those judges serving their second, third, or fourth term in office. The results of the crosstabulation are presented in Table 5.

Table 5. Effects of Experience on the Bench* on Attitudes Toward Appropriateness of Criminalization

Attitude Toward Appropriateness of Criminalization	Terms Served	
	One	More Than One
Less Agreement (low mean)	11 (61.1%)	6 (42.9%)
More Agreement (high mean)	7 (38.9%)	8 (57.1%)
Total	18 (100.0%)	14 (100.0%)

Chi-square=.45; df=1; p=n.s.

*Four judges did not indicate experience on the bench.

Judges in their first term of office were more likely to disagree with appropriateness of criminalization than more experienced judges (61.1% versus 42.9%). Conversely, then, more experienced judges showed more agreement with appropriateness of criminalization than did less experienced judges (57.1% versus 38.9%).

The second cluster pertained to fetal rights. The statements V2, V9, V14, and V19 were combined to form V22, termed "Fetal Rights." The means of V22 ranged from 2.25 to

5.00, with a median of 4.00. Any mean between 2.25 and 4.00 was considered to be a low mean and any mean between 4.01 and 5.00 was considered to be a high mean. A low mean indicated that the judges were in less agreement with the idea of the fetus having any rights. A high mean, on the other hand, indicated that the judges agreed with the statements that the fetus has certain rights which cannot be ignored. Age was again collapsed into two categories. A crosstabulation was computed between V22 and age. The results are shown in Table 6.

Table 6. Effects of Age* on Attitudes Toward Fetal Rights

Attitude Toward Fetal Rights	Age	
	50 and under	51 and over
Less Agreement (low mean)	10 (50.0%)	7 (50.0%)
More Agreement (high mean)	10 (50.0%)	7 (50.0%)
Total	20 (100.0%)	14 (100.0%)

Chi-square=.00; df=1; p=n.s.

*Two judges did not indicate age.

There was no difference relating to age on agreement or disagreement with the statements pertaining to fetal rights. Both younger and older judges were split evenly in their opinions. Age, then, had no effect on the variable.

Next, a crosstabulation was computed between V22 and the number of terms served. V22 was divided into two categories--low (means of 4.00 or less) and high (means of 4.01 or more). The number of terms served was again collapsed into two categories. The results of the crosstabulation are presented in Table 7.

Table 7. Effects of Experience on the Bench* on Attitudes Toward Fetal Rights

Attitude Toward Fetal Rights	Terms Served	
	One	More Than One
Less Agreement (low mean)	10 (55.6%)	7 (50.0%)
More Agreement (high mean)	8 (44.4%)	7 (50.0%)
Total	18 (100.0%)	14 (100.0%)

Chi-square=.00; df=1; p=n.s.

*Four judges did not indicate experience on the bench.

Those judges serving their first term were only slightly more likely to have a low mean than were more experienced judges (55.6% versus 50.0%). Similarly, more experienced judges were only slightly more likely to have a high mean than were less experienced judges (50.0% versus 44.4%). Thus, there was no significant difference relating to experience of the judges in their attitude toward fetal rights.

The third cluster consisted of statements which indicated that the state has a right to intervene in the case of pregnant substance abusers. The statements V4, V6, V10, V17, and V18 were combined to form V23, termed "State Intervention." The means for V23 ranged from 1.25 to 4.60, and they were divided into two categories in relation to a median of 2.80. The first category (low) consisted of those means from 1.25 to 2.80, and the second category (high) consisted of those means from 2.81 to 4.60. Age was again collapsed into two categories. A crosstabulation was computed between V23 and age. The results are shown in Table 8.

Table 8. Effects of Age* on Attitudes Toward State Intervention

Attitude Toward State Intervention	Age	
	50 and under	51 and over
Less Agreement (low mean)	11 (55.0%)	5 (35.7%)
More Agreement (high mean)	9 (45.0%)	9 (64.3%)
Total	20 (100.0%)	14 (100.0%)

Chi-square=.58; df=1; p=n.s.

*Two judges did not indicate age.

Younger judges tended to have a lower mean more frequently than did older judges (55.0% versus 35.7%). Thus, younger

judges appeared to disagree with the idea that the state has the right to intervene in the case of pregnant substance abusers. Older judges, in contrast, appeared more likely to agree with state intervention in the case of pregnant substance abusers.

A crosstabulation was also computed between number of terms served and V23, which was divided into two categories--low mean (2.80 or less) and high mean (2.81 or more). The number of terms served was again collapsed into two categories. The results of the crosstabulation are shown in Table 9.

Table 9. Effects of Experience on the Bench* on Attitudes Toward State Intervention

Attitude Toward State Intervention	Terms Served	
	One	More Than One
Less Agreement (low mean)	9 (50.0%)	6 (42.9%)
More Agreement (high mean)	9 (50.0%)	8 (57.1%)
Total	18 (100.0%)	14 (100.0%)

Chi-square=.00; df=1; p=n.s.

*Four judges did not indicate experience on the bench.

Results show that there was little difference in extent of agreement or disagreement among judges regardless of experience. (See Table 9.) More experienced judges were

slightly more likely than less experienced judges to agree with state intervention in the case of pregnant substance abusers.

The final cluster consisted of those statements concerning mothers' rights. Statements V8, V11, V15, and V16 were combined to form V24, termed "Mothers' Rights." These statements indicate that a mother has few or no rights when it comes to the health of her fetus. The means for V24 ranged from 1.50 to 4.75, and the median score was 3.75. Any mean falling between 1.50 and 3.75 was considered to be a low mean, and any mean falling between 3.76 and 4.75 was considered to be a high mean. Age was collapsed into two categories. A crosstabulation was computed between V24 and age. Results are presented in Table 10.

Table 10. Effects of Age* on Attitudes Toward Mothers' Rights

Attitude Toward Mothers' Rights	Age	
	50 and under	51 and over
Less Agreement (low mean)	13 (65.0%)	5 (35.7%)
More Agreement (high mean)	7 (35.0%)	9 (64.3%)
Total	20 (100.0%)	14 (100.0%)

Chi-square=1.78; df=1; p=n.s.

*Two judges did not indicate age.

Younger judges were more likely than older judges to have a low mean (65.0% versus 35.7%). Conversely, older judges were more likely than younger judges to have a high mean (64.3% versus 35.0%). Thus, younger judges tended to disagree with the idea that the mother has few or no rights. Older judges, then, expressed greater agreement with the concept that the mother has few or no rights when the health of the fetus is concerned.

Finally, a crosstabulation was computed between V24 and the number of terms served. Again, V24 was divided into two categories--low (means between 1.50 and 3.75) and high (means between 3.76 and 4.75). The number of terms served was collapsed into two categories. Results of the crosstabulation are listed in Table 11.

Table 11. Effects of Experience on the Bench* on Attitudes Toward Mothers' Rights

Attitude Toward Mothers' Rights	Terms Served	
	One	More Than One
Less Agreement (low mean)	10 (55.6%)	6 (42.9%)
More Agreement (high mean)	8 (44.4%)	8 (57.1%)
Total	18 (100.0%)	14 (100.0%)

Chi-square=.13; df=1; p=n.s.

*Four judges did not indicate experience on the bench.

Those judges serving their first term in office were slightly more likely to have a low mean than were judges with more experience (55.6% versus 42.9%). Thus, less experienced judges tended to disagree with the idea that mothers have few or no rights when the health of the fetus is concerned. More experienced judges, then, seemed more likely to agree that mothers have few or no rights when the health of the fetus is concerned. However, the differences noted here were very small.

Because the findings are not significant, no support can be offered for the hypotheses presented in Chapter IV. Despite this lack of significance, however, the findings from this paper suggest differences that would indicate the topic merits further study.

Qualitative Analysis

In addition to the Likert scale, the questionnaire consisted of five open-ended questions in which the judges were asked to expand on their views. Each question will now be discussed. Continuing with the established categories, the respondents were divided into two age groups--50 and under and 51 and over--and two experience groups--less experienced judges and more experienced judges.

The first question posed to the judges was: "How do you think the prosecution of pregnant drug abusers will affect other pregnant women who are currently drug abusers?" Some researchers (e.g. Paltrow 1990; Mariner et al. 1990) have suggested that prosecution will serve only to deter pregnant

substance abusers from seeking prenatal care and treatment. The responses from the judges, however, indicated that they did not agree with this idea. Only four of the fifteen respondents in the 50-and-under category answered that prosecution would cause pregnant substance abusers to avoid prenatal care and treatment. For example, one respondent wrote: "If current criminal laws regarding illegal drug use is not deterring them, what good would one more prohibition do?" Other respondents disagreed, making such comments as: "Make them think twice," "Will have some (not a lot) deterrent effect," and "Hopefully it will dissuade them from taking drugs when pregnant."

In the 51-and-over group, half of the judges (7) believed that prosecution would have little or no effect on other pregnant drug abusers. As one judge pointed out: "Drug addicts are not concerned with anything except feeding their habits." Only one judge in this group said that prosecution would deter pregnant substance abusers from seeking treatment and prenatal care. Thus, judging from the comments given by all of the respondents, there seemed to be little consensus as to what effect the prosecution of pregnant substance abusers would have on other pregnant women currently abusing drugs.

Second, the judges were asked: "If women are prosecuted for using drugs while pregnant, what will happen to women who use alcohol or smoke cigarettes while pregnant? Will they also become 'criminals'?" Lynn Paltrow (1990) of the

American Civil Liberties Union believes that this is what is happening. She argues that before long pregnancy will have to be considered a crime since the perfect fetal environment cannot be provided by any woman. However, several of these judges appeared to disagree with her perspective. In the 50-and-under group, seven of the fifteen judges indicated that those women who drink alcohol or smoke cigarettes while pregnant would not be likely to be judged criminals. Several of the judges noted that alcohol and tobacco are not illegal; thus, as one stated: "Prosecution would be politically unacceptable to the community." Only one judge said, "Yes," to the question while others answered: "They should," and "This could be the next step."

Only four of the fourteen judges in the 51-and-over group indicated that pregnant women who drink alcohol and smoke cigarettes would not be likely to be labeled as criminals. Again, the rationale behind their answers was that alcohol and tobacco are not illegal substances. One judge responded, "Yes," to the question, while another noted that it is possible for this to happen if the state chooses to criminalize any type of addiction, and another indicated that it would be the next logical step. Other judges either had no opinion or chose not to answer the question. Among those who responded, little consensus seemed to exist although several of the judges (11 of 29) agreed that women who use alcohol and tobacco while pregnant would not be likely to be classified as criminals.

The third query was: "Should laws be enacted dealing with the issue of pregnancy and drug abuse? What kind of laws, if any, would you support?" Of the 15 judges in the 50-and-under group, only five judges indicated that no laws should be enacted. The remaining ten judges expressed the belief that some type of law should be enacted to deal with the issue of pregnancy and drug abuse. Of these ten, six judges suggested that these laws should be rehabilitative, rather than criminal. One judge noted that the crime should be at least a Class C felony. (A felony, as opposed to a misdemeanor, is a more serious crime and may be punishable by imprisonment. A Class C felony, however, is not the most serious of felonies.) Another suggested: "Yes, if for no other reason to stop the irrational application of existing statutes--only the most severe conduct should be punished." The remaining two judges said, "Yes," but did not elaborate on their answers.

In the 51-and-over group, only three of the fourteen judges said no laws should be enacted. Six judges indicated that some type of law is necessary. Only two of these six, however, believed that the law should focus on education and treatment, rather than prosecution. The others did not elaborate on their responses. The remaining five judges in the 51 and over group had no opinion or said it was not within their expertise to answer this question. About half of all judges believed that some type of law dealing with pregnancy and substance abuse is necessary.

The next question asked was: "What responsibility does the court have to protect a fetus?" Only two of the thirteen respondents in the 50-and-under group indicated that the court has no responsibility to protect a fetus. Five of the judges indicated that this decision is up to the legislature and the Supreme Court. The remaining six judges noted that the court does have some responsibility to the fetus. One judge asked: "Who else is there?" and another stated: "If government doesn't protect them, no one will." Three of the judges stated that the fetus is a person and should be treated as such. For example, one judge responded: "I consider the fetus as much a person as a newborn baby."

In the 51-and-over group, two of the fourteen judges answered that the court has little or no responsibility for the protection of a fetus. Only four of the judges indicated that the court does indeed have a responsibility in the matter. One judge noted, "Simply substitute the word 'child' for 'fetus' and you have your answer." The remaining eight judges offered no opinion on the subject. Thus, younger judges appeared more likely to view the fetus as having some rights.

The last question asked: "Should the criminal justice system take action to punish the addicted mother for her conduct?" Of 15 judges in the 50-and-under group, 12 answered that punishment is not the answer. Of these 12 judges, six suggested that treatment or rehabilitation is

the best way to help these women. The remaining six did not elaborate on their answers. Only two judges indicated that punishment is an adequate response to the problem. One of the judges stated that ". . . it will help to serve as a deterrent for future activity." The remaining judge remarked that "The criminal justice system should evoke whatever sanctions are necessary to prevent harming of the fetus--treatment, incarceration, or both."

In the 51-and-over group, six of the fourteen judges indicated that punishment should not be the answer. All six of these judges suggested treatment and education about the dangers of drugs, alcohol, tobacco, and anything else harmful to the fetus as a better solution than punishment. Only two of the judges answered, "Yes," to the question. One judge noted: "She is contributing in the same sense as if the fetus were a child." The remaining six judges did not offer an opinion or were reluctant to go beyond their expertise. Thus, it seems that judges in both groups favor treatment rather than punishment.

Responses of the less experienced judges were similar to the responses of the younger judges since they were frequently the same people. Of the younger judges who completed the open-ended questions, most were less experienced as well. The same is true of the older judges and the more experienced judges. Most of the older judges who completed the open-ended questions were more experienced as well. There appeared to be little difference in the

responses between age and experience.

In addition to the questions a space was left for any other comments the judges wished to make. One judge stated his views on the issue.

I believe a woman has the right of choice--but once that choice has been made society has a right to a healthy baby, but treatment not criminalization has to be the answer.

Other judges indicated that the issue of pregnancy and drug abuse is one of morality. One judge noted that: "The court system was never intended to be the forum to enforce 'moral' standards or obligations. It is designed to resolve disputes." Nevertheless, in practice the courts do legislate morality. Clearly, there are no easy answers.

CHAPTER VI

CONCLUSIONS

The purpose of this thesis was to determine the attitudes and opinions of circuit court judges in Kentucky concerning the issue of pregnancy and substance abuse. The problem of pregnancy and substance abuse has been increasing rapidly over the past few years. Thousands of "crack babies" are born each year, and estimated hospital costs for these infants have risen to the millions of dollars. Many controversies have arisen as a result of women giving birth to drug-addicted babies. For example, many pregnant women are being arrested for child abuse and neglect; and if the infants die, they are being charged with manslaughter. Advocates of arresting pregnant substance abusers agree that these women are committing a crime and should be punished. Those opposed, however, believe that arresting pregnant substance abusers is discriminatory and will only serve to deter other pregnant addicts from seeking treatment. Although drug treatment programs seem to be one solution to the problem, there are not enough facilities to serve the number of women who need help. Further, many drug treatment programs refuse to admit pregnant women.

Many court cases have resulted from the issue of

pregnancy and substance abuse. However, only a small number of the women charged actually have been found guilty. This is due to the fact that there are no laws currently dealing specifically with the issue. Thus, some prosecutors have amended child abuse and neglect laws to fit their purposes. In most cases, however, the courts have ruled that these laws do not apply to prenatal conduct.

For this research a questionnaire was constructed and sent to circuit court judges in Kentucky. The opinions of judges were sought because if women are arrested for drug abuse during pregnancy, their fate will be in the hands of a judge. Thus, the attitudes and opinions of judges toward this issue are very important. The questionnaire sought the attitudes and opinions of these judges on the issue of pregnant substance abusers. It was both quantitative and qualitative in nature.

Although demographic data were collected on age, experience on the bench, and gender, the number of women was considered too small to permit comparison of responses based on gender. It might be interesting to note that 83.3% of the women judges in the state responded to the questionnaire. This, in itself, indicates potential interest of women in this topic. Had there been a larger number of women judges in the state, it would have been interesting to be able to compare their responses to those of the men. One might expect that women would have different opinions from those of men on this issue.

Certainly, a study which would include a larger number of women could be very revealing.

A crosstabulation between age and the total score indicated that older judges had higher scores and were more likely to favor criminalization of pregnant substance abusers. Younger judges, on the other hand, had lower scores and were less likely to favor criminalization of pregnant substance abusers. It would seem that the age of the judge is an important factor in this issue. Perhaps older judges remember a time when drug abuse was predominantly a male crime. Women just did not engage in such behavior. The judges may find drug abuse by women more repulsive and, thus, may want to punish the women who engage in this type of behavior.

A crosstabulation between the number of terms served and the total score indicated that more experienced judges (those serving their second, third, or fourth terms) had higher scores and more favorable attitudes toward criminalization of pregnant substance abusers. Less experienced judges (those serving their first term), on the other hand, had lower scores and less favorable attitudes toward criminalization of pregnant substance abusers. Since the more experienced judges were more likely to favor criminalization of pregnant substance abusers, the amount of experience the judge has may affect how the woman is treated.

All of the results were consistent in that the older

judges were more favorable toward criminalization of pregnant substance abusers. When new variables were formed by clustering variables into four categories (appropriateness of criminalization, fetal rights, state intervention, and mothers' rights) and crosstabulations were computed, these same results were seen. Older judges agreed that a pregnant substance abuser was committing a crime, that the state has the right to intervene when the health of the fetus is threatened, and that mothers have few or no rights when the fetus is concerned. Younger judges did not agree with the older judges. They were less likely to criminalize pregnant substance abusers. They disagreed that a pregnant woman abusing drugs was committing a crime, that the state has the right to intervene in the case of pregnant substance abusers, and that the mother has few or no rights when the health of the fetus is concerned. The age of the judge, then, clearly seems to be an important factor to the woman arrested for substance abuse during pregnancy. She may find her fate to be determined by whether the judge believes in his or her old conventional values or whether the judge is open to new ideas in a changing society.

The same differences held true for experience on the bench. Less experienced judges were less likely to criminalize pregnant substance abusers. Similarly, they disagreed that pregnant substance abusers are committing a crime and that mothers have few or no rights when the fetus is concerned. More experienced judges, however, favored

criminalization of pregnant substance abusers. They also agreed that pregnant women who abuse drugs are committing a crime, that the state has the right to intervene in the case of pregnant substance abusers, and that mothers have few or no rights when the health of the fetus is threatened. Again, the amount of experience a judge has had will play a role in determining the fate of the woman involved.

When judges were given open-ended questions and asked to expand on their views of pregnant substance abusers and to offer suggestions to the problem of pregnancy and substance abuse, some additional insights were provided. Although older judges and more experienced judges were more likely to favor criminalization of pregnant substance abusers, several of these judges indicated that prosecution was not the answer. Instead, these judges felt that education about the dangers of substance abuse and treatment for pregnant substance abusers are the best ways to help these women. The younger judges and the less experienced judges agreed that education and treatment are more effective and beneficial than prosecution.

It seems almost contradictory that a large number of judges seem to feel that laws need to be enacted to deal with the issue of pregnancy and drug abuse. As noted above, they tend to favor education and treatment over prosecution. Perhaps in-depth interviews could have clarified this potential disagreement. On the other hand it may be that the judges feel that the laws might serve to promote

education and treatment instead of prosecution.

From a labeling perspective, these results are important because it is apparent that at least particular judges--those who are older and those who are more experienced--are less hesitant to label the woman as a criminal. The age and the experience of the judge could determine whether a pregnant substance abuser will have a criminal label that can have a devastating influence on her future as well as the future of her child. Lest we forget, it is the agents of social control who will make the final decision.

Suggestions for Further Research

The results of this study cannot be generalized to all judges because of the small sample size. More extensive research needs to be done in order to gain an adequate view of the attitudes and opinions of judges across the country. Also, the attitudes and opinions of others might be looked at. The men and women who elect the judges will have strong feelings about pregnant substance abusers. It will be interesting to note if there are differences between the attitudes of men and women. If men are willing to criminalize a woman for harming her fetus through drug abuse, will they also be willing to criminalize a man for the same reason? Research is now showing that drugs can be transmitted to a fetus through sperm (Ezzel 1991). This issue is worth looking into.

Judging from the results of this study, judges clearly

need specific laws dealing directly with pregnancy and drug abuse. Specific laws will aid judges in making decisions about pregnant drug abusers. If such laws are passed, the age of the judge and the experience of the judge would then play no part in the decision. In fact, if ordinary citizens choose to take an active role in influencing legislation, judges' personal views will be of little consequence. All women would know what to expect and would be treated equally no matter which judge were assigned to her case. Further, laws need to specify which types of drugs are included. If only illegal drugs such as cocaine and crack are included, then this needs to be specified in the law. This would mean that women who smoke cigarettes and drink alcohol while pregnant would then be excluded unless other laws were specified.

Finally, more treatment centers need to be provided for pregnant substance abusers. These women have a problem and currently have little opportunity to help themselves.

In summary, many of the responses to the questions seemed to indicate that treatment, not prosecution, is the better answer to the problem of pregnancy and drug abuse. However, until sufficient treatment for pregnant substance abusers is available, the problem remains unresolved.

APPENDIX A

TABLES

Table 12. Age Distribution of Judges

Age	Frequency	Percent
Under 40	2	5.9%
40-50	18	52.9%
51-60	3	8.8%
61-70	9	26.5%
Over 70	2	5.9%
Total	34	100.0%

Missing cases=2

Table 13. Numbers of Terms Served by Judges

Terms Served	Frequency	Percent
One	18	56.2%
Two	7	21.9%
Three	3	9.4%
More than three	4	12.5%
Total	32	100.0%

Missing cases=4

Table 14. Frequencies of Responses to Questionnaire Items

Variable	Responses				
	Strongly Disagree	Disagree	Undecided	Agree	Strongly Agree
1	9 (25.0%)	14 (38.9%)	7 (19.4%)	2 (5.6%)	4 (11.1%)
2*	0 (0.0%)	2 (5.6%)	6 (16.7%)	20 (55.6%)	7 (19.4%)
3	1 (2.8%)	3 (8.3%)	5 (13.9%)	21 (58.3%)	6 (16.7%)
4*	4 (11.1%)	7 (19.4%)	10 (27.8%)	13 (36.1%)	1 (2.8%)
5	12 (33.3%)	13 (36.1%)	8 (22.2%)	3 (8.3%)	0 (0.0%)
6*	2 (5.6%)	8 (22.2%)	12 (33.3%)	10 (27.8%)	3 (8.3%)
7*	2 (5.6%)	9 (25.0%)	13 (36.1%)	8 (22.2%)	3 (8.3%)
8	1 (2.8%)	2 (5.6%)	6 (16.7%)	20 (55.6%)	7 (19.4%)
9	0 (0.0%)	1 (2.8%)	1 (2.8%)	23 (63.9%)	11 (30.6%)
10*	0 (0.0%)	4 (11.1%)	7 (19.4%)	22 (61.1%)	2 (5.6%)
11	1 (2.8%)	7 (19.4%)	3 (8.3%)	22 (61.1%)	3 (8.3%)
12	0 (0.0%)	16 (44.4%)	10 (27.8%)	9 (25.0%)	1 (2.8%)
13*	4 (11.1%)	17 (47.2%)	9 (25.0%)	5 (13.9%)	0 (0.0%)
14*	0 (0.0%)	2 (5.6%)	3 (8.3%)	16 (44.4%)	14 (38.9%)

Table 14. Frequencies of Responses to Questionnaire Items
(cont.)

Variable	Responses				
	Strongly Disagree	Disagree	Undecided	Agree	Strongly Agree
15*	1 (2.8%)	6 (16.7%)	6 (16.7%)	18 (50.0%)	4 (11.1%)
16	0 (0.0%)	6 (16.7%)	9 (25.0%)	20 (55.6%)	1 (2.8%)
17	3 (8.3%)	9 (25.0%)	14 (38.9%)	9 (25.0%)	1 (2.8%)
18	6 (16.7%)	15 (41.7%)	9 (25.0%)	5 (13.9%)	1 (2.8%)
19*	0 (0.0%)	4 (11.1%)	4 (11.1%)	20 (55.6%)	6 (16.7%)
20	4 (11.1%)	18 (50.0%)	4 (11.1%)	9 (25.0%)	1 (2.8%)

*One or more cases missing

Table 15. Judges' Scores on All Items Favoring Criminalization*

Total Score	Frequency	Percent
36	1	2.8%
44	1	2.8%
48	1	2.8%
49	1	2.8%
54	1	2.8%
57	1	2.8%
58	2	5.6%
60	2	5.6%
62	2	5.6%
64	2	5.6%
66	1	2.8%
67	1	2.8%
68	1	2.8%
69	1	2.8%
70	2	5.6%
72	1	2.8%
76	3	8.3%
77	2	5.6%
78	1	2.8%
90	1	2.8%
91	1	2.8%
Missing**	7	19.4%
Total	36	100.0%

*Possible totals ranged from 20 to 100.

**These seven judges omitted one or more items from the questionnaire.

Table 16. Average Score on V21* for Each Judge

Average Score	Frequency	Percent
1.33	1	2.8%
1.50	1	2.8%
1.67	2	5.6%
1.83	1	2.8%
2.00	1	2.8%
2.17	2	5.6%
2.33	2	5.6%
2.40	1	2.8%
2.50	5	13.9%
2.67	4	11.1%
2.83	6	16.7%
3.00	1	2.8%
3.17	1	2.8%
3.20	1	2.8%
3.33	1	2.8%
3.50	2	5.6%
3.67	1	2.8%
4.00	1	2.8%
4.33	2	5.6%
Total	36	100.0%

*V21 is an average of the respondent's scores of V1, V3, V5, V7, V13, and V20.

See p. 30 for actual statements.

Table 17. Average Score on V22* for Each Judge

Average Score	Frequency	Percent
2.25	1	2.8%
3.00	2	5.6%
3.25	2	5.6%
3.50	2	5.6%
3.67	1	2.8%
3.75	2	5.6%
4.00	9	25.0%
4.25	7	19.4%
4.50	5	13.9%
4.67	1	2.8%
4.75	1	2.8%
5.00	3	8.3%
Total	36	100.0%

*V22 is an average of the respondent's scores of V2, V9, V14, and V19.

See p. 31 for actual statements.

Table 18. Average Scores of V23 for Each Judge*

Average Score	Frequency	Percent
1.25	1	2.8%
1.60	3	8.3%
1.80	1	2.8%
2.25	1	2.8%
2.40	2	5.6%
2.60	3	8.3%
2.80	7	19.4%
3.20	2	5.6%
3.40	4	11.1%
3.50	1	2.8%
3.60	6	16.7%
3.80	2	5.6%
4.00	1	2.8%
4.40	1	2.8%
4.60	1	2.8%
Total	36	100.0%

*V23 is an average of the respondent's scores of V4, V6, V10, V17, and V18.

See p. 31 for actual statements.

Table 19. Average Scores on V24 for Each Judge*

Average Score	Frequency	Percent
1.50	1	2.8%
2.00	1	2.8%
2.25	1	2.8%
2.33	1	2.8%
2.50	1	2.8%
3.00	3	8.3%
3.25	3	8.3%
3.50	4	11.1%
3.75	5	13.9%
4.00	10	27.8%
4.25	3	8.3%
4.50	2	5.6%
4.75	1	2.8%
Total	36	100.0%

*V24 is an average of the respondent's scores of V8, V11, V15, and V16.

See pp. 31-32 for actual statements.

APPENDIX B
QUESTIONNAIRE

ATTITUDES AND OPINIONS OF CIRCUIT COURT JUDGES IN KENTUCKY
CONCERNING PREGNANT DRUG ABUSERS

Please check the appropriate response.

- | | | |
|-----------------------------------|--------------------------------------|---------------------------------|
| 1. Age | Number of terms
served | Gender |
| <input type="checkbox"/> under 40 | <input type="checkbox"/> 1 | <input type="checkbox"/> male |
| <input type="checkbox"/> 40-50 | <input type="checkbox"/> 2 | <input type="checkbox"/> female |
| <input type="checkbox"/> 51-60 | <input type="checkbox"/> 3 | |
| <input type="checkbox"/> 61-70 | <input type="checkbox"/> more than 3 | |
| <input type="checkbox"/> over 70 | | |

Please indicate whether you strongly agree (SA), agree (A), are undecided (U), disagree (D), or strongly disagree (SD) with each of the following statements.

- | | |
|--|-------------|
| 1. A pregnant women addicted to drugs is a criminal. | SA A U D SD |
| 2. The fetus has rights separate from those of the mother. | SA A U D SD |
| 3. Drug abuse during pregnancy is child abuse. | SA A U D SD |
| 4. Doctors and health care workers should be required to report pregnant addicts to criminal authorities. | SA A U D SD |
| 5. Incarceration is the best treatment for pregnant addicts. | SA A U D SD |
| 6. The criminal court has the responsibility to protect fetal rights. | SA A U D SD |
| 7. The killing of a fetus through drug abuse should be considered homicide. | SA A U D SD |
| 8. Arresting pregnant women for abusing drugs violates their constitutional, procreation-related privacy guarantees. | SA A U D SD |

9. Once a woman chooses not to abort, she has a legal and moral duty to bring the child into the world as healthy as is reasonably possible. SA A U D SD
10. The state has the right to intervene when the actions of a pregnant woman threaten her fetus. SA A U D SD
11. Prosecuting a pregnant woman for actions which harm the fetus brings us dangerously close to criminalizing pregnancy itself, for no woman can provide the perfect fetal environment. SA A U D SD
12. Fear of prosecution will deter women from obtaining the proper prenatal care they need. SA A U D SD
13. Mandatory laws should be enacted to punish pregnant substance abusers. SA A U D SD
14. A child has the right to begin life with a sound mind and a sound body. SA A U D SD
15. Jailing women because of their conduct while pregnant infringes fundamental guarantees of reproductive choice and bodily autonomy. SA A U D SD
16. Doctors and medical care professionals have an obligation to their patients and should respect their privacy, even when the health of the fetus is threatened. SA A U D SD
17. The criminal justice system should take action to punish pregnant addicts for their conduct. SA A U D SD
18. The state has the right to control a woman's actions during pregnancy. SA A U D SD
19. The fetus is a part of the mother and should not be thought of as a separate entity. SA A U D SD
20. Drug addiction should be seen as an illness, not as a crime. SA A U D SD

APPENDIX C
COVER LETTER

June 25, 1991

Dear Judge :

Under the auspices of the Social Research Laboratory and the Department of Sociology and Anthropology at Western Kentucky University, I am conducting a survey to determine the attitudes and opinions of Circuit Court Judges in Kentucky concerning the issue of pregnant drug addicts. As a Circuit Court Judge in Kentucky, your responses are crucial to this study.

I would appreciate it if you would complete the enclosed questionnaire. It is very important that I receive the completed questionnaire which will require only about 15 minutes of your time. You have been provided a pre-addressed envelope for your convenience.

The information you provide will contribute to an important sociological study. Results of the study will be available upon request.

Confidentiality is assured under the academic ethics standards of the American Sociological Association. Your name will not be revealed nor will it be associated with your responses.

Thank you for your help in this research project. Please complete the questionnaire as quickly as possible and return it by July 8th.

Sincerely,

Michelle L. DeGeorge
Research Associate

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