

She was jailed for losing a pregnancy. Her nightmare could become more common

Chelsea Becker, prosecuted for murder after her stillbirth, spent 16 months in jail: ‘Why did the hospital call police?’

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Chelsea Becker spent 16 months in jail after she was charged with murder for having a stillbirth. Illustration: Anastasia Ivashchenko/The Guardian

On 4 November 2019, TV stations across California blasted Chelsea Becker's photo on their news editions. The "search was on" for a "troubled" 25-year-old woman wanted for the "murder of her unborn baby", news anchors said, warning viewers not to approach if they spotted her but to call the authorities.

The next day, Becker was asleep at the home she was staying in when officers with the Hanford police department arrived.

"The officer had a large automatic weapon pointed at me and a K-9 [dog]," Becker, now 28, recalled in a recent interview. "I walked out and surrendered."

Two months before, Becker had had a stillbirth at a California hospital, losing a baby boy at eight months pregnant. The Kings county prosecutor in the central valley charged her with "murder of a human fetus", alleging she had acted with "malice" because she had been struggling with drug addiction and the hospital reported meth in her system.

Becker's attorneys argued there was no evidence that substance use caused the stillbirth and California law did not allow for this type of prosecution in the first place. Still, she spent 16 months in jail awaiting trial before a judge dismissed the charges.

Becker's nightmare offers a preview of the kinds of criminal cases that could become commonplace in the US if the supreme court, as expected after the leak of a draft opinion last month, officially overturns *Roe v Wade*. In the states that outlaw abortion, advocates warn, pregnancy losses more broadly will be treated as potential crimes, including in cases of wanted pregnancies. Even with *Roe* in effect, women have repeatedly faced arrest and charges for their pregnancy outcomes.

"These prosecutions will escalate at an extremely rapid clip if *Roe* is reversed," said Emma Roth, staff attorney with the National Advocates for Pregnant Women (NAPW), a non-profit group that supported Becker in her legal battle. "A lot of people don't realize that pregnant people are already facing criminalization all across the country, including in blue states like California. All it takes is a rogue district attorney."

‘Why did the hospital call police?’

Becker grew up in an agricultural region 200 miles north-west of Los Angeles. The area has an unemployment rate twice the California average, and more than 15% of its residents live in poverty. Authorities say it has long been a hub for meth distribution, and access to drug rehabilitation, reproductive healthcare and other services is limited.

Becker had struggled with addiction and at the time of her stillbirth was also battling homelessness, occasionally forced to sleep on a motel stairwell.

On 9 September 2019, she had been preparing for the birth of her fourth child, a baby boy whom she had already named, when her family had to call an ambulance to rush her to the hospital.

She was uncontrollably bleeding when she arrived at the Adventist Health Hanford hospital, a faith-based organization, and roughly two hours later lost the child.

Staff treated her with suspicion, Becker said. Her mother learned before her that the baby had not survived, Becker recalled in an email interview. “I was in shock, physically from the blood loss and mentally from the news,” she said.

She briefly held her baby, she said, and wondered whether he could have survived if the hospital had done an emergency C-section. She also wondered why she received blood transfusions only hours after she had arrived in distress.

The next morning, she said, she discovered that the hospital had left her baby on a table at the other end of the room for hours on end. She also learned that hospital staff had called the police.

“Why the hospital staff called the police to take my baby away is still so troubling. That image of me lying in the hospital bed with my deceased son left on a table, seemingly abandoned, is an image I will never forget,” she said.

‘I suffered alone’

Police records show that hospital staff reported the stillbirth as “suspicious” to police and found Becker tested positive for meth, though her attorneys say she never consented to a drug test.

Later, Becker agreed to meet police at her mother’s house where an officer interrogated her about her drug use. The police recommended she be prosecuted for murder, and weeks later, took her to jail.

Becker was prosecuted by the Kings county district attorney, Keith Fagundes, the only prosecutor in California who has filed charges for a stillbirth in the last three decades. The year before, Fagundes had also filed a murder case against Adora Perez, after she delivered a stillborn baby at the same hospital in Hanford and police also alleged that meth use had caused the loss.

Becker awaited trial in jail while struggling to process her grief. Behind bars, she was unable to receive proper counseling, she said in a recent statement to lawmakers: “I was afraid anything I might have said to any of them would be used against me in court, so I suffered alone.”

While in jail, she lost custody of her son, who was adopted. Her two other children were already in the custody of a relative.

Becker was prosecuted under Section 187 of the California penal code, which defines murder as “the unlawful killing of a human being, or a fetus, with malice aforethought”. Lawmakers added “fetus” to the statute in 1970 in response to the case of a man who had attacked a pregnant woman, causing a stillbirth. The law does not apply to an act “consented to by the mother of the fetus”, and the primary author of the legislation, a Republican lawmaker, later testified that the mention of fetus was solely intended for prosecuting “a third party’s willful assault on a pregnant woman”.

But Fagundes, and the police officials who investigated Perez and Becker, have used it to argue that women, in some cases, should be jailed.

Becker’s lawyers argued that she could not legally be prosecuted under Section 187. They also noted that at the time of the stillbirth, Becker had three separate reproductive infections, all of which can cause stillbirth. The pathologist who concluded Becker’s stillbirth was due to “acute methamphetamine toxicity” admitted in court that he was not aware of the infections when he conducted the autopsy and had not reviewed her medical records before his determination.

A judge dismissed the case in May 2021.

Adora Perez, the other woman prosecuted by Fagundes, spent four years behind bars before her case was dismissed earlier this year.

“The DA’s extraordinarily broad and very dangerous interpretation of the statute means that if a woman does any kind of activity that could be considered reckless while she’s pregnant, and she loses her fetus, she’s up for murder,” said Mary McNamara, Perez’s lawyer. “If she works at a dangerous factory while she’s pregnant and loses her child, that’s murder. If she is ill and needs cancer treatment that could harm her fetus, that’s murder.”

‘Women are afraid to seek help’

Although Becker’s case was unusual in California, it is not unique in the US.

The 1973 Roe decision established the constitutional right to abortion. But NAPW has tracked more than 1,700 cases between 1973 and 2020 in which pregnant people have been criminalized often based on the notion of “fetal personhood” – that a fetus is, in effect, a person with rights. That estimate, probably an undercount, includes a wide range of cases in which pregnant people faced arrest, prosecution or other criminal or civil consequences based on some action or behavior that law enforcement claimed caused harm to the fetus.

Pregnant women have been criminalized for falling down stairs; giving birth at home; exposing a fetus to dangerous “fumes”; having HIV; not resting enough during the pregnancy; not getting to a hospital fast enough while in labor; being the victim of a shooting; and self-inducing an abortion.

“Once prosecutors decide they want to punish somebody for ending a pregnancy, they will figure out a way to do so,” said Farah Diaz-Tello, senior counsel and legal director of If/When/How, a reproductive justice group.

Substance use is one of the most common allegations, with mothers facing charges even when there’s no evidence of harm to the fetus and in some instances, even after they have given birth to a healthy baby.

Two physician experts testified that Becker’s arrest was rooted in “medical misinformation” and that the claims that meth use causes stillbirths were unfounded. At least 20% of all pregnancies in the US end in miscarriages and stillbirths, often with unknown causes, the doctors wrote, and if the courts treat stillbirths as potential crimes, it will require a dramatic expansion of the role of law enforcement in pregnancy.

A coalition of major medical associations, public health and reproductive rights groups also filed a brief supporting Becker, noting the research consensus that the threat of prosecutions does not protect pregnancies, but rather endangers them by leading people to avoid care. “It is in no way pro-life or in the interest of the health of a fetus that we criminalize the negative outcomes of pregnancy,” added Jacqueline Goodman, one of Becker’s attorneys.

Becker said women who are addicted and pregnant are afraid to seek help, whether in the form of drug treatment or prenatal care. “Women wonder, ‘How can I fix this on my own without anyone else finding out, and in time before the baby comes?’” Becker said. “And many times, as we have seen, it’s much too difficult a battle to fight alone, and many women are unable to kick their addiction by themselves without professional help.”

The fight to protect others

When Becker's case was dismissed last year, she was in the middle of completing a drug treatment program. "There was a small part of me that said, 'I don't have to be here any more. I can leave and go home, and nothing will happen to me.' But I knew better than to abandon that commitment," Becker recalled.

After completing treatment, she enrolled in college and is now working toward a community health worker certificate and public health degree.

She also recently advocated for state legislation meant to explicitly block these kinds of prosecutions.

"I hope that in the future, no woman will ever be prosecuted for losing a pregnancy," she told legislators. "I was punished for something that could have happened to anybody."

Brian Johnson, an Adventist Health spokesperson, declined to comment on Becker's case, but said it was hospital policy to notify the coroner's office in a stillbirth after 20 weeks, and that it follows reporting requirements of child protective services.

The Hanford police department did not respond to inquiries.

Fagundes, the prosecutor, dismissed the medical associations' arguments as a "political position". He said he could not cite research to support his claims that prosecution was the right approach to addiction, but noted that the women did not use drugs behind bars.

Asked why he was the only DA in the state prosecuting women for stillbirths, he said, "Others are fearful of the liberal media machine, the attorney general and the governor and our legislature."

He added he could in the future refile cases against Becker and Perez, but said he had no immediate plans to do so. "It really depends on how these two women proceed in life. If they're successful and sober and don't harm more children, then they probably deserve some credit for that," he said.



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