

THE RIGHTS AND DIGNITY OF ALL PREGNANT WOMEN MUST BE
CONSTANTLY UPHELD



Lynn M. Paltrow
Executive Director

[National Advocates for Pregnant Women](#)

If we are to fight back effectively against the assault on women's reproductive health and rights, we must understand how two cases, both from the US state of Indiana are inextricably linked. These cases involved issues that may seem unrelated. However, *State v. Herron*, involving a pregnant woman who allegedly used cocaine had everything to do with winning the freedom of a woman who was convicted of two crimes because she sought an abortion.

In 2013, Purvi Patel, an Indian American woman was charged with two crimes; neglect of a dependent and feticide. This came about from her efforts to have a safe abortion with medication at her Indiana home: she was convicted and sentenced to 20 years in prison. After Patel spent more than a year in prison, a unanimous panel of appellate judges overturned the feticide conviction and drastically reduced the neglect of a dependent charge, leading to her release on 1 September 2016. If not for an earlier case involving Idette Herron, a pregnant Black woman who used drugs, Patel might still be incarcerated.

In the appellate ruling in *Patel*, the Indiana Court of Appeals did two things. First, it refused to allow the prosecution to radically expand the feticide law (created to punish people who harm pregnant women). As the judges explained, "the legislature did not intend for the feticide statute to apply to illegal abortions or to be used to prosecute women for their own abortions." This legal ruling got rid of the feticide conviction, which came with a six-year sentence.

Second, the court downgraded Patel's conviction for neglect of a dependent *leading to death* (a Class A felony with a 20-50 year sentence) to simple neglect (a Class D felony with a 6 month to 3 year sentence). But for that ruling, Patel could have spent another decade or more in prison.

The original neglect of a dependent charge was based on the claim that Patel's abortion attempt failed and that she had given birth to a baby who died shortly after birth. The prosecution's proof of live birth relied on a long-repudiated, non-scientific "float test." Further, because the prosecution had no evidence of anything Patel did after the premature birth to cause death (other than not immediately calling 911), the prosecution relied on what Patel did and did not do while pregnant to persuade the jury to convict her on the neglect charge. This is how Idette Herron's case assisted Patel.

On 20 March 1999, Herron gave birth to a son and in so doing fell prey to a new Indiana policy that called for punishment of pregnant women who gave birth to babies who tested positive for cocaine. This policy was based on medical misinformation about pregnancy and cocaine use. Moreover, no new law had been passed to support the policy.

Nevertheless, Herron was charged with felony neglect of a dependent—the same crime Patel would be charged with 14 years later. Herron challenged the legitimacy of the charge against her. An Indiana appellate court ruled in her favour, holding that the neglect of a dependent law could not be misused to punish pregnancy or its outcomes.

Relying on the *Herron* decision, the court concluded that Patel's neglect conviction could not be based on what she did *while* she was pregnant, whether obtaining and using medication in an attempt to have an abortion or giving birth at home, outside of a medical setting. As a result, Patel's sentence was drastically reduced and she was freed. National Advocates for Pregnant Women, has long recognized that if States could punish mothers who gave birth to healthy babies by claiming that these women had, while pregnant, risked harm to their babies (that is, by using drugs, drinking alcohol, refusing caesarean surgery, not getting bed rest, or any number of other things known or believed to risk harm during pregnancy) those States would certainly punish women who intentionally sought to end a pregnancy. This is just one reason why all arrests based on pregnancy must be challenged.

And yet the arrests of pregnant women, especially those who, like Herron, are Black and/or poor and/or use drugs, receive far less attention and inspire far less support than cases involving abortion. Why? One reason is that there are numerous organizations whose mission is to defend the right to choose abortion but few pro-choice groups concerned with ensuring comprehensive health, rights, and justice for *all* pregnant people. That includes for those who are criminalized or considered "unworthy" of protection.

As it became clearer and clearer that Patel, herself a woman of colour, was being punished for attempting to have an abortion, her case generated a significant outpouring of support from both national and international organizations. There has been far less support for the hundreds of women who, like Herron, are arrested because they brought their pregnancies to term in less than perfect circumstances.

What the *Patel* and *Herron* cases teach us is that if we want to ensure that women are not punished for having abortions, we must be equally willing to fight to ensure that pregnancy is not conceptualized as a form of child abuse and that women are never punished for continuing to term, whatever their circumstances. Every time we fight for some pregnant women and not for all (for example, those who seek abortion but not those who seek to go to term), and every time we divide pregnant women into the good ones and bad ones, we become less likely to win our struggle for reproductive justice.

The rights and dignity of all pregnant women and not only those seeking to exercise a right to an abortion must be constantly upheld.

Adapted from an article that first appeared in [Rewire](#) on January 23rd 2017