

BRITTANY: Why wouldn't someone help me?

Jenn Stanley: This is CHOICE/LESS, a storytelling podcast from Rewire Radio about reproductive injustice and the laws that put people in choice-less situations. I'm Jenn Stanley, senior staff reporter at Rewire, and the host of this podcast.

Reproductive justice covers a wide range of issues, not just abortion rights. So far this season, CHOICE/LESS has centered abortion stories, but today's story is a little different and is not about abortion access.

This episode is concerned with one law in particular, Tennessee's fetal assault law. A 2014 amendment to the state's fetal homicide law allowed pregnant women to be charged with aggravated assault, which carries a maximum penalty of 15 years in prison, if they have pregnancy complications after illegal narcotic use.

While other state courts have found ways to criminalize pregnancy through interpretations of their laws, Tennessee is the first to enact such an explicit law.

In theory, it gives drug addicted pregnant women two options: get treatment, or go to prison. But the state did little to ensure that treatment options were available to pregnant women.

Though the law is set to expire on July 1, 2016, many, like today's storyteller, were left choice-less.

Brittany Hudson, of Knoxville Tennessee, began to struggle with substance abuse when she was 14, but her problems escalated a few years later, when she started using opioids.

Brittany Hudson: I met this guy during that time and he did pain pills, and I wanted him to love me like I loved him. It wasn't very long after and I had a needle in my arm.

JS: Tennessee has one of the highest rates of opioid abuse in the United States, and it's the worst in eastern Tennessee, where Brittany has lived all her life.

Brittany moved in with her boyfriend who used opioids, and her problem worsened.

BH: I started doing things that were against all my morals that I didn't believe in. I wasn't doing to the point where I would detox or get sick from it. But I would do it so often that it'd be like four or five days and I would skip a day, and then do it four or five days, skip a day.

JS: She picked up a shoplifting charge for aggravated burglary.

BH: I didn't serve jail time. I bonded out, and got on a diversion, and this time I was on probation, I was still getting high. They just never drug tested me. I guess I just fell through the cracks a little bit.

JS: And then she found out she was pregnant.

BH: I was really excited. I remember standing in the bathroom thinking like this is it this is where I'm going to change things are going to be different. I'm not going to use drugs starting tomorrow. And every day the next day would be like I'm putting it off until tomorrow, and then I would say after tomorrow I am not going to use no more, and it was a continuous cycle. I did go to my OB. I went to all my OB visits. I was really excited, and I remember when she told me I was having a girl. It was almost like it hit me that I was actually having a child when she finally told me I was having a girl. And then in September, about a month or two before I delivered, I told her I was addicted to drugs and I couldn't get clean. And she told me I probably should go to the methadone clinic but in my mind I didn't want to substitute one thing for another so I didn't go I just continued to abuse drugs and I had my daughter on October 4, 2011.

JS: This was about three years before the fetal assault law was enacted, but both she and her daughter failed a drug test, and her daughter was starting to show signs of withdrawal. Tennessee's Department of Children's Services got involved. Her daughter was in foster care for about a month before they made arrangements for her to live with Brittany's mother.

BH: And I did not stay clean. I had a DCS worker and I continued to use, except this time it was getting more progressive. The father of my child was actually- he started beating me and physically abusing me a lot. I remember him kicking me in the ribs one night and pulling my hair and it was just a really unhealthy sick relationship because we were both drug addicts and we fought over drugs

He went to jail for violating probation and picking up a theft charge so when he went to jail. I thought I would try to get into somewhere so I ended up finding a halfway house that was half halfway house, half intensive outpatient, but you lived there. So I stayed there. And I stayed there for four months and I got kicked out finally for having a cell phone.

I managed to stay clean about a month after that but then I started drinking again. I was thinking that it was ok for me to drink as long as I wasn't doing drugs and then my daughter's father had gotten out of jail and he was in drug court so I ended up getting back with him and he wasn't using but I started to use again. We would still fight and he would get drunk. He was just awful to me. I remember this one time he sexually assaulted me and physically assaulted me and I finally had enough, and that was February 14, 2013.

I left him and I went to my mom's. I ended up staying clean for the most part but I started going to bars a lot and I was drinking every night and not coming home and then I met this guy who worked at this bar that I went to a lot and we ended up I was pretty much just like I love you. I'm always zero to 100. There's no medium. It's just jump in and go full throttle with it, so I ended up moving in with him and everything was good. I was just drinking quite a bit and while I was drinking one night this guy who I used to use drugs with offered me something and I couldn't

turn it down. I said yes and it opened the gates back up. In December of 2013 I was using pretty hardcore again.

JS: In February 2014, she found out she was pregnant again.

BH: It was almost like, oh no, here we go again. Like this is happening. And during this time the law the fetal assault law was coming out and I remember reading on Facebook: pregnant criminalizing drug addicted moms, and that was my reality. How I perceived that became my reality. I was like, oh no if someone finds out I'm using drugs I'm going to jail, if I fail a drug test I'm going to jail. I thought while I was pregnant they were just going to throw me in jail. So I didn't end up going to my OB. I kept putting it off.

JS: Brittany is not alone. Since the fetal assault law went into effect, East Tennessee Children's Hospital saw a threefold increase in NICU admittances where the mother received no prenatal care.

But she was afraid. She didn't have a lot of information on the law, and she tried throughout her pregnancy to get help. But she was having a hard time finding a treatment center that would take a pregnant woman, and those that would wouldn't take her insurance.

BH: In my head I envisioned me going to the OB failing a drug test and being handcuffed. Even on the pictures they were showing, it was like pregnant women holding their bellies with bars behind them. I was like, oh my god they're really taking people to jail for failing drug tests while pregnant. That became my reality I was like if I go fail a drug test they'll put me in jail.

JS: Her partner did not know she was using, and she began spending more time with people who did use or who could help her use.

That spring she met another pregnant woman through friends who were using. They were due around the same time, and quickly became close friends.

BH: A couple weeks went by and she messaged me, can you pee for me? And I knew I was going to be dirty. I said, you don't want me to pee for you I smoked weed before I found out I was pregnant. And she was like, oh it's ok. It's for the doctor. And she told me this story like someone had smashed up a pain pill and put it in her drink, and she accidentally took a drink and she was scared she was going to fail for opiates. I was like, I may fail for Xanax and it takes 30 days to get out of your system. I never really did Xanax until after I had Brayley so I just told her that because I knew it would stay in your system longer. And she was like, don't worry about it because I'm prescribed Xanax. And she was like i'll give you \$20 right now for your pee. And I was like ok. I met her, and I peed for her. She claimed she was going to the doctor.

We didn't really talk much after that, and the farther along I got she started calling me. Like in July we started hanging out quite a bit. She didn't know I used drugs either at this time. I didn't tell her until maybe August, and the farther along I got, it was really weird because she would call at like 1 in the morning because my boyfriend, my youngest daughter's dad, he was a bartender so he would work till like 3 in the morning, and it would just be me there and his ten year old. And she would be like do you want me to bring you anything she would go to Sonic for me and bring me food all hours of the night. Finally I was really sick one day and I was like, I'm

not going to be able to get money, and I was like look I'm on Suboxone, and I was like I need your help. I need you to get me one. I can't withdraw. She didn't know what she was buying me, but as time went on she would go to my drug dealer and get them for me. We were really close.

JS: That summer, she decided to go to an OB appointment.

BH: And the doctor was like everything is good, she's healthy. I didn't come out and say I was a drug addict but I had marks on my arm and they drew my blood, so I'm assuming they would know I was an IV drug user.

I went to three OB appointments and on my last one I preregistered at the hospital, and I didn't go to one that was in my area. I went to a hospital in a different county because where I already had one drug addicted baby, I was trying to outsmart the system. So I ended up getting caught using my drugs in the beginning of October. The guy that I was living with, he kicked me out. And I made up every excuse to justify it. I was like those aren't my drugs they're somebody else's, but it didn't work.

JS: She went to stay with her friend who was pregnant. Brittany was eight months along. She was very visibly pregnant. But she noticed her friend, who was due around the same time, wasn't getting very big. Her friend told her the baby had heart problems. On October 23, Brittany went into labor.

Brittany says the friend she was living with had searched the internet for how to deliver a baby at home. Instead of taking her to the hospital, her friend claimed to be taking her to a midwife.

Brittany says she didn't really know what was going on. She was in excruciating pain. She was high. And up until this point, she says she believed this person to be a good friend. She trusted her.

BH: I started having some type of pain and I was like, am I having this baby? And they kept on getting worse and worse, and that morning I ended up- I realized I was going into labor. I told her I was like, I'm going into labor. People always ask if I was scared and I'm not exactly sure how I felt. I still can't pinpoint exactly if it was I didn't go to the hospital then because I was scared or if I thought, well maybe I can just put it off. She shouldn't be here yet because I was actually due October 28, so I thought I still had the four extra days.

When we got to this girl's work I was in a lot of pain and feeling really nauseous and she ended up giving me an Opana, and she was on the phone with this lady and she told me it was a midwife. She was like, this lady says you're probably going into labor and I remember sitting down on the car and I put my hands down there and I felt a head coming out, and I was like no she's here. She's coming.

We jumped in the car. I'm not exactly sure where we were driving to. I was high and in labor, so I wasn't exactly in the right state of mind anyways. I ended up delivering my little girl on the side of the road, and it's really sad because I can't even tell you exactly the time. I know it was around one in the afternoon but that's all I know.

Her friend tried to hide evidence of the birth and buried the placenta on the side of the road. Brittany was in and out of consciousness, but the next thing she remembers, she

was at someone else's house. There was no midwife. Brittany's phone was dead and she was still losing a lot of blood.

The next day, her friend said she would take her to the hospital, but on the way there, the cops stopped them. Brittany still doesn't know who, but someone reported them to the authorities. Said Brittany gave birth on the side of the road, addicted to drugs, and that her friend had helped her.

BH: There were about four cops. They checked on the baby and she was ok at that point. They called an ambulance and took us to the hospital. And we get to the hospital and they check her out, check me out, and a couple hours later they come back and say we're going to have to take her to the NICU at University of Tennessee. So they transfer her to UT. They let me out. And a couple days go by, and I did go up to the hospital and see her probably like two or three times a day. I would call and check on her after every feeding and about four or five days after she was born I called up there one day and they told me, we can't tell you how she is. There's been a no contact order put between you and your daughter from DCS.

So at that time drug use continued to get worse and worse I started shooting heroin and Xanax and morphine. I shot drugs but Xanax and heroin were not things I had done before. But it was almost like I subconsciously was trying to die. I didn't care if I lived. They scheduled an appointment a couple days later at the DCS office. And I went in and I was sitting at this table and the next thing I know I see two people walk in with guns on their hips and they were detectives and they arrested me and took me to jail for child abuse and neglect and assault.

JS: Her friend who delivered her baby also went to jail on charges of child abuse and neglect, and falsifying records. Brittany later found out that this woman wasn't pregnant. She'd gone so far as to wear a fake pregnancy belly. Rewire tried to contact this friend several times, but we were unsuccessful. Brittany and her friend are now estranged. Brittany says she doesn't think she'll ever know what her real intentions were.

Brittany bonded out of jail and tried to find a treatment center that would take her.

BH: I tried to get into a couple at that point. I had tried to get in treatment and either there was a waiting list- I tried to get in Centerpoint, Cornerstone wouldn't take my insurance, Centerpoint there was a waitlist. There was one in Kingston but they didn't detox and that's what I needed. So December 28, I called my mom and I told her, I'm going to die, I want to die, can you please come get me, and come help me.

So my mom picked me up and drove me to the hospital in Knoxville. There were ODs on both sides of us in the rooms, and he was like you know there's nothing we can do for her. She's going to have to detox. And my mom was like we're not leaving here until you get her in somewhere she can't just die. So he gave me a list of options and called Buffalo Valley in Nashville. I gave them my information they're like, be here in the morning, so I stayed with my mom detoxing that night. And we woke up that morning, and she took me all the way to Nashville, and they opened the doors and they were like you need to say your goodbyes, we have her now. She's going to be OK. So my mom gets in the car and leaves, and before my mom could even make it back to Knoxville they called and said, her insurance isn't going to pay for detox. You need to come get her. But it was late. So my mom didn't come and get me. They let me stay. But they told me I needed to go to outpatient or go home. And I needed to detox, I

hadn't detoxed. So I left with this girl who I met in treatment who is actually from Maryville, and we went to Peninsula and it was late when we arrived at Peninsula so we needed up making an appointment to come back the next day.

So we came back the next day. She got in, and it took them so long for them to approve me I ended up leaving. I was like I'm done I'm going to go get high. I'm sick. I'm on day two or three at this point so I called my friend they came and got me. And that night picked up another charge of aggravated burglary. So I went to jail on December 31, and I stayed in until January 14. And I remember sitting in jail on New Year's Eve. I was puking, and laying on the floor. Just thinking how miserable, like how much I hated my life I was crying sweating it was awful, it was an awful experience. Jail was definitely not for me.

I got out January 14. My mom finally bonded me out because I had a kidney infection. So I got home and we kept trying to get me in treatment even after that. At that point I had either been clean for too long- after two weeks, I can pass a drug test, so no one wanted to take me. I went to a local place in Knoxville and they did a five minute assessment on me and told me I needed to find some sober living.

I needed help and nobody would help me. And it's a really sad experience to know that I'm not the only out there that wants help and can't get it. Either being pregnant or not pregnant, detox in jail, and then trying to get help, so we ended up keep on putting these requests for rehab into my insurance, Then I'd get like- you've been approved. And then the next day I would get a letter saying, you've been rejected and you need to appeal it. So finally my mom was like pack your letters up we're going to Nashville. So we wrote Senator Doug Overvey a letter. Just telling him you know exactly what was going on. I'm charged with this law that you guys put in place that didn't offer any help in the process of it and we went up there took my letters. And I met with Rep. Bob Ramsay and a DCS liaison, and I just cried. Like I told them, I'm begging you guys to help me and nobody will help me.

In the end, nothing came of it. I still didn't get into treatment. So finally I was like, I'm gonna go to an NA meeting. I know what I need to do from last time I was in the halfway house. I need to get to an NA meeting. So I went to an NA meeting. I just shared about how I couldn't find nowhere, and what was I supposed to do. I was running out of options.

I was able to see my daughter as long as my mom supervised, but they wanted me in treatment and wanted to see I could be clean by myself. So this girl gave me a card to this halfway house, and I called and I went there. When I left the halfway house I had unsupervised visits two days a week, and I ended up getting the first weekend I was out I moved in with my grandma, and they're like, you can have her overnight. So I got overnight visits for the weekend with her.

In November in August I started doing volunteer work with women who were struggling with addiction while pregnant. It was at Renaissance Recovery Group, and I would tell my story with them and it had been about November I finally met the clinical director. He was like, your story is priceless, it has a lot, it can help and benefit these girls so much because of what you've been through and knowing that they can get through, it so they offered me a job.

I started working with them about 10 months clean. And then after that I got joint custody of my daughter. It became official in February. January 1st is my one year clean. And then in February

I got my daughter, and in February I also got put on two years probation for those charges. I tried to fight it for a year. So now I'm stuck with a violent offender charge.

JS: Brittany was able to get shared custody of her second daughter. She and the father tried to work things out after she got clean, but Brittany says that the process of recovery changed her too profoundly. But she says they coparent well together. They still get along and just want what's best for their daughter.

Brittany's mother has had full custody of her oldest daughter, and recently adopted her.

BH: I got to the point where I know with my daughter about being five it'd almost do more harm than good. She knows who I am, but she doesn't call me mom. My mom spoils her and can give her a life that I can't give her right now. and I'm ok with that. I'm ok with knowing that she's in a good place. Just because she's adopted by my mom doesn't mean I'm never going to see her again or not have that relationship with her.

JS: A small but decisive group of Tennessee representatives voted in March to discontinue the fetal assault law, which expires July 1, 2016. At least four women have served or are serving six-month sentences, but experts say the number is likely higher, and it's been difficult to track. For those women who have already been charged with the law, its expiration does not mean that their sentences will be commuted.

Evan Sexton, the clinical director of Renaissance Recovery, where Brittany works, told me that neither the law nor the sunset properly address the lack of treatment options in the state, or the seemingly hopeless situation faced by addicted pregnant women in Tennessee.

This episode of CHOICE/LESS was produced by me, Jenn Stanley, for Rewire Radio, with editorial oversight by Marc Faletti, our director of multimedia. Laura Huss, our research associate contributed research for this episode. Jodi Jacobson is our editor-in-chief, Brady Swenson is our director of technology. Music for this episode was by Doug Helsel. Special thanks to all the staff at Rewire.

For more on Tennessee's fetal assault law and the criminalization of pregnant women, visit our website at Rewire.news/CHOICELESS.

And stay tuned later this week we have a bonus episode of CHOICE/LESS where Jessica Mason Pieklo, the vice president of law and the courts here at Rewire, explains what the 5-3 decision in favor of Whole Woman's Health means for HB2, this season's storytellers from Texas, and for abortion access across the country.

Thanks for listening.