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Jailed for a Suicide Attempt

After a pregnant Indiana woman tried to kill herself—and lost her newborn—the state threw her in prison. Jennifer Block reports on Bei Bei Shuai's strange saga, and why women can't be held criminally liable for their pregnancy.

by [Jennifer Block \(/contributors/jennifer-block.html\)](/contributors/jennifer-block.html) | April 12, 2011 10:32 PM EDT

Bei Bei Shuai was so depressed last Christmas, she chose a punishing way to die: rat poison. When her friends swooped in and saved her life, the Chinese restaurant owner's story might have ended happily, except for one detail about Shuai's condition: she was 33 weeks pregnant.



AP Photo (inset)

While Shuai survived the suicide attempt, her fetus ultimately did not. The state of Indiana responded not with continuing mental health services, but by incarcerating the 34 year-old on [charges of murder](#)

[and attempted feticide \(http://www.msnbc.msn.com/id/42116782/ns/us_news-crime_and_courts/\)](http://www.msnbc.msn.com/id/42116782/ns/us_news-crime_and_courts/). Today, a judge will determine if she'll be released on bail.

The case is something out of a Margaret Atwood novel. Medical groups have unanimously railed against the state's actions as being punitive and counter to public health goals, since they may deter at-risk women from seeking care. And the American Civil Liberties Union argues the charges are unconstitutional: "If a woman can be criminally prosecuted for those acts or omissions (or medical conditions) that pose a threat to her health while pregnant, then the state's control over her life would be limitless," says the group's amicus brief.

But the state of Indiana is not persuaded by such arguments. And based on the emotional testimony of Shuai's friend Sui Mak at a [bail hearing \(http://www.beaumontenterprise.com/news/article/Friend-Woman-who-tried-suicide-cried-as-baby-died-1322353.php\)](http://www.beaumontenterprise.com/news/article/Friend-Woman-who-tried-suicide-cried-as-baby-died-1322353.php) last week, you might wonder if the prosecutor has a shred of compassion, let alone an understanding of criminal justice.

Shuai's downward spiral began in late December, when her boyfriend blindsided her. It turned out the man who had fathered her baby and promised to marry her, and with whom she'd recently opened a restaurant, wasn't going to follow through on any of his promises. He was married to someone else—not divorced, as he'd told Shuai—with two children. And perhaps lacking vision or a spine, he decided he didn't want to give up his estranged family to start a new one. He left Shuai, sobbing on her knees, alone in a parking lot.

It seems cruel if not unusual to imprison a woman who happened to be pregnant when she tried to kill herself.

When Shuai looked up, she saw a hardware store, walked in and bought rat poison. She went back to her apartment in Indianapolis and ate the pellets. But she was surprised when they didn't immediately kill her. Frustrated, she got back in her car and drove northeast to Anderson, where several close friends live, though she didn't go to any of them. Instead, she went to a gas station, where by chance, Sui Mak's husband, Bing, spotted her. She was puffy-eyed, pale, out of sorts. He convinced her to drive straight to their home and have a meal. Finally, she confided about the rat poison. They coaxed her into the car and drove her to the hospital.

Shuai spent Christmas on the maternity ward at Methodist hospital in Indianapolis. On New Year's Eve, doctors decided a cesarean was necessary. The Maks' 14-year-old daughter named the baby girl: Angel. Everyone expected mother and child to make a full recovery, but after the delivery, Angel started to decline. The hospital asked Shuai to sign forms allowing blood transfusions and procedures. On January 2nd, doctors asked her permission to take the newborn off life support. At that point, law enforcement was notified.

The prospect of her baby's death led to a second breakdown, according to Mak's testimony, which was relayed by Shuai's attorney, Linda Pence. "She was fainting and crying, fainting and crying, drifting in and out of sleep. She was completely unstable." But that evening, with the help of her friends, she decided to take Angel off life support. Shuai "held the baby for five hours straight until she died in her arms," said Pence. "The whole time Bei Bei was crying and screaming, 'Why couldn't I die? Why did they have to take my baby?'"

Shuai spent the next month on the hospital's psych ward, recovering and grieving. By March, she had resumed running her restaurant. That's when the state locked her up.

Marion County Chief Trial Deputy David Rimstidt defended his office's actions. "She attempted suicide and that resulted in the death of a fetus that was born and lived for a few days and then died,"

he said. "So she's being charged with the crime against the viable fetus, and the child that was born, and not against herself." The last statement explains why she was charged with both attempted feticide and murder.

Holding a woman criminally liable for the outcome of her pregnancy is a radical interpretation of the law, legal experts told The Daily Beast. "Indiana does not prosecute people for attempted suicide," said Indiana University law professor, medical doctor, and former state representative David Orentlicher. "So now this prosecutor is saying, 'If you're suicidal, you better not get pregnant, because you might get thrown in jail.' That to me is a very important constitutional problem."

And the case is not an outlier. The [National Advocates for Pregnant Women](http://www.advocatesforpregnantwomen.org) (<http://www.advocatesforpregnantwomen.org>), which is assisting with Shau's defense, has been tracking hundreds of similar cases: women who have been locked up on murder or attempted murder charges because they miscarry or because their baby dies soon after birth; women who are charged with child abuse while pregnant (the "child" being the fetus); and alternatively, pregnant women who have been court-ordered to hospitalization or cesarean sections against their will. All of these cases are based on statutes that effectively give fetuses more rights than the women upon whom they are physiologically dependent.

"States pass feticide or similar laws in the wake of some horrible violence against a pregnant woman," explained Lynn Paltrow, who founded and directs the National Advocates for Pregnant Women. "They claim to protect pregnant women, but prosecutors turn around and use these laws against women themselves"—often for taking illegal drugs, but sometimes for falling down stairs (as happened last year in Iowa).

The laws also end up undermining the patient-doctor relationship. In Texas, following passage of the 2003 "[Prenatal Protection Act](http://www.utexas.edu/law/news/2003/060503_robertson.html) (http://www.utexas.edu/law/news/2003/060503_robertson.html)," Amarillo's district attorney wrote a letter to area physicians requiring them "to report a pregnant woman who is using or has used illegal narcotics during her pregnancy." Doctors turned in some 40 women, who were then charged with giving drugs to "minors."

"This is the predictable and increasingly common result of a growing movement in this country to treat fertilized eggs, embryos and fetuses as separate from the women who carry them," said Paltrow. She calls it a "fetal separatist movement," advocated by right-to-life ideologues and implemented by activist prosecutors.

What doesn't make sense is that if the goal is to protect fetuses, such prosecutions only cause them more harm. Women with addiction problems or mental health issues will avoid medical treatment for fear of criminal penalty—they may even seek an abortion—or they'll be exposed to the notorious prison health system, Paltrow points out.

"We just don't miss a chance to kick a woman in the head," said Jeanne Marie Flavin, author of *Our Bodies, Our Crimes: The Policing of Women's Reproduction in America* (<http://www.amazon.com/Our-Bodies-Crimes-Reproduction-Alternative/dp/0814727549>). "What happens is that when a woman needs counseling, or when a woman needs drug treatment, when a woman would most benefit from the support, we respond to her most harshly. We lock her up."

It seems obvious that the endgame of this fetus movement is to recriminalize abortion, and these are the grounds on which pro-choice groups oppose such laws. But Paltrow argues that it's a mistake to think in such narrow terms—that doing so "has ignored how these laws would be used to hurt pregnant women themselves." Feticide laws are used "as a legal basis to deprive women of their personhood," she said. "It's not just reproductive rights. It's not just the right to privacy. It gives the

state authority to say that, while other human beings will have health problems that will be treated through a compassionate health-care response, pregnant women alone will be imprisoned without bail for not being able to guarantee the outcome of their pregnancy.”

All of which makes the state of Indiana—and Alabama, Texas, South Carolina, and some 30 other states with feticide laws—seem cruel if not unusual for imprisoning a woman who happened to be pregnant when she tried to kill herself. I posed this notion to Marion County's Rimstidt, but he didn't get it: “You mean the fact that she killed her baby with rat poison is cruel?”

Jennifer Block writes frequently about women's health and is the author of the award-winning book [Pushed: The Painful Truth About Childbirth and Modern Maternity Care](#)

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