

## **Investigation of stillborn fetus in river ends**

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### ***Prosecuting case nearly impossible, county official says***

Metro police have closed an investigation into why a nearly 6-month stillborn fetus was found floating in the Cumberland River on Sunday because they have too little to go on.

"Maybe there are only one or two people who know of this event," Metro police spokesman Don Aaron said yesterday. "And if they haven't shared it with anyone, it would be that much more unlikely someone will come forward and give us some specific information to act on.

"It's a very unusual situation."

Police do not know who the mother is, and it's not clear that a crime even occurred, said police and Davidson County District Attorney General Torry Johnson.

The Metro medical examiner's office determined that the 23- to 26-week-old fetus, which was female, was "not viable," police said. Her race is unknown.

Criminal charges can be filed in a case where an abortion is performed illegally. Charges also can be filed in a case in which a corpse is mistreated or illegally disposed of, Johnson said.

It's unclear if such charges would apply in this case, he said.

Also, Johnson said, without knowing who the mother is and without any physical evidence that could lead to her, prosecuting a case is nearly impossible.

"If someone confessed tomorrow, and that action violated the law, we would review it for possible prosecution," Johnson said.

Three men found the fetus at 1 p.m. as they looked for arrowheads along the riverbank, near Lock Two Park near Opry Mills, a mall in the Donelson area east of downtown.

At the heart of any criminal investigation would be the status of the stillborn fetus under state law.

Johnson said it would be up to a court to decide if the stillborn fetus could be considered a corpse under Tennessee law, which would make its disposal a possible crime and thus the grounds for prosecution.

On the other hand, criminal defense lawyer and state constitutional expert David Raybin said, he believes that state law would not recognize a stillborn fetus as a corpse. Raybin said he supports

a woman's right to choose an abortion. Maybe the only laws broken were those that regulate pollution, Raybin said.

Raybin said perhaps it should be illegal to dispose of human remains in the river, even if the fetus had never lived.

"It is offensive to my sense of humanity to dispense of a child on the river. It is offensive to dignity. It shouldn't be done. And it is a health concern. Health issues alone justify making that against the law in the future."

The mother's health could be in danger, said Margaret Buxton, certified nurse midwife at the West End Women's Health Center at Vanderbilt University Medical Center.

She could suffer serious problems after any miscarriage or stillbirth, such as infection and severe blood loss, Buxton said.

### **Viable fetus as victim**

Tennessee law states that it is a crime to harm a "viable fetus." However, the law does not "affect abortion, which is legal in Tennessee. This section shall in no way apply to acts, which are committed pursuant to usual and customary standards of medical practice during diagnostic or therapeutic treatment."

Source: Tennessee Code Annotated