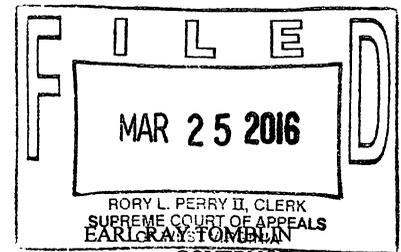


**PUBLIC DEFENDER SERVICES
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MARY JANE PICKENS
ACTING SECRETARY

DANA F. EDDY
EXECUTIVE
DIRECTOR

March 25, 2016

Rory Perry, Clerk
West Virginia Supreme Court of Appeals
State Capitol, Room E-317
1900 Kanawha Boulevard, East
Charleston, West Virginia 25305

Re: *State of West Virginia v. Stephanie Elaine Louk*, 15-0021
Notice of Additional Authority, Rule 10(i)

Dear Mr. Perry:

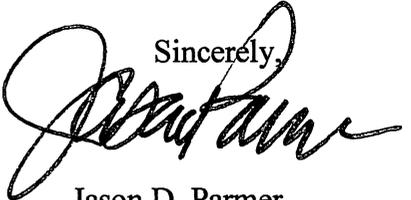
Please be advised that the Supreme Court of Arkansas issued an opinion on October 8, 2015 that is relevant to the above-referenced case. *Arms v. State*, 471 S.W.3d 637 (Ark. 2015). Arms used methamphetamine when pregnant and she was convicted under Arkansas Code § 5-13-210 for administering a controlled substance to another person. However, the Supreme Court of Arkansas vacated Arms' conviction, finding that the Legislature did not intend to: 1) include fetuses or unborn children as potential victims of this statute, or 2) allow women to be prosecuted for acts with respect to the fetus she is carrying.

The Arkansas criminal code has a strikingly similar provision to the West Virginia Unborn Victims of Violence Act, which defines a fetus as a "person," but only for certain offenses, and even then, it does not allow a mother to be charged or convicted of any offense against her child that was committed while it was in utero. Ark. Code §5-1-102(13)(B)(iii); *see* W.Va. Code § 61-2-30(d)(5). The Court in *Arms* deferred to the Arkansas Legislature's statutory

scheme. In doing so, it applied the rule of lenity and the maxim *expressio unius est exclusio alterius* to determine that Arms should not have been convicted of a crime against her unborn child. *Arms v. State*, 471 S.W.3d 637, 642-43 (Ark. 2015).

Thank you for your attention to this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Jason D. Parmer", written in a cursive style.

Jason D. Parmer

cc: Elbert Lin, Solicitor General