

# PRESIDENT'S NOTE

---

Pregnant people are uniquely and increasingly vulnerable to criminalization in ways that do not exist for other subsets of the population. For too long, this has not been a central concern of the reproductive rights movement in the United States. Central to criminalization are increasing efforts to grant legal recognition of fertilized eggs, embryos, and fetuses as people. So-called “fetal personhood” has concerningly gained significant momentum in state laws and judicial decisions. Rather than an abstract ideology, fetal personhood has very real, and truly devastating, impacts on pregnant people’s rights, health, and well-being. Pregnant people are, simply by virtue of being pregnant, vulnerable to criminal charges: child abuse or endangerment if they are accused of exposing their fetus to some perceived or actual risk of harm; or murder, feticide, or manslaughter if they experience a pregnancy loss. This report, documenting nearly 1,400 cases in just 16.5 years, demonstrates the accelerating trend of pregnancy criminalization in the United States, connected most directly to the expanding ideology of fetal personhood.

Fetal personhood is also very much at the heart of restrictions and bans on abortion. This report documents the alarming rise in pregnancy criminalization prior to the U.S. Supreme Court’s *Dobbs v. Jackson Women’s Health Organization* ruling, from 2006 until June 2022. It situates this phenomenon during a time in which abortion was still recognized as a fundamental right, but one that was rapidly eroding. The 1973 *Roe v. Wade* decision not only established the right to abortion, it also rejected the concept of fetal personhood and affirmed that people do not lose their constitutional rights upon becoming pregnant. And now, without the protections of *Roe*, we can expect pregnancy criminalization to continue to increase.

This report builds on Lynn M. Paltrow and Jeanne Flavin’s seminal article, published in 2013 in the *Journal of Health Law and Policy*, which documented and analyzed pregnancy criminalization for the first time. It is a critical reminder that reproductive autonomy is about more than just abortion—the overwhelming majority of cases documented since 1973 did not target abortion, but pregnancy loss or alleged “child abuse” while pregnant. While the

“war on drugs” and reproductive oppression have historically targeted Black, Brown, and Indigenous women, they also established a model for addressing substance use and pregnancy through the criminal system and constrained alternative policy pathways. As a result, policies enacted to police communities of color are now being imposed on poor white communities as well. As shown in this report, being poor is currently the greatest indicator of pregnancy criminalization.

The criminalization of substance use and pregnancy, specifically among poor people, is the vehicle by which fetal personhood has gained a foothold. The echoes of the “war on drugs” continue to reverberate in the cases documented here. In the wake of the *Dobbs* decision, which erased the constitutional right to abortion, the public is more clearly seeing the connection between reproductive justice and criminal justice—that the fight for reproductive justice will now be fought in criminal courts just as much as it will be fought in other venues. This report serves as a pressing reminder that the criminalization, rights violations, and dehumanization of pregnant people are not new. The risk to a pregnant person exists whether that person has an abortion, a miscarriage, a stillbirth, or a healthy birth outcome.

There is much to learn about our post-*Dobbs* future by looking at our recent past. We know this research will be fundamental to envisioning a future without criminalization, where healthcare is divorced from the criminal legal and family regulation systems, where neither poverty nor race is criminalized, and where everyone can receive the healthcare and support they need without discrimination, state violence or coercion, family separation, or stigma.

**We invite you to read this report, utilize it in your advocacy, partner with us, and help us create a collective future where pregnant people’s human rights are realized and no one is criminalized because of pregnancy.**

*Lourdes A. Rivera*