

KEY FINDINGS

- » The report found that **1,396 criminal arrests of 1,379 people** (a small number of individuals are or were involved in more than one case) took place over the 16.5 years between January 1, 2006, and June 23, 2022, the day before the *Dobbs* ruling. This represents a startling increase compared to the findings of the 2013 Pregnancy Justice study, which reported 413 cases during a 33-year period: over three times as many cases in half as many years.
- » While this study found cases of pregnancy criminalization in 46 states and U.S. territories, **nearly four in five (79.4%) arrests took place in just five southern states:** Alabama (46.5%), South Carolina (13.0%), Tennessee (9.4%), Oklahoma (8.1%), and Mississippi (2.6%).⁴ Alabama had far and above the highest number of pregnancy criminalization arrests, representing almost half (46.5%) of the total. With the exception of Mississippi, these were the only states in the country that either had judicial decisions that expanded definitions of “child” to include fetuses in their criminal laws, or, in the context of Tennessee, had a law in place that explicitly criminalized the pregnant person if the newborn was born exposed to or harmed by a drug.⁵
- » More than **9 in 10 cases involved allegations of the co-occurrence of pregnancy and substance use.** The three most common substances associated with pregnancy criminalization cases were methamphetamine, cannabis, and cocaine.
- » A striking **one-quarter of cases involved alleged use of legal substances,** including prescription opiates (both prescription status known and unknown) (20.6%), nicotine (1.6%), and alcohol (2.5%).
- » **Nearly 85% of cases involved criminal charges against a pregnant person who was deemed legally “indigent,”** meaning that they faced considerable financial hardship such that incurring legal fees would mean they would be unable to afford basic life necessities.
- » Reports made by medical professionals or hospital-based social workers were the most common basis for pregnancy criminalization arrests. **One in three cases were first instigated by a medical professional, and two in five involved family regulation workers.**
- » According to the case information available, **poor Black pregnant people and poor white pregnant people bore the brunt of the consequences** of pregnancy criminalization. Black people represented 18.2% of arrests due to pregnancy criminalization from January 2006 to June 2022, despite Black women making up only 13.0% of the U.S. population. Similarly, white pregnant people accounted for eight in ten (79.0%) of the total reported arrests, yet white women represent 58.8% of the population. This indicates a marked shift in the racial patterns of arrests compared to the first three decades following *Roe*, when pregnancy criminalization disproportionately targeted Black communities.⁶ Today, poor white people are now over-represented in the data. This is not to say that race and racism are no longer factors in pregnancy criminalization. On the contrary, it is the racist carceral tactics established during the war on drugs that are now being extended to target poor white communities in the midst of the opioid and methamphetamine epidemics.
- » In cases where such information was available, **we found a wide variety of pregnancy outcomes.** Two in three (66.0%) cases involved a live birth with no mention of negative health outcomes for the infant; 14.9% involved a live birth with the data indicating the baby had health problems at birth. Slightly under one in ten arrests (9.9%) occurred while the person was still pregnant. The remaining cases involved stillbirths (7.2%), miscarriages (1.4%), or abortions (0.6%). In 217 (15.5%) cases, the pregnancy outcome could not be determined from the data.

4 The CDC considers the following states to be part of the South Census region: Alabama, Arkansas, Delaware, Florida, Georgia, Kentucky, Louisiana, Maryland, Mississippi, North Carolina, Oklahoma, South Carolina, Tennessee, Texas, Virginia, and West Virginia. List of States in South Census Region, CDC (May 17, 2021), <https://www.cdc.gov/hiv/funding/announcements/ps22-2201/attachments/south-cesus-region.html>.

5 See Cary Aspinwall, These States Are Using Fetal Personhood to Put These Mothers Behind Bars, The Marshall Project (July 25, 2023) <https://www.themarshallproject.org/2023/07/25/pregnant-women-prosecutions-alabamaoaklahoma> (“Mississippi doesn’t have a fetal personhood law, but that hasn’t stopped prosecutors in at least two counties from filing criminal charges against women who tested positive for drugs while pregnant.”)

6 The case information indicates only one arrest of a non-cisgender woman. This may not be an accurate reflection of the gender identities in the dataset, as the criminal legal system and state actors within it may not accurately or properly categorize people based on their gender identity, nor is there often an option to self-identify as non-binary.

Conclusion and Recommendations

Ending pregnancy criminalization will require concerted efforts to: reject the ideology of “fetal personhood”; address the stigma associated with substance use during pregnancy; increase knowledge of the evidence base supporting non-carceral approaches to substance use disorder as a public health problem; ensure that pregnancy criminalization across all pregnancy outcomes is considered a key concern in the fight to restore and expand abortion rights; elevate an understanding of the racial and sexist underpinnings of the criminalization of pregnant people; and attenuate the role of the social and healthcare systems in pregnancy criminalization. Without the protections of *Roe*, pregnant people across the country are more vulnerable than ever. The findings outlined in this report provide a roadmap for safeguarding their rights moving forward.

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**Thank
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