

# METHODS

This study captures trends in pregnancy criminalization across the United States from January 1, 2006, until the day before the *Dobbs* decision, June 23, 2022, specifically through examining cases in which a person's pregnancy was a necessary factor leading to their arrest. In most included cases, pregnancy provided a “but for” factor, meaning that but for the pregnancy, the criminal penalty taken against the pregnant person would not have occurred.<sup>67</sup> In this study, pregnancy criminalization includes when a person faced any of the following state actions due to their pregnancy:

- » a criminal arrest;
- » the issuance of an arrest warrant or court order, regardless of whether it was acted upon;
- » following a non-pregnancy-related arrest, the use of pregnancy to justify more restrictive bond conditions or changes in conditions of pretrial release, sentencing, or community supervision; or,
- » following a non-pregnancy-related conviction, the use of pregnancy to justify probation or parole revocation.

The cases were identified and then coded using a structured framework (“coding scheme”) that was deductively developed to answer pre-identified research questions, stated below. Ten researchers were trained to use the coding scheme and enter results into a spreadsheet prepared for that purpose. Data were analyzed in Stata and R, commonly used statistical programs, and all statistics were checked by an independent second analyst. Intercoder reliability was calculated and discussed until coders could reliably code the variables.

Further information about the methods used in this study (inclusion and exclusion criteria, data collection, data entry, analytic framework, and limitations) is available in the appendix.

## Research Questions

Laws and legal decisions governing fetal personhood are state-specific. Given the findings of the 2013 Pregnancy Justice study, other literature on the criminal legal system, and feminist analyses of pregnancy—which have consistently found that

those in poverty are most affected by the criminal legal system and by curtailment of reproductive rights—this study asked:

### RQ1 (Sample Description)

How many cases of pregnancy criminalization occurred in the years of the study, and where, when, and to whom did they occur?

There are a number of actors who make decisions and take actions that lead to the criminalization of pregnancy. Thus, we asked:

### RQ2 (Involved Actors)

What people and institutions were involved in initiating the criminalization of pregnancy?

The characteristics and outcomes of these types of cases have not been documented since the 2013 study.

### RQ3 (Procedural Characteristics)

What are the characteristics and outcomes of these cases?

Given the role that substance use played in the 2013 study, we wanted to understand what role it played in the criminalization of pregnancy during this study period.

### RQ4 (Substance Use and Pregnancy)

What role does substance use play in pregnancy criminalization?

Because much attention has been paid to the criminalization of abortion, we wanted to have a fuller picture of the kinds of pregnancy outcomes criminalized.

### RQ5 (Pregnancy Outcomes)

What kinds of pregnancy outcomes are being criminalized?

# FINDINGS

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This study identified 1,396 criminal arrests of 1,379 people (a small number of individuals are or were involved in more than one case) between January 1, 2006 and June 23, 2022, the day before the *Dobbs* ruling. This represents a startling increase in the rate of pregnancy criminalization in comparison to the 2013 Pregnancy Justice study, which reported 413 cases over 33 years.

While much attention has been paid to the criminalization of abortion, a look at the case information shows that pregnant people are at risk of being targeted by the criminal legal system, regardless of birth outcome. Primarily carried out under the guise of addressing the issue of pregnancy and substance use, these arrests represent the merging of the fetal personhood movement with the war on drugs to criminalize people for acts and omissions that would not otherwise have been treated as criminal but for their pregnancy. The vast majority of charges were for criminal child neglect, abuse, and/or endangerment. These cases relied on an expansion of the category of “children” to include fetuses—a radical augmentation of the intended definition with sweeping implications. These cases also often relied on the cooperation of the healthcare and family regulation systems with law enforcement.

This report found a marked shift in the racial patterns of arrests compared to the first three decades following *Roe*, when pregnancy criminalization disproportionately targeted Black communities. Relying on racialized carceral tactics established during the height of the “crack epidemic,” the phenomenon has now extended to criminalize white poverty across all regions of the country. The arrests disproportionately affected people from lower socioeconomic levels across all races and were overwhelmingly concentrated in the South.<sup>68</sup>

In examining trends in pregnancy criminalization, this report includes an overview of the 1,396 cases (*Sample Description*), the people and institutions involved in the criminalization of pregnancy (*Involved Actors*), the characteristics and outcomes of these cases (*Procedural Characteristics*), and how these arrests related to the criminalization of controlled substances (*Pregnancy Criminalization Centered on Allegations of Substance Use*). We provide illustrative case studies throughout this section.

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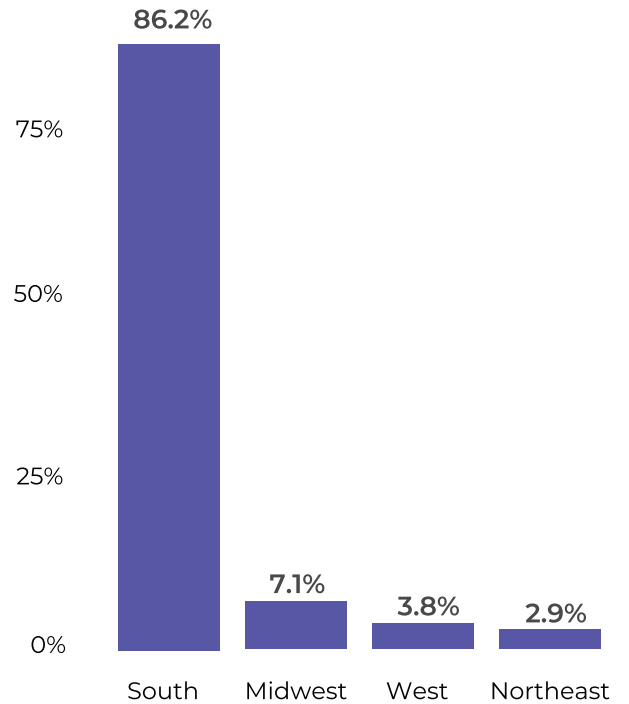
## Sample Description

### Geographic Patterns

While this study found cases of pregnancy criminalization in 46 states and U.S. territories, the overwhelming majority—86.2%—occurred in the South. The Midwest accounted for the second-highest number of cases, approximately every 1 in 20 (7.1%). The remaining arrests were distributed relatively evenly across the remaining regions (West, Northeast, and U.S. territories). Figure 1 excludes U.S. territories because there were less than five cases.

The vast majority of arrests—nearly four in five (79.4%)—took place in just five southern states:<sup>69</sup> Alabama, South Carolina, Tennessee, Oklahoma, and Mississippi. Alabama had far and above the highest number of pregnancy criminalization arrests, representing almost half (46.5%) of the total, followed by South Carolina (12.9%), Tennessee (9.4%), Oklahoma (8.1%), and Mississippi (2.6%). It is important to note that, 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 (and consequently expanded to limit pregnant people’s rights) in their criminal laws, or, in the context of Tennessee, had a specific law in place that explicitly criminalized the pregnant person if the newborn was born exposed to or harmed by a drug.

FIGURE 1  
Census Region



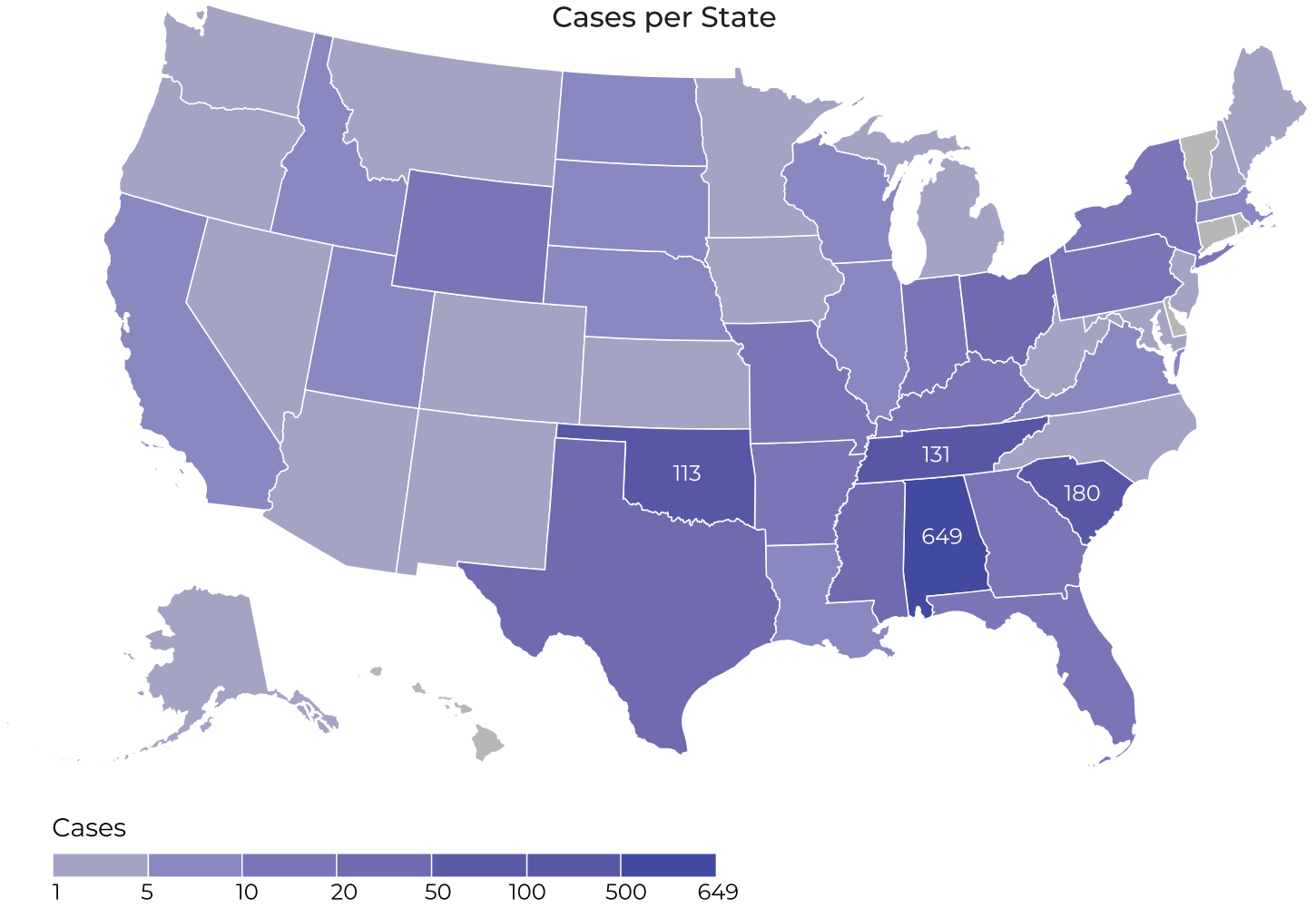
— CASE STUDY —

**A typical chemical endangerment arrest in Etowah County, Alabama—the county with the highest number of cases in the United States.**

STATE | ALABAMA  
CHARGES | CHEMICAL ENDANGERMENT  
ARREST YEAR | 2021

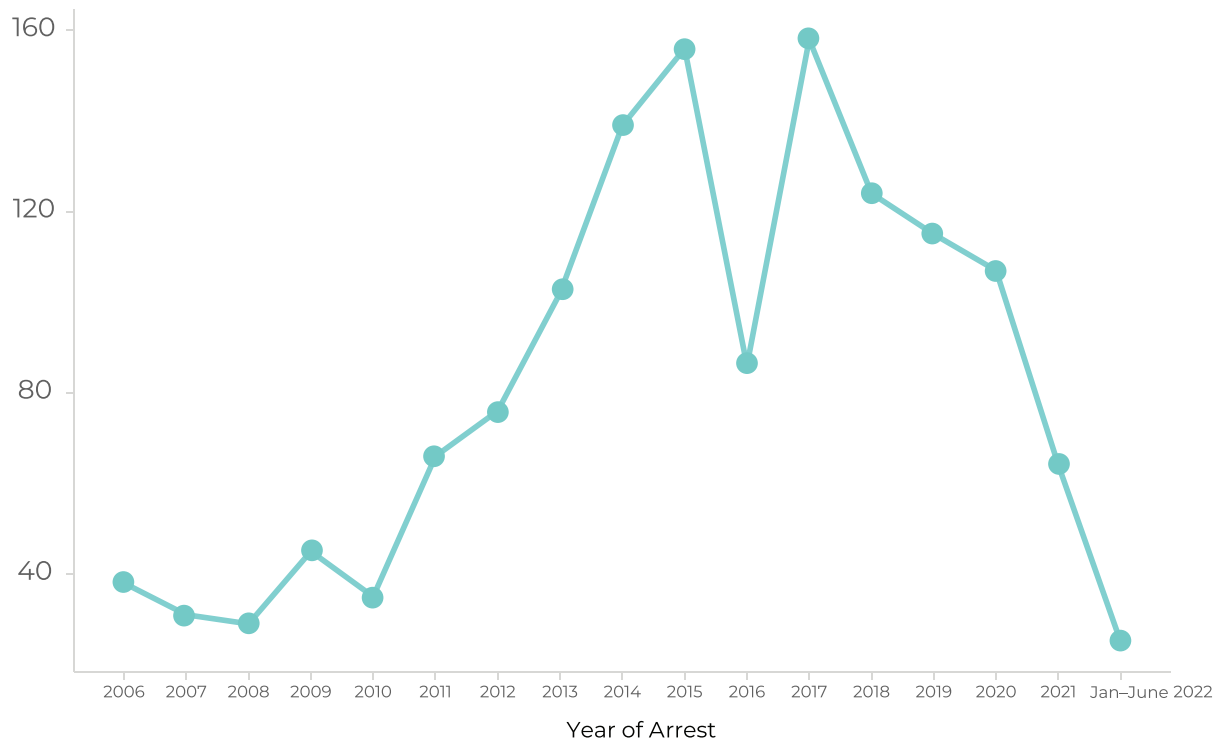
N.K., a 33-year-old white woman, gave birth to a baby boy in September 2020.<sup>70</sup> Although N.K. had a negative toxicology test after labor, her son tested positive for opiates and marijuana. Nearly a year after giving birth, N.K. was arrested for “chemical endangerment of a minor” in December 2021. Less than a month later, she pleaded guilty to the charge and received a suspended sentence of 36 months and 24 months of supervised probation.

**FIGURE 2**  
Cases per State



State	Cases	State	Cases	State	Cases	State	Cases	State	Cases
Alabama	649	Hawaii	0	Michigan	4	North Carolina	4	Utah	6
Alaska	1	Idaho	8	Minnesota	3	North Dakota	9	Vermont	0
Arizona	3	Illinois	6	Mississippi	36	Ohio	31	Virginia	7
Arkansas	11	Indiana	13	Missouri	10	Oklahoma	113	Washington	3
California	8	Iowa	1	Montana	4	Oregon	1	West Virginia	3
Colorado	4	Kansas	1	Nebraska	7	Pennsylvania	17	Wisconsin	6
Connecticut	0	Kentucky	12	Nevada	2	Puerto Rico	0	Wyoming	12
Delaware	0	Louisiana	8	New Hampshire	2	South Carolina	180		
District of Columbia	0	Maine	1	New Jersey	1	South Dakota	8		
Florida	13	Maryland	3	New Mexico	1	Tennessee	131		
Georgia	10	Massachusetts	7	New York	12	Texas	23		

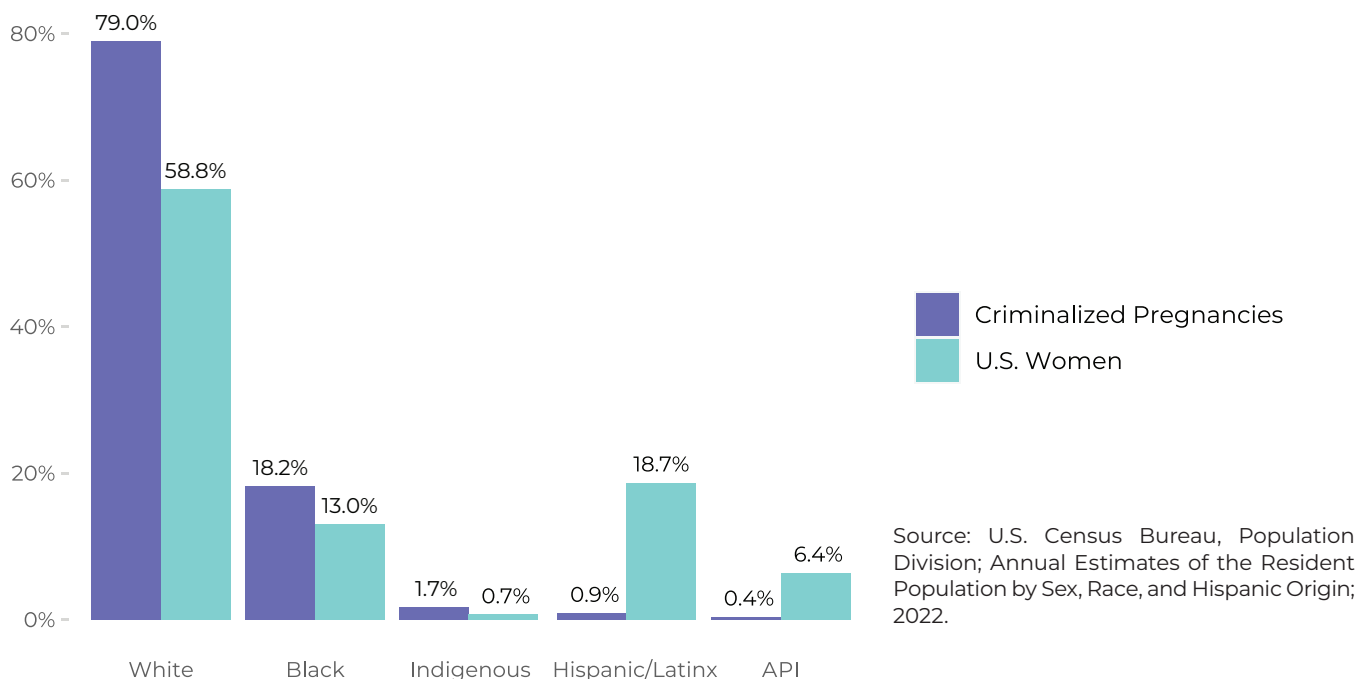
**FIGURE 3**  
Arrests per Year



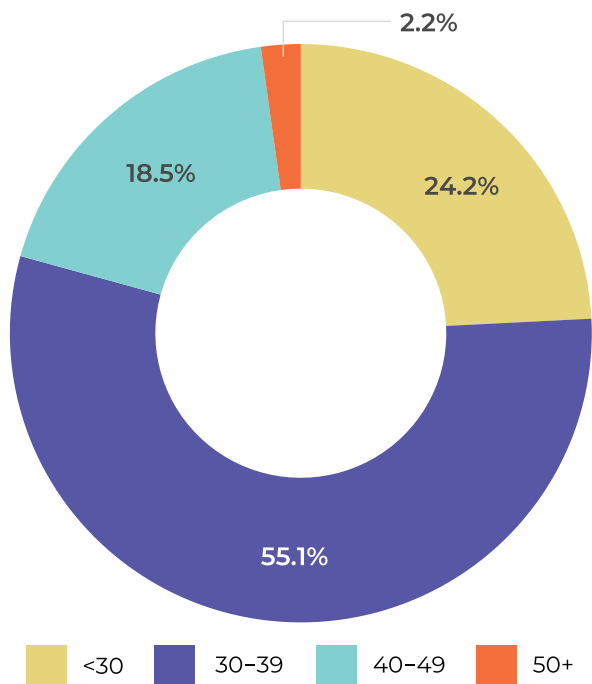
## Overall Trends

This report identified 1,396 arrests due to pregnancy criminalization between January 2006 and June 2022, with an overall upward trend (see figure 3). Arrests rose steadily from 2010 through 2015, followed by a temporary drop in 2016. The rise and subsequent dip in arrests in 2016 can likely be explained by several factors: legislative amendments to Alabama’s chemical endangerment law went into effect in 2016, prohibiting the application of the law to pregnant people who take prescribed or over-the-counter medications; there had been significant investigative journalism in 2015 exposing the harms of prosecuting pregnancy in the state;<sup>71</sup> and Tennessee’s Fetal Assault Law was active between 2014 and 2016.<sup>72</sup> Arrests rebounded with a vengeance in 2017, which was the year with the highest number of cases (158). The year 2008 had the lowest number (excluding 2022, which had 25 arrests from January through June). Cases began to fall again in 2020, likely driven in part by the COVID-19 pandemic, which caused a number of processing delays in the criminal legal system as well as a drop in the overall arrest rate during a portion of this period.<sup>73</sup>

**FIGURE 4**  
Criminalized Pregnancies and U.S. Women by Race



**FIGURE 5**  
Age Distribution



### Age

Although women ages 20–29 had the highest birth rate,<sup>74</sup> over half (55.1%) of arrests due to pregnancy criminalization were of those between 30 and 39 years old. Around one-quarter (24.2%) of pregnancy criminalization arrests were of those under 29,<sup>75</sup> and slightly under one in five (18.5%) arrests were of pregnant people ages 40–49. The remaining (2.2%) arrests were of pregnant people over age 50.

### Racial Demographics

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. The remainder of the arrests were of Indigenous pregnant people (1.7%), Hispanic/Latinx pregnant people (0.9%), and Asian American and Pacific Islander (API) pregnant people (0.4%).

Arrests of people identified as Hispanic/Latinx and API were not representative of their population size, and were underrepresented in the report data. This could reflect inconsistent and poor accounting of people who identify as Hispanic/Latinx, Indigenous, API, and multiracial in the criminal legal system. We recognize the complexity and diversity of racial identities and the limits of accurate categorization, particularly within the criminal legal system. Because of these limitations, our conclusions about the racial demographics of people who experienced pregnancy criminalization were confined to those who were classified in criminal legal documents as “Black” or “white.” Keeping these limitations in mind, the data shows that white pregnant people made up a majority of pregnancy criminalization cases during the study period.

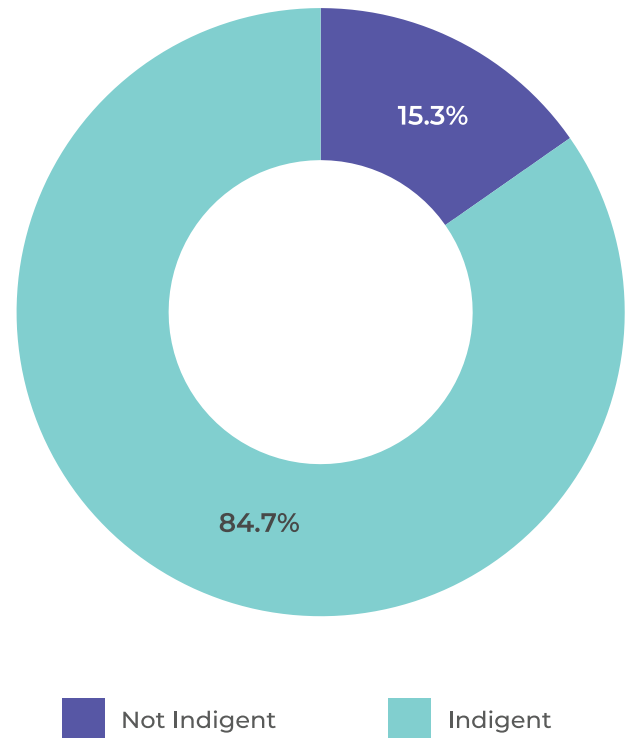
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**The case information available suggests pregnancy criminalization overwhelmingly affected poor people.”**

### Socioeconomic Level

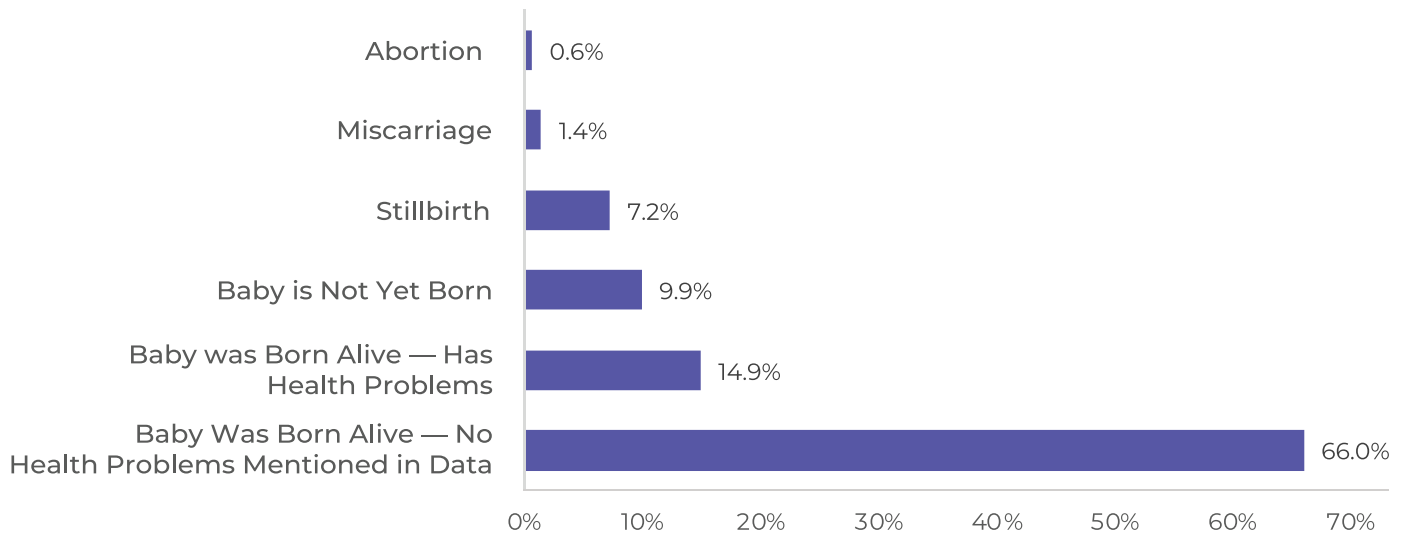
The case information available suggests pregnancy criminalization overwhelmingly affected poor people. Over 8 in 10 (84.7%) pregnancy criminalization arrests involved a pregnant person who qualified as “indigent.” A defendant who is indigent<sup>76</sup> has a constitutional right to court-appointed representation.<sup>77</sup> While the threshold to qualify for court-appointed counsel varies from state to state, “indigency” generally means that the court determined the defendant could not afford a lawyer. This suggests that most of the pregnant people arrested faced substantial financial hardship.

FIGURE 6  
Indigency





**FIGURE 7**  
Pregnancy Outcomes



## Pregnancy Outcomes

In cases where information on pregnancy outcomes was available, we found a wide variety of outcomes. Slightly under 1 in 10 (9.9%) arrests occurred while the person was still pregnant. A smaller share of cases involved stillbirths (7.2%), miscarriages (1.4%), or abortions (0.6%). 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. Consistent with the robust scientific literature, we did not consider a positive toxicology test alone to indicate a negative fetal health outcome. While acknowledging that neonatal abstinence syndrome (NAS), or withdrawal, is a treatable and temporary condition if properly addressed (treatment methods include rooming-in with mothers after birth, breastfeeding, skin-to-skin contact, swaddling, minimizing stimuli, and, if warranted, pharmacologic methods like medication), this report considered negative health outcomes to include noted signs of NAS, respiratory issues, and other conditions requiring the newborn be admitted to the neonatal intensive care unit.<sup>78</sup> In 217 (15.5%) cases, the pregnancy outcome could not be determined.

— CASE STUDY —

**Most commonly, pregnant people are charged with child abuse or endangerment, even when their baby is born with no health problems.**

STATE | OKLAHOMA  
CHARGES | CHILD ABUSE  
ARREST YEAR | 2020

J.W., a 35-year-old white woman, gave birth to a healthy baby girl at a local hospital in August 2019.<sup>79</sup> When her daughter’s meconium test came back positive for marijuana, the Department of Human Services (the state family regulation agency) and the county police department initiated an investigation. Two weeks after J.W. gave birth, law enforcement conducted a home visit and questioned her about her drug use during her pregnancy. J.W. confirmed that not only did she have a medical marijuana card confirming her lawful use of medical marijuana in the state, but also that she had confirmed with her doctor that she could still use marijuana while pregnant. Despite these facts, law enforcement arrested and charged her with a felony count of child abuse by injury the following July. In early 2023, after several delays, the state moved to dismiss the charges.



## Involved Actors

While not all routes to pregnancy criminalization were documented in the available data, cases came to the attention of law enforcement through many means. These included, but were not limited to, care professionals reporting patients to child welfare authorities, who then informed the police; police recovery of fetal remains; anonymous tips to the police; drug testing of pregnant people as per probation conditions or randomly at the discretion of the overseeing officer; police response to an emergency medical situation; police searches for controlled substances in people's cars; and/or friends, parents, or intimate partners reporting the pregnant person to the police directly.

### Healthcare and Family Regulation Workers

Reports made by medical professionals (e.g., doctors, nurses, or medical assistants) or hospital-based social workers were the most common basis for an arrest. Many of these reports were initially made pursuant to civil child abuse mandatory reporting laws, hospital policies, or the misperception that such reporting was legally required. One in three pregnancy criminalization arrests (33.8%) were first instigated by a medical professional, and two in five (42.6%) involved family regulation workers. Medical professionals can play both direct and indirect roles in pregnancy criminalization—for example, they might notify law enforcement officials, or they might notify family regulation workers who then alert law enforcement. The family regulation system can also be involved in arrests in a number of ways, including by reporting individuals to law enforcement, conducting background screenings of pregnant people and their families, providing witness statements, and monitoring compliance with parole and probation conditions.

#### — CASE STUDIES —

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**Pregnancy criminalization frequently begins in a hospital setting. Hospital workers and family regulation workers were often the ones to report pregnant people to law enforcement.**

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STATE | OKLAHOMA  
CHARGES | CHILD NEGLECT  
ARREST YEAR | 2021

Prior to giving birth, B.D., a 20-year-old Indigenous woman, admitted to using methamphetamine and drinking alcohol twice a week while pregnant.<sup>80</sup> She then gave birth to her child, who tested positive for methamphetamine and marijuana. Shortly after, the Department of Human Services, the state family regulation agency, opened an investigation, and B.D.'s case worker reported her to local police. The warrant for her arrest relied exclusively on the facts her case worker provided to law enforcement. Within six months of becoming a new mother, B.D. was arrested for child neglect, for which she pleaded guilty and received a 12-year suspended sentence.

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STATE | MISSISSIPPI  
CHARGES | CHILD ENDANGERMENT  
ARREST YEAR | 2018

In September 2017, A.R., a 30-year-old Black woman, gave birth to a baby boy.<sup>81</sup> At the time of birth, both A.R. and her baby tested positive for cocaine. After receiving the test results, hospital staff notified the state family regulation agency. A case worker then contacted local law enforcement and later provided police with copies of A.R.'s and her child's test results. While collaborating closely with state family regulation case workers, law enforcement located and arrested A.R. for felony child abuse. A.R. moved to dismiss the charges under the argument that an unborn child does not constitute a "child" under Mississippi's child abuse statute, but the motion failed in November 2018. The following March, A.R. pleaded guilty to her original charge and was sentenced to 10 years imprisonment and three years of post-release supervision.

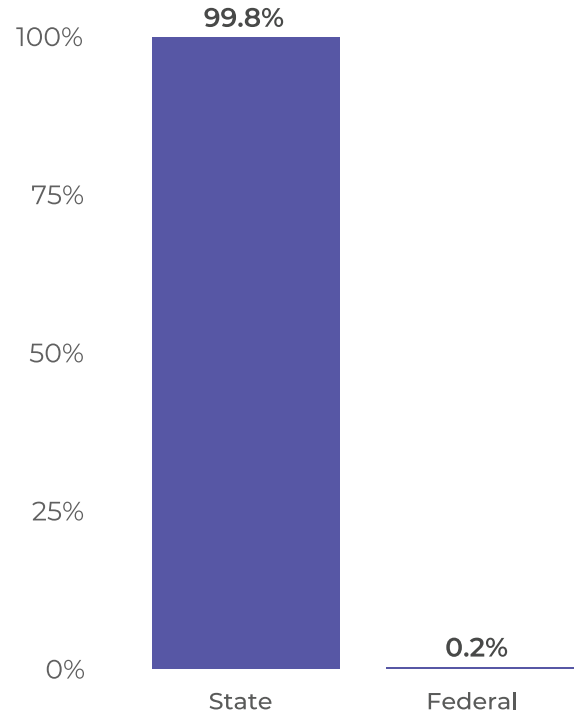
## Procedural Characteristics

### Initial Charges and Court of Origin

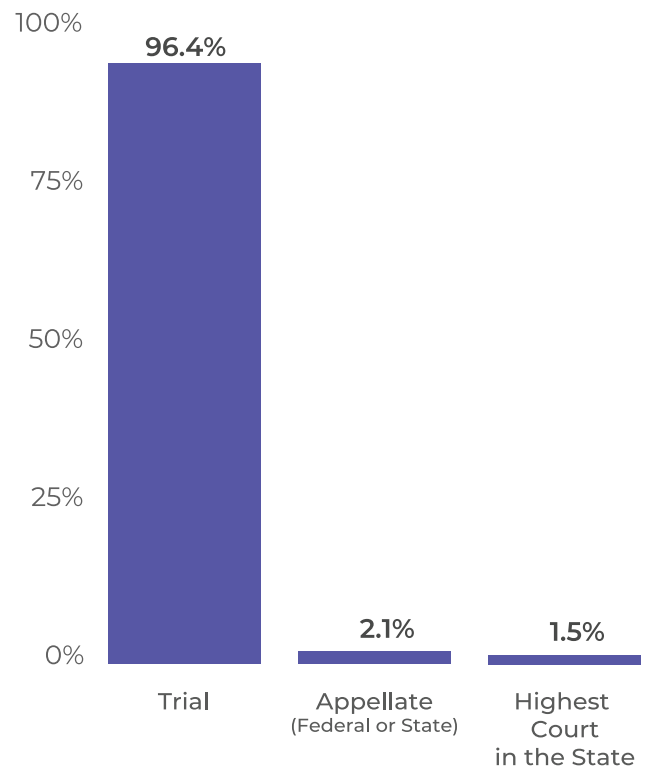
Nearly all (98.8%) of the cases documented in this report involved a criminal arrest that took place during or after the person's pregnancy ("Arrest During or After Pregnancy"). In a much smaller number of cases, less than 1 in 20 (4.5%), an arrest occurred before pregnancy ("Arrest Before Pregnancy"), but a judge used the person's later pregnancy as justification for modifying the conditions of their sentencing, parole, or probation. In a very small number of cases (3.3%), the same pregnancy was both the justification for a new arrest and a justification for modifying the conditions of sentencing, parole or probation of a prior criminal case (3.3%, "Both").

Almost every case (99.8%) where the initial court could be determined began in state (rather than federal or tribal) court. In nearly all cases (96.4%), the highest level reached was trial court, with the small number of other cases reaching either a federal or state appellate court (2.1%) or the highest court in the state (1.5%). Certain states have only trial and highest-level courts, and no intermediate appellate courts,<sup>82</sup> meaning that the statistic regarding the highest court in the state might be overstated.

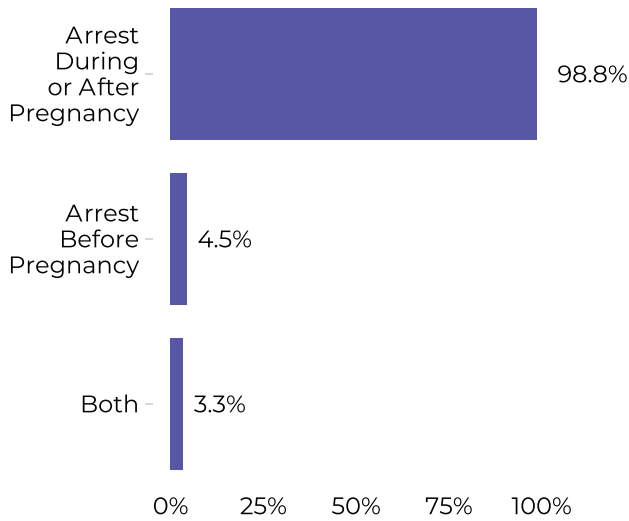
**FIGURE 9**  
Court of Origin



**FIGURE 10**  
Highest Court Reached



**FIGURE 8**  
Initial Charges



## Criminal Charge Details

Criminal charges identify the law and the statutory citation a defendant is accused of violating. This study used official court documents such as an indictment, criminal information, arrest warrant, probable cause statement, court transcript, police testimony, and/or judicial decision to ascertain the criminal charge(s).

The cases fell into nine primary categories of criminal charges: attempted or completed criminal child neglect, abuse, or endangerment; unlawful possession of a substance; drug use; drug delivery to a minor; feticide/murder/manslaughter; legally unauthorized abortion; failure to report a birth or death; tampering or mistreating fetal remains; and fetal assault. Most of the criminal laws used to charge pregnant people were never intended to apply to pregnancy; in most cases, government actors applied criminal statutes beyond their original intent to criminalize otherwise legal acts and omissions by pregnant people. Almost all (97.8%) pregnancy criminalization case files included criminal charge information.

CHILD ENDANGERMENT/ABUSE/NEGLECT		
Charge Type	N	Percent
Misdemeanor	46	4.0%
Felony	1,099	96.0%
Total with Charges	1,145	100%
SUBSTANCE POSSESSION		
Charge Type	N	Percent
Misdemeanor	28	26.4%
Felony	78	73.6%
Total with Charges	106	100%
DRUG USE		
Charge Type	N	Percent
Misdemeanor	9	47.4%
Felony	10	52.6%
Total with Charges	19	100%
FETICIDE/MURDER/MANSLAUGHTER		
Charge Type	N	Percent
Misdemeanor	0	0
Felony	80	100%
Total with Charges	80	100%
LEGALLY UNAUTHORIZED ABORTION		
Charge Type	N	Percent
Misdemeanor	1	6.2%
Felony	15	93.8%
Total with Charges	16	100%

FAILURE TO REPORT BIRTH/DEATH		
Charge Type	N	Percent
Misdemeanor	9	64.3%
Felony	5	35.7%
Total with Charges	14	100%
TAMPERING REMAINS OR ABUSE OF A CORPSE		
Charge Type	N	Percent
Misdemeanor	6	22.2%
Felony	21	77.8%
Total with Charges	27	100.0%
FETAL ASSAULT		
Charge Type	N	Percent
Misdemeanor	99	100.0%
Felony	0	0.0%
Total with Charges	99	100.0%
DRUG DELIVERY		
Charge Type	N	Percent
Misdemeanor	2	8.0%
Felony	23	92.0%
Total with Charges	25	100.0%
OTHER CHARGES		
Charge Type	N	Percent
Misdemeanor	22	30.6%
Felony	50	69.4%
Total with Charges	72	100.0%



**Neglect and endangerment laws do not require any evidence of harm, or evidence that the neglect or endangerment led to harm—they require only that someone knowingly or recklessly acted in ways that risked harm.”**

## CHILD NEGLECT, ABUSE, AND/OR ENDANGERMENT

Among the cases with charge information, four in five (83.9%) were instances of pregnant people being charged with criminal child neglect, abuse, and/or endangerment. The majority (96.0%) of these charges were felonies, and the remaining (4.0%) were criminal misdemeanor charges.

While definitions vary, state laws generally define “neglect” as a caregiver failing to provide adequate food, clothing, hygiene, nutrition, shelter, medical care, or supervision in ways that threaten the child’s well-being.<sup>83</sup> Child endangerment occurs when a caregiver fails to adequately protect a child from harm. Child abuse generally involves an act or failure to act by a parent or caretaker that causes actual harm or imminent risk of harm.<sup>84</sup>

Neglect and endangerment laws do not require any evidence of harm, or evidence that the neglect or endangerment led to harm—they require only that someone knowingly or recklessly acted in ways that risked harm. This sole focus on risk—and not on actual harm—is key to criminalizing pregnancy,<sup>85</sup> in part because it allows state actors

to use exposure to substances alone, rather than any actual harm, as a basis for criminalization.<sup>86</sup>

Some states have also expanded statutory definitions of children to include fertilized eggs, embryos, and fetuses. This changes the status of pregnant people, allowing them to be charged with attempted or completed child neglect, abuse, or endangerment for allegedly risky behaviors during pregnancy. Most notably, the Alabama Supreme Court redefined Alabama’s “chemical endangerment of a minor” law, originally meant to prevent children from being exposed to toxic fumes produced by home methamphetamine labs, to apply to fertilized eggs, embryos, and fetuses, and has been used to criminalize pregnant people for using controlled substances at any point in pregnancy.<sup>87</sup> The highest courts in South Carolina and Oklahoma have similarly sanctioned the expansion of their child abuse laws to apply to fetuses, which have been used to charge people for pregnancy and substance use.<sup>88</sup>

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**Pregnant people have been arrested under this charge for their alleged use of both illegal and legal substances, including medications such as methadone and buprenorphine, which are used to treat substance use disorders.”**

#### **EXPLICITLY DRUG-RELATED CHARGES: POSSESSION, USE, AND DELIVERY**

Criminal drug use, possession, and delivery cases represented 10.0% of pregnancy-related arrests. This is because, as discussed above, prosecutors were far more likely to use child neglect, endangerment, or abuse statutes to criminalize pregnancy and substance use. Among the cases with charge information, 7.8% involved cases of pregnant people charged with drug possession. Of those, three in four (73.6%) were felonies and the remaining quarter (26.4%) were misdemeanor charges. Drug delivery charges accounted for 1.8% of cases. The majority (92.0%) of these drug delivery charges were felonies, and the remainder (8.0%) were misdemeanor charges. Drug use cases accounted for 1.4% of cases. More than half of the drug use arrests (52.6%) were felony charges and the remainder (47.4%) were misdemeanor charges.

Typically, criminal laws governing controlled substances criminalize possession and not use, to avoid deterring people from seeking treatment for substance use disorder.<sup>89</sup> Yet we found cases of pregnant people being charged with drug possession even when the underlying facts involved only drug use. They were also charged with drug use in the rare states in which use alone is a criminal activity.<sup>90</sup> Prosecutors used “drug delivery” charges, a separate but related category, to charge pregnant people accused of allegedly distributing controlled substances to a fetus in utero or, despite being scientifically unsupported, to the newborn via the umbilical cord after delivering the baby but before the cord was cut or via breast milk.

— CASE STUDY —

**Pregnant and postpartum people have been arrested on the scientifically unfounded basis of drug delivery via the umbilical cord or breast milk.**

STATE | WYOMING  
CHARGES | CHILD ENDANGERMENT  
ARREST YEAR | 2019

L.D., a 23-year-old white woman, gave birth to a baby girl in August 2019.<sup>91</sup> Shortly after birth, her daughter’s urine tested positive for amphetamines. Following this discovery, hospital staff contacted law enforcement and L.D. was questioned about her drug use during pregnancy. L.D. admitted to police that she used methamphetamine while pregnant, and hospital staff confirmed L.D. tested positive for amphetamines during her pregnancy. Two months later, L.D. was arrested for child endangerment under a provision that criminalizes “giving” a child an illegal drug. Prosecutors claimed that in the seconds immediately after giving birth, before the umbilical cord was severed, L.D. knowingly furnished drugs to her newborn daughter. After the court denied her motions to dismiss and request to certify questions of the law, L.D. pleaded guilty to child endangerment but reserved the right to appeal the court’s denial of her motion to dismiss.

## FETAL ASSAULT

In about 1 in 13 (7.3%) cases, law enforcement officials charged pregnant people with fetal assault. All (100%) of these cases were misdemeanor fetal assault charges arising out of Tennessee's S.B 1391 Fetal Assault Law, which was in effect from July 1, 2014, through July 1, 2016. Tennessee law enforcement officials used this law to arrest pregnant people if the newborn was "born exposed to or harmed by a drug."<sup>92</sup> Pregnant people have been arrested under this charge for their alleged use of both illegal and legal substances, including medications such as methadone and buprenorphine, which are used to treat substance use disorders.<sup>93</sup>

“

**Pregnant people have been arrested under this charge for their alleged use of both illegal and legal substances.”**

### — CASE STUDY —

#### A typical fetal assault case in Tennessee

STATE | TENNESSEE  
CHARGES | FETAL ASSAULT  
ARREST YEAR | 2014

J.C., a 24-year-old white woman, gave birth to a baby girl in a car on the side of the road in August 2014.<sup>94</sup> After receiving an anonymous tip, police began investigating J.C. about the nature of her birth and pregnancy. While being questioned by the police, J.C. admitted to using Xanax during her pregnancy and that she was struggling to breastfeed her daughter. As a result, J.C. and her daughter were transported to the local hospital, where J.C. tested positive for opiates. At the hospital, police contacted the Department of Children's Services to remove J.C.'s daughter from her custody. Three months later, J.C. was arrested and charged with "assault on a fetus" and child abuse. In early 2016, J.C. pleaded guilty to assault and the lesser charge of child neglect and was sentenced to 11.5 months of supervised probation.



## FETICIDE, MURDER, AND MANSLAUGHTER

In some cases, law enforcement officials charged people who experienced pregnancy loss, had pregnancy-related complications, or had an abortion with attempted or completed fetal homicide (also called feticide), murder, or manslaughter. Among pregnancy criminalization cases with charge information, more than 1 in 20 (5.9%) were charged with felony feticide, murder, or manslaughter.

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**Among pregnancy criminalization cases with charge information, more than 1 in 20 were charged with felony feticide, murder, or manslaughter.”**

### — CASE STUDIES —

#### Pregnant people are charged with murder for experiencing pregnancy loss.

STATE | OKLAHOMA  
CHARGE | MANSLAUGHTER  
ARREST YEAR | 2020

M.R., an Indigenous woman, was 19 years old when she had a miscarriage at 15–17 weeks of pregnancy.<sup>95</sup> In March 2020, M.R. was arrested and charged with first-degree manslaughter for her miscarriage based on methamphetamine use, despite the fact that the medical examiner did not identify methamphetamine toxicity as the cause of the miscarriage, but rather as a possible contributing factor (despite a lack of scientific basis). In fact, the examiner identified five other significant conditions that could have contributed to the pregnancy loss, including a congenital abnormality, placental abruption, bacterial infections, and inflammation. Nonetheless, in October 2021, M.R. was convicted of first-degree manslaughter based on the prosecutor’s theory that her methamphetamine use caused the miscarriage. After a jury trial, M.R. was sentenced to four years in a state prison. After her conviction, M.R. chose not to appeal to avoid facing the risk of a life sentence.

STATE | SOUTH CAROLINA  
CHARGE | HOMICIDE BY CHILD ABUSE  
ARREST YEAR | 2006

In September 2006, C.L., a 33-year-old white woman, went to a South Carolina hospital complaining of stomach pains and later delivered a stillbirth.<sup>96</sup> At the hospital, C.L. tested positive for cocaine and confided to staff that she used cocaine three to four days prior to giving birth. She also shared that she did not want a child and had intended to have an abortion. The following November, she was arrested and charged with “homicide by child abuse.” Despite the fact that cocaine use does not cause pregnancy loss, the prosecution relied, in part, on the fact that the fetus’s time of death approximately coincided with C.L.’s cocaine use to build their case. Two years later, C.L. pleaded guilty to a lesser charge, “inflicting great bodily injury to a child,” and was sentenced to five years suspended to 90 days served in the county detention center.



## LEGALLY UNAUTHORIZED ABORTION

Among cases with charge information, 1.2% involved a charge for unsanctioned abortion. It is important to note that cases involving facts or allegations regarding an unsanctioned abortion do not always involve a charge of unsanctioned abortion, but may involve a charge of murder, manslaughter, or feticide (see, for example, the case study on this page). Almost all (93.8%) of these cases were felonies, with the exception of one misdemeanor charge. While *Roe v. Wade* was in effect for the entire time period covered in this report, pregnant people have nonetheless been charged for having a legally unauthorized abortion after state gestational time limits, obtaining an abortion from a non-licensed medical professional, using abortion pills outside of authorized methods, or using medicinal herbs to induce a pregnancy loss.

### — CASE STUDY —

#### Pregnant people have been arrested for self-managed abortions.

STATE | GEORGIA  
CHARGE | MURDER  
ARREST YEAR | 2015

During her second trimester, D.R., a 23-year-old Black woman, consumed misoprostol to terminate her pregnancy.<sup>97</sup> D.R. delivered the baby, who died shortly after she arrived at the hospital. Hospital social workers subsequently notified police, and D.R. was arrested and held without bond on the charge of “malice murder.” Although the prosecutor later concluded that there existed no legal grounds in Georgia for charging a pregnant woman with murder for terminating her own pregnancy, D.R. still faced a misdemeanor charge of possession of a dangerous drug. D.R.’s defense counsel prepared motions to dismiss the case and to suppress and exclude evidence, and the possession charge was dropped in 2016.

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**While *Roe v. Wade* was in effect for the entire time period covered in this report, pregnant people have nonetheless been charged for having a legally unauthorized abortion after state gestational time limits, obtaining an abortion from a non-licensed medical professional, using abortion pills outside of authorized methods, or using medicinal herbs to induce a pregnancy loss.”**

## TAMPERING WITH REMAINS OR ABUSE OF A CORPSE

Among cases with charge information, 2.0% involved pregnant people who were charged with tampering with remains or abuse of a corpse; of these, more than three-quarters (77.8%) were felony charges and slightly less than one-quarter (22.2%) were misdemeanor charges.

Typically, law enforcement officials charge a person with tampering with or abuse of a corpse when they intentionally or unlawfully disinter, dig up, remove, conceal, mutilate, or destroy part of a human corpse or ashes. In the pregnancy criminalization cases documented, this charge was applied to pregnant people who experienced a pregnancy loss outside of a traditional medical setting. People who experienced a pregnancy loss have been charged both for bringing the fetal remains to a medical provider and for burying or disposing of the fetal remains themselves.

### — CASE STUDY —

#### Pregnant people are arrested for experiencing a pregnancy loss and disposing of remains.

STATE | ARKANSAS  
CHARGES | ABUSE OF CORPSE  
ARREST YEAR | 2018

In December 2017, G.B., a 24-year-old Black woman, awoke late at night due to severe stomach pains<sup>98</sup>. Shortly thereafter, she gave birth to stillborn twins. In a moment of panic, G.B. laid her deceased children in a suitcase and placed it on the side of the road. When law enforcement discovered the suitcase several weeks later, they confirmed that the babies died in the womb and had no illegal substances in their systems. Still, G.B. was arrested and charged with two felony counts of abuse of a corpse. Three years after her arrest, G.B. entered a plea of no contest and was sentenced to a total of four years but given a suspended sentence of five years supervised probation.

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**In the pregnancy criminalization cases documented, this charge was applied to pregnant people who experienced a pregnancy loss outside of a traditional medical setting.”**

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**People are arrested for experiencing a pregnancy loss and disposing of fetal remains.**

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STATE | ARKANSAS  
CHARGES | CONCEALING A BIRTH; ABUSE OF A CORPSE  
ARREST YEAR | 2015

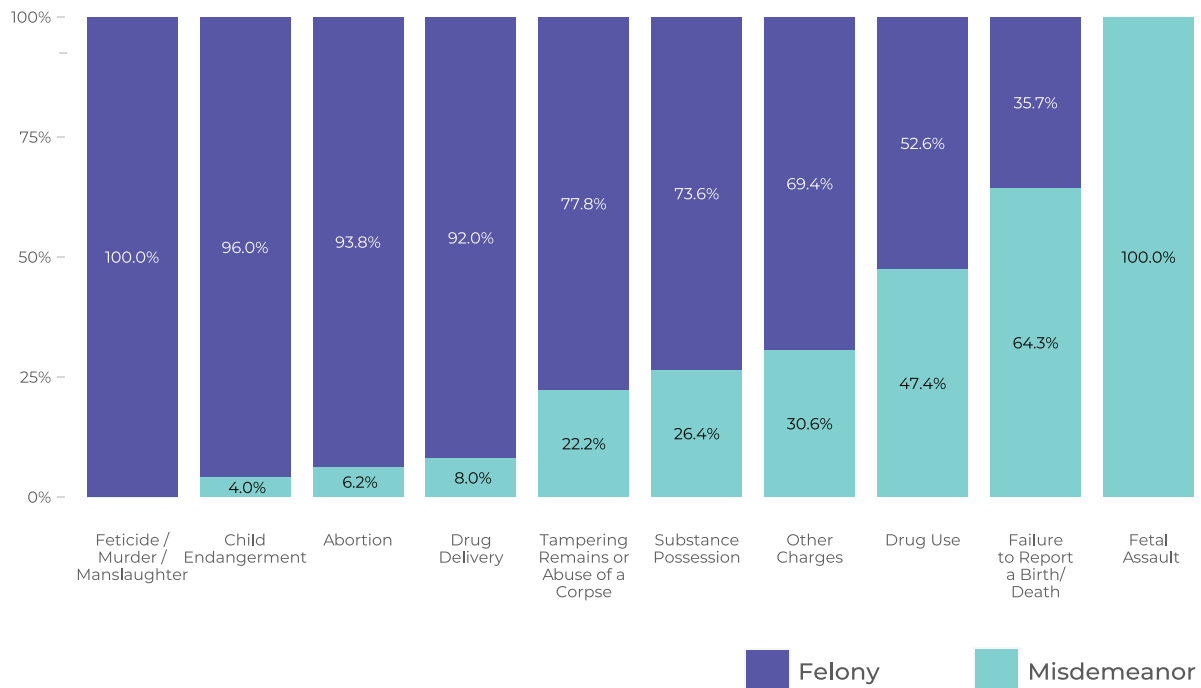
S.W., a 37-year-old white woman, was arrested after experiencing a stillbirth at home.<sup>99</sup> After the stillbirth, S.W. safeguarded the fetal remains and several hours later brought those remains to a hospital, asking to see a doctor. Five days later, she was arrested on charges of “concealing a birth” and “abuse of a corpse.” Local law enforcement alleged that S.W. took a number of pills to induce an abortion, after which her pregnancy ended with a stillbirth. Although the trial court dismissed the abuse of a corpse charge, a jury found S.W. guilty of “concealing a birth” and subsequently sentenced her to six years’ imprisonment. S.W. appealed the conviction and the Arkansas Court of Appeals ruled unanimously to reverse her conviction for “concealing a birth.”

**FAILURE TO REPORT  
A BIRTH OR DEATH**

Among cases with charge information, 1.0% were charged with failing to report a birth or a death. Roughly one-third (35.7%) of these charges were felonies and the remaining (64.3%) were misdemeanor charges. In these cases, people faced criminal charges for bringing a newborn or fetal remains to a hospital, for a home birth, or for burying fetal remains themselves after a pregnancy loss. Essentially, people were at risk of being charged for both reporting and not reporting a pregnancy loss.

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**Essentially, people were at risk of being charged for both reporting and not reporting a pregnancy loss.”**

**FIGURE 11**  
Proportion of Felony Charges for Each Criminal Charge Type

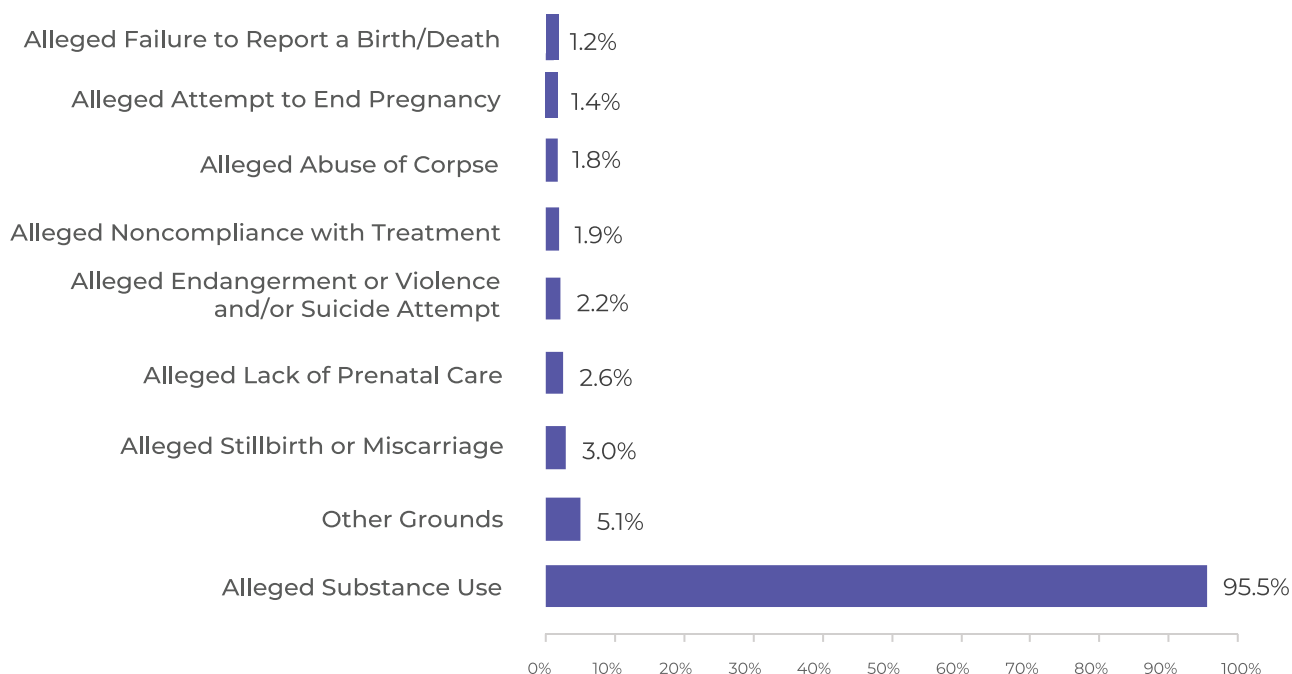


## Grounds for Arrest

Before police officers can make an arrest or execute an arrest warrant, they have to establish probable cause—a reasonable belief that someone has committed a crime. Because criminal charges on their own do not always establish what kind of conduct is being criminalized, “grounds for arrest” provide information on the factual allegations of criminal behavior. To ascertain the stated grounds for arrest, we used official court documents such as an indictment, criminal information, arrest warrant, probable cause statement, court transcript, police testimony, court judgment and/or ruling.

In approximately three in four (73.2%) cases, the case file contained official documents that indicated the grounds for the criminal arrest (in the remaining cases, we could not determine the grounds due to a lack of such documentation<sup>100</sup>). Grounds for arrest are not mutually exclusive; multiple factual allegations may be used to justify an arrest. For example, it may be that the basis for a child neglect charge was substance use and that the indictment also indicated that the pregnant person lacked consistent prenatal care. Nearly all (95.5%) cases where such information was available mentioned substance use at least once in the official grounds for arrest.

**FIGURE 12**  
Grounds Given for Criminal Arrest



## Bail Information

After an arrest, in most cases, a judge sets a bail amount after considering a number of factors, such as flight risk, the severity of the alleged crime, and safety to community.<sup>101</sup> Bail is typically monetary, but can also require the defendant to adhere to certain terms, such as not leaving the state. If the individual can afford to pay bail or pay a portion of bail to a bail bondsman, they can be released from pretrial detention (jail or police custody) while awaiting trial or the resolution of their case.<sup>102</sup> Once court fees are deducted, bail is returned to defendants when their trial is over. Bail is purportedly used to ensure that a defendant will appear for trial and all mandatory pretrial hearings once released.

Among cases with the relevant information available, approximately four in five (79.2%) arrests involved an initial non-zero bail amount. Of those arrests, over two-thirds (63.9%) of defendants had their bail granted and were released after bail was set. The initial bail amount set ranged from \$10 to \$5,000,000; however, the median bail amount set was \$10,000. The median initial bail amount varied by criminal charge.

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**In slightly over one-tenth of the total arrests, the pregnant person either had bail set but was released on a personal recognizance bond or had a zero bail amount set.”**

For example, feticide charges were associated with a median \$50,000 initial bail amount, possession with a median \$15,000 initial bail amount, and child endangerment and fetal assault charges with a median \$10,000 bail amount. In slightly over one-tenth (13.2%) of the total arrests, the pregnant person either had bail set but was released on a personal recognizance bond or had a zero bail amount set, thus allowing them to be released from custody with only a written agreement to appear in court and without the requirement of posting bail or bond.

## Final Disposition

Legal proceedings can take a considerable amount of time from the moment of initial investigation and arrest to the final judgment and sentencing order. Given the recency of many of the pregnancy criminalization arrests included in this study, a substantial number of cases were still pending as of this writing, and thus the final disposition remains unknown. Where information was available and cases were resolved, we documented case outcomes, including guilty pleas and convictions after trial.

Plea information was available for about three in five (58.5%) cases. Of these, in two in three (66.4%) cases, the pregnant person pleaded guilty to the original or a lesser charge.

Among the cases where the trial outcome information was available and the pregnant person did not plead guilty, 15.8% went to trial and were convicted of either their original charge or a lesser charge. In the remaining cases, the pregnant person was not convicted, the conviction was overturned after trial, the case was dismissed or dropped before trial, or the final disposition is still unknown. However, it is important to keep in mind that even in instances where cases are dismissed or dropped before trial, defendants experience significant financial and psychological strain, and these proceedings can take several years.<sup>103</sup>

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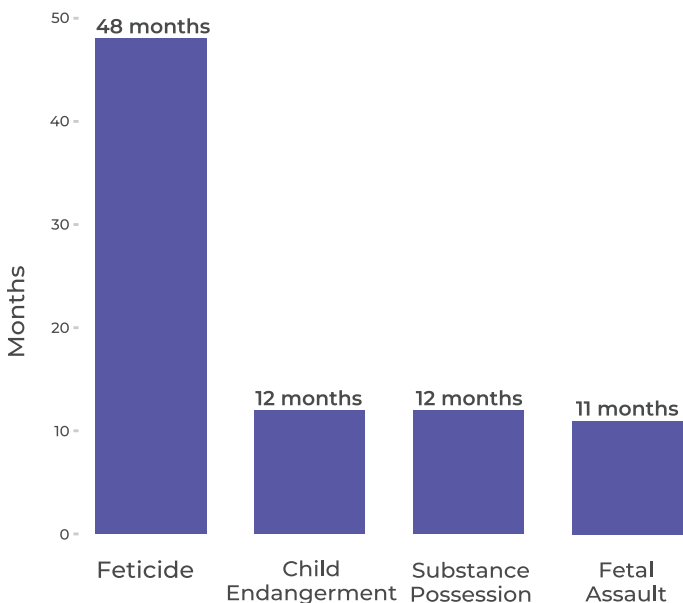
**However, it is important to keep in mind that even in instances where cases are dismissed or dropped before trial, defendants experience significant financial and psychological strain, and these proceedings can take several years.”**

## Sentencing, Incarceration, Parole, and Probation

Sentencing information was available in 95.3% of cases in which a pregnant person pleaded guilty or was convicted at trial. Among these, more than four in five (83.1%) cases resulted in incarceration and prison time.<sup>104</sup> The median minimum sentence length was 12 months incarcerated, and the median maximum sentence length was 48 months incarcerated. Minimum sentence length ranged from zero to 312 months, and the maximum sentence length ranged from one to 480 months. However, median minimum sentence length varied by charge convicted. Whereas pregnant people convicted of feticide had a median minimum sentence length of 48 months, child endangerment charges and substance possession charges were associated with a median minimum sentence of 12 months, followed by 11 months for fetal assault.

FIGURE 13

Median Minimum Sentence Length



Among cases with information on parole and probation, approximately one in five (20.4%) involved revocation of parole or probation. The conditions of probation and parole can be onerous, costly, and time-consuming. Reasons that a judge might revoke parole or probation include not completing a drug treatment program, missing a meeting with their probation officer, or testing positive for controlled substances, which often indicates that a person with a history of substance use disorder has experienced a relapse.

### — CASE STUDY —

**Instead of being provided with treatment, pregnant people were arrested and rearrested for their alleged substance use.**

STATE | ALABAMA  
CHARGES | CHEMICAL ENDANGERMENT  
ARREST YEAR | 2019

P.L., a 27-year-old white woman, was arrested in 2019 for “chemical endangerment of a minor” after her newborn daughter tested positive for methamphetamine at birth.<sup>105</sup> P.L. pleaded guilty to the charge and was diverted to a community corrections program for monitoring and treatment. Between September 2019 and February 2021, P.L. failed to appear for drug court review twice and tested positive for marijuana—all violations of her deferred sentencing agreement. P.L. was later arrested in 2021 on a second chemical endangerment charge for testing positive for amphetamines at the birth of her child; she pleaded guilty to this charge in January 2022. She subsequently received a suspended sentence of five years and three years of supervised probation. Due to her failure to report to her probation officer on several occasions, P.L. was rearrested in April 2023 and required to serve her original underlying sentence in prison.



This study also identified cases of parole and probation revocation based on an individual's status as pregnant. These cases typically began with a non-pregnancy-related underlying charge. When information about a person's pregnancy was discovered during their probation or parole, a judge modified or revoked the pregnant person's parole or probation. Among all cases, 4.2% involved a change to the original sentence length.

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**Although R.W.'s challenge was successful, she still served her sentence in full and remained incarcerated throughout her entire pregnancy.”**

— CASE STUDY —

**The criminal system addresses relapse, an expected aspect of recovery, through incarceration instead of healthcare.**

STATE | MICHIGAN  
CHARGE | POSSESSION OF METHAMPHETAMINE  
CHARGE | POSSESSION OF MARIJUANA  
ARREST YEAR | 2018

R.W., a white, 31-year-old mother of two, came before a judge in November 2018 for violating the terms of her three-year probation.<sup>106</sup> During the hearing, R.W.'s attorneys revealed that she was pregnant. Citing R.W.'s relapse with methamphetamine and cocaine while participating in the drug court program, the judge sentenced her to 13 to 24 months in custody. He reasoned that her child had better chance of avoiding “a lifetime of permanent disability” if she was incarcerated for the remainder of her pregnancy. Appellate judges denied R.W.'s first appeal, but in a 2-1 opinion, the Michigan Court of Appeals determined the trial court demonstrated extreme bias by revoking R.W.'s probation and sending her to prison because of her pregnancy. Although R.W.'s challenge was successful, she still served her sentence in full and remained incarcerated throughout her entire pregnancy.

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**The fact that pregnancy criminalization overwhelming involves substance use allegations cannot be considered in a vacuum. Every year, over one million people are criminally prosecuted for drug-related charges in the United States.”**

## **Pregnancy Criminalization Centered on Substance Use Allegations**

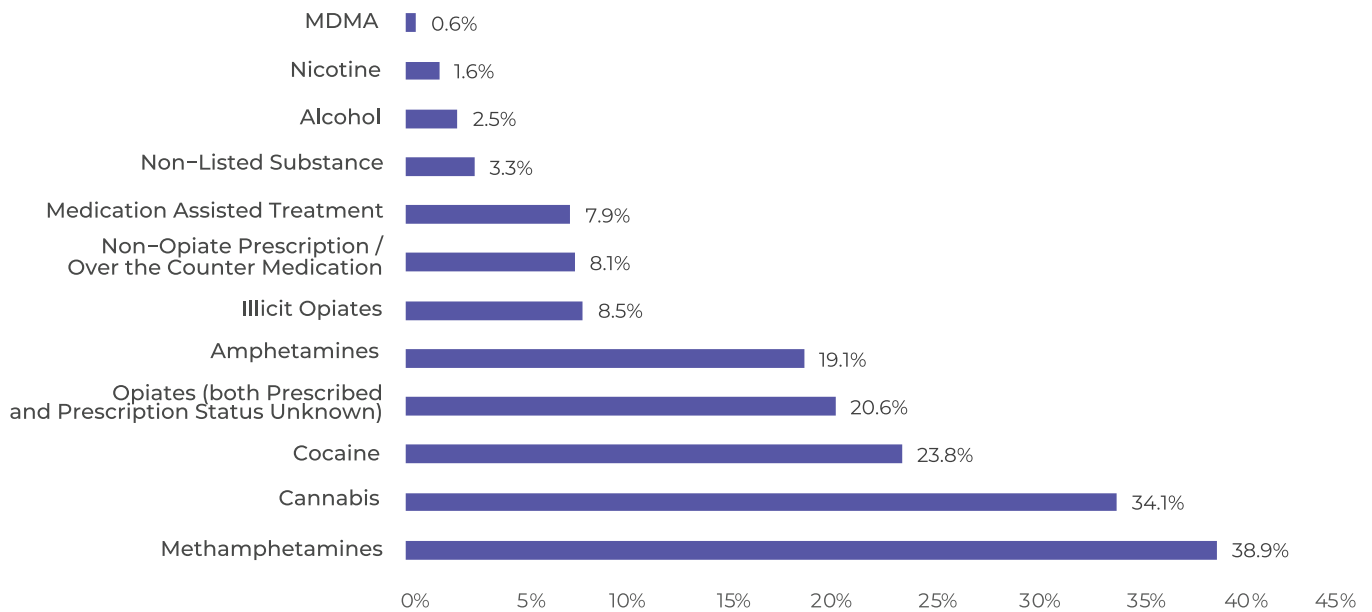
In approximately 9 in 10 (92.0%) cases of pregnancy criminalization, the case information showed accusations or evidence of substance use. Of cases involving allegations of substance use or possession during pregnancy, almost half (47.0%) involved a drug test conducted on the pregnant person, and approximately three in five (58.5%) involved a drug test conducted on a newborn.

Pregnant people were criminalized for allegations of using both criminalized and legal substances.<sup>107</sup> The three most common substances were methamphetamine (38.9%), cannabis (34.1%), and cocaine (23.8%). This is followed by almost one in five arrests involving allegations of amphetamines (19.1%) and opiates (both prescribed and those with unknown prescription status) (20.6%). One in ten arrests involved allegations of illicit opioids (8.5%), non-opiate prescription or over-the-counter medication (8.1%), and medication-assisted treatment (7.9%). The remainder were allegations

related to alcohol (2.5%), nicotine (1.6%), MDMA (0.6%), and all other substances (3.3%). Nearly half (45.9%) of all the cases that mentioned substances involved allegations of more than one substance. The allegations of substance use reported in figure 15 are not mutually exclusive.

The fact that pregnancy criminalization overwhelming involves substance use allegations cannot be considered in a vacuum. Every year, over one million people are criminally prosecuted for drug-related charges in the United States.<sup>108</sup> Suspicion or knowledge of a parent using drugs or alcohol has become one of the most common justifications harnessed by states to condemn, investigate, and separate families, primarily through the “child welfare” system. Between 2000 and 2019, the frequency with which parental alcohol or drug use was cited as a contributing factor for child removal more than doubled, from 18.5% to 38.9% nationwide.<sup>109</sup>

**FIGURE 14**  
Substance Type



The distribution of pregnancy and substance use cases varies slightly by race. Of the arrests of Indigenous pregnant people, 100% involved allegations of substance use, followed by 94.4% of arrests of white pregnant people and 91.5% of arrests of Black pregnant people. The racial distribution of arrests also varied based on substances alleged to have been used, despite no statistically significant difference in illicit substance use rates between races.<sup>110</sup> For example, one-third (32.5%) of arrests of white people involved allegations of opiate use, including both non-prescription opiates such as heroin and prescription opiates, compared to less than 1 in 10 (9.3%) arrests of Black people. One in two arrests of Indigenous people (50.0%) and Black people (48.5%) involved

allegations of cannabis use, compared to less than one in three arrests involving white people (30.2%). One in two (51.5%) arrests of Black people involved allegations of cocaine use, compared with one in five (20.1%) arrests of white people and less than one in five (15.0%) arrests of Indigenous people. Two in three (65.0%) arrests of Indigenous people involved allegations of methamphetamine use, compared to two in five arrests (41.4%) of white people and 1 in 10 (11.3%) of Black people. It should be noted that the rates for racial groups are only reported if the sample size per each substance type exceeded 15 cases; therefore, the breakdown of arrests of API, Hispanic/Latinx, and Indigenous people do not appear for every substance listed.

**FIGURE 15**  
Arrests Involving Substance Use by Type and Race

