

APPENDIX: EXTENDED METHODS DESCRIPTION

Inclusion and Exclusion Criteria

This report documents arrests of pregnant people across the United States and U.S. territories that occurred from January 1, 2006 through June 23, 2022. The start date was chosen because it is one day after the end date of the last national study capturing the arrests of pregnant people in the United States. The end date was chosen because it is the day before the U.S. Supreme Court's *Dobbs v. Jackson Women's Health Organization* decision, which officially overturned *Roe v. Wade*. This end date was selected to ensure that all the people arrested were subject to the same federal constitutional protections and to simplify the analysis.

Cases were included if information on the person's name and the year, county, and state of arrest were all available, and the case met at least one of the following criteria:

- I. Any arrest or issuing of an arrest warrant to a person where the reason for the arrest warrant included the factor of being pregnant, having an abortion, experiencing a pregnancy loss, or giving birth.
- II. Any arrest or issuing of an arrest warrant to a person for allegations of an action taken or not taken during pregnancy, labor, or birth. This included but was not limited to cases in which the pregnant person was charged for concealing a birth or a death, being in a "dangerous situation" while pregnant, not complying with medical treatment, lacking prenatal care, having a digital search history for abortion, allegedly engaging in "abuse of a corpse" or "improper disposal" of their fetal remains, or alleged neglect, abuse, assault, or endangerment to a fetus based on the pregnant person's substance use.
- III. Any occasion where the state imposed harsher penalties on a person for being pregnant, even if the precipitating arrest itself was not associated with pregnancy. This includes cases where the original charge was unrelated to pregnancy, but because the person was pregnant, there was post-conviction parole or probation revocation, sentence enhancement, or a modification to pretrial release conditions.

Similar to the previous study,¹⁷² cases that did not fit our inclusion criteria included instances when pregnancy influenced how a person was treated when in jail or prison, instances when pregnancy was discussed in connection to an alleged crime but the pregnancy was not defined as part of the criminal action or inaction, and civil child welfare cases and investigations, even where pregnancy-related conduct was at issue. Further, unlike the previous documentation effort, this study did not include civil or family court cases that involved house detentions or forced medical interventions such as forced cesarean sections or blood transfusions.

After applying the inclusion and exclusion criteria, we identified 1,396 cases for this review. Each case corresponds to a unique arrest. However, certain people faced multiple pregnancy-related arrests at different points in time, and are therefore represented multiple times in our dataset. Overall, our dataset includes 1,379 unique individuals.

Data Collection

We identified cases through a variety of sources. Documentation was gathered through repeated and systematic searches using legal databases including WestLaw, LexisNexis, and Bloomberg Law to identify federal cases, state cases, and secondary sources. Pregnancy Justice staff identified cases as a result of our direct involvement in them or if those individuals reached out to our organization in need of legal assistance. Additionally, cases came to staff members' attention through their relationships with and informal inquiries from public defenders, other legal advocates, academics, judges, healthcare providers, and investigative and legal journalists who work with pregnant populations. The research team also conducted repeated and systematic Google searches to identify media coverage of potential cases.

Once we determined that a case met the inclusion criteria, a digital file was created for each case that contained all available documentation on that specific arrest. This could include any combination of the following documents: docket sheets, arrest warrants, indictments, orders, decisions, pleadings, briefs, written memoranda, documentation relating to sentencing, probation,

and parole, media reporting, online public court records, documents from inmate and offender public databases, public memoranda, published photographs, and other documents filed in court. Documentation was gathered from public police and court record requests, Google searches, and Google Alerts for media records, as well as by contacting attorneys and parties involved in the cases and documenting their responses. Certain files only contain secondary source material such as media articles and newspaper headlines, as the court documents were unavailable. All the digital files are stored on Pregnancy Justice's secure internal electronic database.

Definitions

This report relied on criminal charge information to identify the birth outcome. Therefore, we considered a case to have an abortion birth outcome if the most recent official documents from either a court or law enforcement stated abortion as the final birth outcome. Cases were not considered to be abortion cases if they started off as an abortion investigation but the birth outcome was eventually found to be a miscarriage or stillbirth. As such, this study reports a lower abortion criminalization count than other sources.

We ascertained a pregnant person's indigent status using affidavits of financial hardship, documented houselessness, court-appointed counsel, attorney-client agreements indicating pro bono representation due to financial hardship, and client transcripts in case files.

Charges for drug possession were only included in our dataset in one of two circumstances: 1) if the possession charge was based solely on the ingestion of a substance or a positive toxicology test obtained in the course of perinatal care, or 2) if the possession charge was brought in addition to other charges that relied on pregnancy as an element of the crime. Put differently, a traditional possession case, in which someone was caught by law enforcement with any amount of a controlled substance on their person, would not on its own meet the inclusion criteria for our study. Only possession charges that would not have arisen but for a person seeking prenatal care or charges brought in conjunction with other pregnancy-related charges were included in our research.

Qualitative Methods and Coding of Cases

The research team developed guidance to code the cases. A team of 11 coders used qualitative coding recorded in a spreadsheet to categorize cases using information from their corresponding digital files. This tool was piloted and refined in an iterative process, with individual coders noting where codes were ambiguous. As part of the refinement process, intercoder reliability was calculated on 1,396 cases, which were coded by two different coders. In keeping with common practice,¹⁷³ when intercoder reliability was below 0.6, definitions and guidance were refined and cases recoded. A second set of intercoder reliability was performed, in which all variables included in this report met the criteria.

The final data tool captured information on 144 variables. The variables fell into eight categories: basic demographic information (race, gender, age, etc.), administrative information on each arrest (state of arrest, county of arrest, date of arrest, etc.), substance use and possession allegations (type of substances included in drug allegations, drug testing of the pregnant person, drug testing of the fetus, etc.), grounds for arrest (reasons for arrest given in official court documents, etc.), context for arrest (other reasons for arrest given in unofficial non-court documents); actors involved in the instigation of the arrest (hospital worker involvement, family regulation worker involvement, arrested by a police officer, etc.), procedural characteristics (type of counsel, bond conditions, case outcome, probation conditions, etc.), and birth outcome (abortion, birth with no adverse health outcomes, pregnancy loss, etc.).

Analysis

Data were appended together into one dataset and analyzed in Stata and R. Two analysts calculated all statistics independently in order to ensure accuracy.

Limitations

Although the research team went to great lengths to collect cases of pregnancy criminalization across the United States, there were several limitations to the scope of this study. Due to barriers in retrieving case information and the study's strict inclusion criteria, it is likely that the 1,396 pregnancy criminalization cases identified represent a substantial undercount of the actual cases.

Data Collection Limitations

Absent a published court opinion, a majority of cases were identified by defense attorneys, prospective clients, coalition partners, and investigative journalists, or by the research team through media reports and online searches. Though it is possible to make bulk public records requests for all arrests under a specific criminal statute, with one exception, the laws used to charge people with pregnancy-related crimes are not unique to pregnancy, but are rather charges like child abuse, which apply far more broadly. Notably, there is no searchable database of criminal cases involving pregnancy; decisions from Native American tribal courts are not easily accessible; and cases in which juveniles have been deprived of their liberty through court proceedings remain confidential. Cases of pregnancy criminalization are often legal aberrations that reflect state prosecutors' experimentation with or misapplication of existing statutes; as such, the research team relied heavily on media reporting to identify novel applications of the law. Some case files only had media files and unofficial documents. Each state has different laws and procedures for requesting official court documents. While some jurisdictions have publicly accessible web-based filing systems, others require document requests to be made in person by a state resident. And without personal identifiable information such as the arrestee's date of birth, some public records clerks are unable to locate the relevant documents. The absence of official documents resulted in missing data, for both demographic variables and variables related to grounds for criminal arrest.

Demographics

The information provided in this report was limited by the data available on cases. Official documents often offer only limited racial category options, and sometimes the options leave out important categories or artificially force the choice of one race. It can therefore be difficult or impossible to differentiate between (for example) Middle Eastern/North African and white or non-Hispanic white and Hispanic-white, or to accurately ascertain when individuals are multiracial. In

addition, official documents rarely allow for the reporting of gender identities such as transgender, gender non-conforming, non-binary, or intersex (TGNCNBI). Further, the data cannot determine the degree to which non-indigent pregnant people were above the threshold for indigency.

Disposition

About 4 in 10 case files did not have information on disposition either because the case had not yet been resolved or because the case file was missing information.

Grounds for Arrest

The case files contained official documents indicating the grounds for the criminal arrest in approximately three in four cases. In the remaining cases, we could not determine the grounds due to a lack of such documentation.¹⁷⁴

Case Investigation Actors

Despite the complex—and often integral—role that hospital social workers, drug treatment counselors, and family regulation authorities play in pregnancy criminalization, the research team only systematically tracked whether a case was instigated at a hospital or if family regulation services were involved in the case. It is often impossible to know with certainty that a specific actor, be it a hospital social worker or family regulation worker, initiated the report to police, because that information is not typically documented. Such reports could be inferred given the underlying circumstances. Even though police work closely with social workers and hospital personnel to report new parents, there are many other actors—including friends, family, partners, and neighbors—who instigate criminal investigations of pregnant and perinatal people. This report did not specifically track their involvement, but examining the role of these actors could reveal other pathways to pregnancy criminalization.

Despite these limitations, this study represents the most comprehensive accounting of pregnancy criminalization cases from 2006 to *Dobbs*.