



From January 2006 to June 2022, Pregnancy Justice has documented nearly 1,400 instances in which people across the U.S. were arrested, prosecuted, convicted, or detained because of their pregnancy status or outcomes.¹ The data reveals that **Alabama ranks first in the nation for criminalizing pregnancy outcomes and conduct during pregnancy**, with nearly half (46.5 %) of all pregnancy-based prosecutions nationwide originating in the state.² This document provides an overview of observed trends in pregnancy-related prosecutions in Alabama during the studied time period.

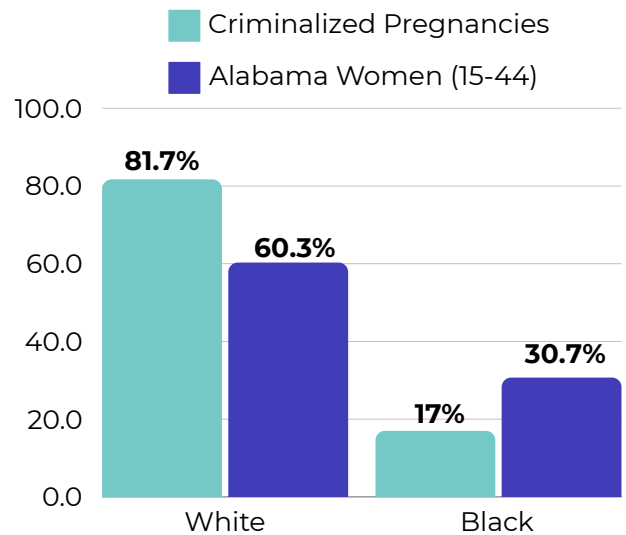
Background

Pregnant and postpartum women are criminalized often based on improper interpretations and judicial expansions of state laws, all for the purported purpose of protecting fetuses and punishing “bad” mothers. Alabama is one of only three states with judicial decisions that expanded the definition of “child” to include fetuses. In 2006, Alabama created a new crime of “chemical endangerment of a child,” which sought to protect children from environments in which they could be exposed to drugs or controlled substances, specifically residential methamphetamine labs.³ While the law made no mention of pregnant women or fetuses when it was first passed, prosecutors nonetheless criminalized scores of people under the premise that the term “child” includes a fetus, and a womb is an “environment.”⁴ Following years of these prosecutions, two women convicted of endangering their children (i.e., fetuses) because they used substances while pregnant appealed their convictions to the Alabama Supreme Court in 2013. The court held that under Alabama law the word “child” included a fetus, fertilized egg, or embryo at any stage of pregnancy,⁵ meaning that women in Alabama could be charged for chemical endangerment of a child from the earliest moments of pregnancy.

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The harms of Alabama’s chemical endangerment statute were brought to national attention after a 2015 ProPublica and AL.com investigation exposed stark disparities in the way prosecutors across Alabama’s 67 counties applied the law—with some of the state’s least populated counties contributing significantly to the state’s chemical endangerment charges.⁶

Racial Breakdown of Arrests



Source: March of Dimes, *Data for Alabama, 2021*⁷

Pregnancy criminalization overwhelmingly affects poor Alabamans. Over 8 in 10 arrests in the state involved a pregnant person who qualified for public defense, meaning the court determined they faced substantial financial hardship.

Since the law did not address pregnancy, there was no guidance for hospital personnel or law enforcement on how to respond to pregnant people who used prescription medication.⁸ As a result, several women faced felony charges for taking prescribed medication.⁹

Alabama

Background cont.

As a result of this reporting, in May 2016, the Alabama Legislature amended the chemical endangerment law to provide for an affirmative defense: the use of a medication pursuant to a lawful prescription.¹⁰ Although the amendment provided new protection to pregnant women

taking medication in its prescribed manner, pregnant women using illegal substances, or using controlled ones beyond the bounds of their prescription, still face criminalization by virtue of their pregnancy status.

Arrests by County

Etowah County, Alabama subjected more pregnant people to criminal prosecution and pretrial incarceration for pregnancy-related charges than any other county in Alabama or the United States. Over 1 in 10 (13%) pregnancy-related arrests **in the entire country** originated in Etowah County. Although only 2% of the state's population lives in the county, Etowah accounted for over a quarter (28%) of pregnancy-related arrests in Alabama. Like poverty and race, geography is also a determinant of pregnancy criminalization in Alabama.

Top 3 Alabama Counties

County	Arrests	Percentage of Arrests
Etowah	182	28%
Morgan	79	12.17%
Lauderdale	58	8.93%

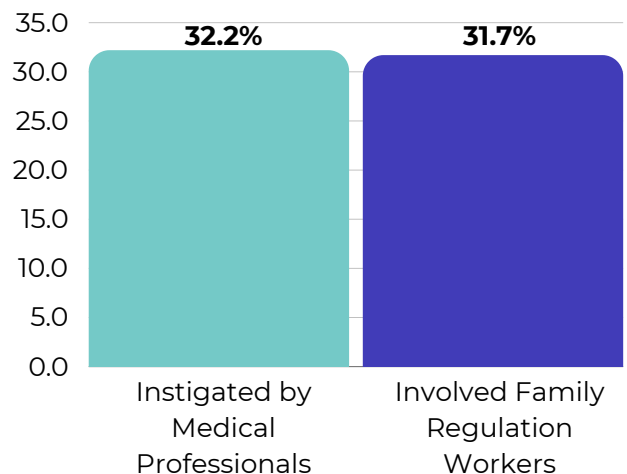
Source: Pregnancy Justice, *The Rise of Pregnancy Criminalization*, 2023

The Underpinnings of Criminalizing Pregnancy & Substance Use

The fact that pregnancy criminalization overwhelmingly involves substance use allegations cannot be considered in a vacuum. Pregnancy criminalization relies on a combination of forces, including fetal personhood, racial and socioeconomic disparities in policing and surveillance, carceral approaches to substance use, and the system of mandated reporting within the U.S. healthcare and family regulation systems. In practice, mandated reporters extend concepts of fetal personhood to the interpretation of state and federal child abuse reporting laws, while operating with explicit and unconscious bias. As a result, medical professionals and family regulation workers play a key role in not only fueling the hospital-to-prison and family regulation system-to-prison pipelines, but sustaining the racial and socioeconomic disparities apparent in pregnancy criminalization.

In Alabama, allegations of prenatal substance use constituted 96% of all pregnancy-related arrests in the state.

Hospital and CPS Worker Involvement in Arrests



Most Common Substances Criminalized

1	Methamphetamine (35.6%)
2	Cannabis (35.5%)
3	Amphetamines (20.9%)

Pregnancy Criminalization & Maternal/Infant Health

Though purportedly rooted in the desire to preserve fetal life and health, laws and policies that explicitly criminalize substance use during pregnancy produce a chilling effect; expectant parents forego prenatal care out of fear, which places them and their fetuses at risk of adverse health outcomes.¹¹ As long as prosecutors are emboldened to use the chemical endangerment law in this manner, pregnant Alabamans will fail to seek critical healthcare during their pregnancies.¹² At present, Alabama faces a maternal and infant health crisis. The pre-term birth rate in Alabama has been trending upward since 2015, 11.7% to the current rate of 13.1% in 2021.¹³

The state of maternal and infant health in Alabama—and the South more broadly—is dire for people of color and lower-income communities. The Black infant death rate in Alabama is an alarming 11.2 deaths per 1,000 births compared to the rate of 5.6 for white infants.¹⁴ A similar racial disparity exists for maternal death rates; Black birthing people are twice as likely to die during or pregnancy or following birth than their white counterparts.¹⁵ According to a report by the Alabama Maternal Mortality Review Committee (AL-MMRC), substance use is one of the leading causes of maternal death and the majority of these deaths (55%) were preventable.¹⁶

Alabama’s criminal response to substance use and pregnancy is in direct opposition to what local and national public health leaders recommend to improve health outcomes for mothers and babies.

Alabama’s current infant mortality rate is 7.6 per 1,000 live births, ranking it third worst in the nation.¹⁷ The state’s maternal mortality rate is 41.4 deaths per 100,000 live births, compared to the national rate of 23.5¹⁸

The AL-MMRC and other leading medical and public health organizations agree that punitive drug testing and reporting create hostile treatment environments, and the issue should be addressed through education, prevention and community-based treatment.¹⁹ The justifiable fear of incarceration and potential loss of parental rights deters expecting mothers in Alabama from pursuing much-needed medical care.

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