



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 **Oklahoma ranks fourth in the nation for criminalizing pregnancy outcomes and conduct during pregnancy**, with just under 1 in 10 (8%) of all pregnancy-based prosecutions nationwide originating in the state.² This document provides an overview of observed trends in pregnancy-related prosecutions in Oklahoma during the studied time period.

Background

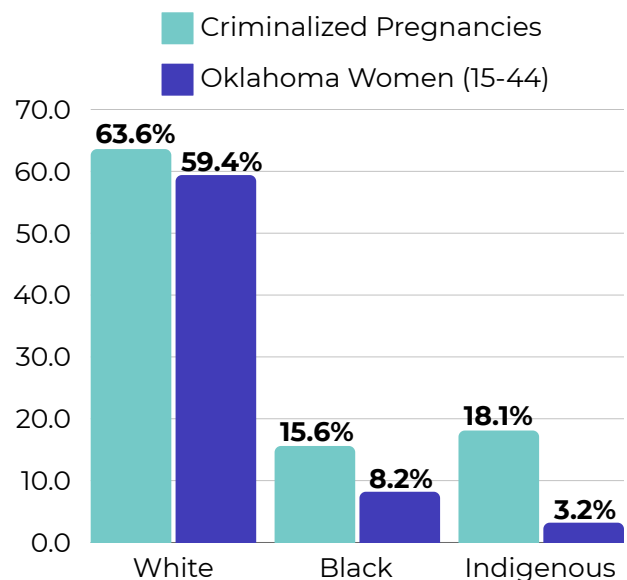
Pregnant and postpartum people are criminalized often based on improper interpretations and judicial expansions of state laws, all for the purported purpose of protecting fetuses and punishing “bad” mothers. In just the last five years, Oklahoma has quickly joined the ranks of other states like Alabama, South Carolina, and Tennessee which have prosecuted individuals for pregnancy-related criminal charges at exceedingly high rates.

Oklahoma is one of only three states with judicial decisions that expanded the definition of “child” to include fetuses.

Beginning in 2015, the pregnancy criminalization landscape in Oklahoma evolved into one of the most hostile in the nation. The state experienced an explosion in arrests for felony child neglect on the basis of conduct deemed harmful to a fetus. In 2020, as compared to numbers from five years prior, Oklahoma arrested eight times as many people for pregnancy-related crimes, based on allegations of prenatal substance use. Further emboldened by rulings from the Oklahoma Court of Criminal Appeals within the last three years,³ prosecutors frequently use a mother or infant’s positive toxicology as evidence of child neglect. **At present, state officers overwhelmingly prosecute pregnancies ending in healthy births, which indicates the child’s wellbeing is not the true motivation for these cases.**⁴

Oklahoma also has a concerning record of criminalizing stillbirths and miscarriages. Some of the country’s most high-profile pregnancy loss cases resulting in convictions for child neglect or manslaughter originated in the state.⁵ Two of the three appellate decisions holding that drug use during pregnancy constitutes child neglect, *Green* and *Akers*, began with an investigation of the defendants’ respective stillbirths.

Racial Breakdown of Arrests



Source: March of Dimes, *Data for Oklahoma, 2021*⁶

Pregnancy criminalization overwhelmingly affects poor Oklahomans. Nearly 9 in 10 arrests in the state involved a pregnant person who qualified for public defense, meaning the court determined they faced substantial financial hardship.

Green, the first of these cases, held that state’s criminal child neglect law could be used to prosecute a woman who used drugs while 33 weeks pregnant. This paved the way for scores of women in Oklahoma to be arrested and charged with child neglect, or in several cases manslaughter, all under the guise of protecting “the unborn.”

Oklahoma

Arrests by County

Kay County, Oklahoma subjected more pregnant people to criminal prosecution and pretrial incarceration for pregnancy-related charges than any other county in the state, representing over 4 in 10 arrests. Like poverty and race, geography is also a determinant of pregnancy criminalization in Oklahoma.

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

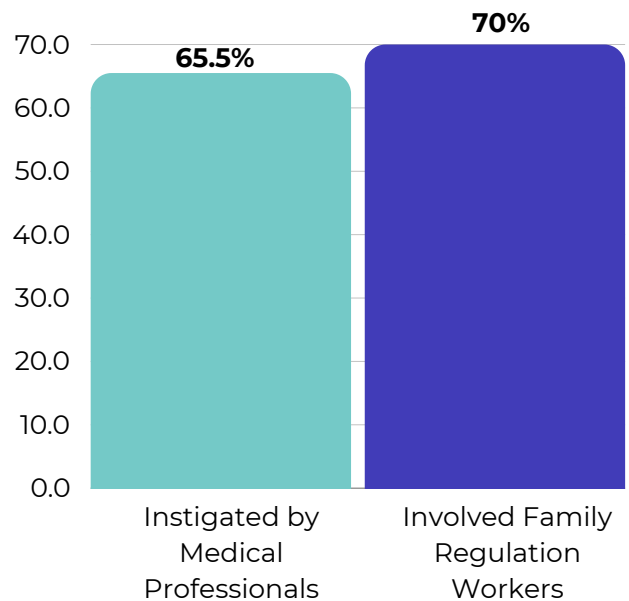
Top 3 Oklahoma Counties

County	Arrests	Percentage of Arrests
Kay	47	41.6%
Comanche	27	23.9%
Muskogee	9	8%

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.

Hospital and CPS Worker Involvement in Arrests



Most Common Substances Criminalized

- 1 Methamphetamine** (73.6%)
- 2 Cannabis** (48.1%)
- 3 Amphetamines** (32.7%)

An increasing number of cases have been brought in Oklahoma against new mothers for prenatal marijuana use, some of whom possess a lawful medical license to use marijuana.⁷ Marijuana is often used to self-manage common symptoms of pregnancy such as stress, anxiety, and nausea.⁸

Oklahoma law requires that any medical professional “involved in the prenatal care of expectant [parents] or the delivery of infants” report any instance in which an infant test positive for alcohol or a controlled substance to the Oklahoma Department of Human Services,⁹ which discourages people from seeking care and initiates the medical provider-to-criminalization pipeline.

In Oklahoma, allegations of prenatal substance use constituted 97% of all pregnancy-related arrests in the state.

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.¹⁰ As long as prosecutors are emboldened to criminal laws to target pregnant women, pregnant Oklahomans will fail to seek critical healthcare during their pregnancies.¹¹ At present, Oklahoma faces a maternal and infant mortality crisis. Although the state reached a record low infant mortality rate of 5.9 per 1,000 births for the state in 2020, the infant mortality rate increased more than 20% by the end of 2021.¹²

The state of maternal and infant health in Oklahoma—and the South more broadly—is dire for people of color and lower-income communities. The Black infant mortality rate in Oklahoma is an alarming 12 deaths per 1,000 births, more than twice that of the mortality rate for white infants.¹³ A similar racial disparity exists for maternal death rates in Oklahoma; Black and Indigenous birthing people are 3 and 2.8 times, respectfully, more likely to die post-birth than white birthing people.¹⁴ The Oklahoma Maternal Mortality Review Committee (OMMRC) recently reported that substance use disorder, lack of financial access and stigma, amongst other factors, contribute significantly to pregnancy-related mortality.¹⁵

Oklahoma’s criminal response to substance use and pregnancy is in direct opposition to what national and local public health leaders recommend for approaching prenatal alcohol and drug use.

Oklahoma’s current infant mortality rate is 7.1 per 1,000 births, ranking it seventh worst in the nation.¹⁶ The state’s maternal mortality rate is 30.3 deaths per 100,000 live births, compared to the national rate of 23.5.¹⁷

In 2021, over 30 Oklahoma doctors signed an open letter denouncing the prosecution of substance use during pregnancy.¹⁸ The OMMRC and other leading medical and public health organizations do not recommend punitive responses to treat substance use disorder in pregnancy; experts agree that the issue should be addressed through education, prevention, and community-based treatment.¹⁹ To close the gap in health care provider knowledge, the committee specifically recommends SBIRT (Screening, Brief Intervention, Referral to Treatment) for prenatal patients struggling with substance use disorder.²⁰ However, Oklahoma has only one prenatal clinic specializing in care for pregnant women with substance use disorders.²¹ The lack of adequate resources, justifiable fear of incarceration, and potential loss of parental rights deters expecting mothers in Oklahoma from pursuing much-needed medical care.

References

1. Kavattur, Purvaja S, et al., *The Rise of Pregnancy Criminalization: A Pregnancy Justice Report*, New York: Pregnancy Justice (2023), <https://www.pregnancyjusticeus.org/wp-content/uploads/2023/09/9-2023-Criminalization-report.pdf>
2. *Id.* at 19.
3. *State v. Green*, 474 P.3d 886 (Okla. Crim. App. 2020); *State v. Allen*, 492 P.3d 27 (Okla. Crim. App. 2021); *State v. Akers*, No. S-2021-378 (Okla. Crim. App. Jan. 27, 2022)
4. Kavattur, *supra* note 1, at 4.
5. Cary Aspinwall, Brianna Bailey & Amy Yurkanin, *They Lost their Pregnancies. Then Prosecutors Sent Them to Prison*, The Marshall Project (Sept. 1, 2022), <https://www.themarshallproject.org/2022/09/01/they-lost-their-pregnancies-then-prosecutors-sent-them-to-prison>; Kassie McClung & Brianna Bailey, *She was Charged with Manslaughter After a Miscarriage. Cases Like Hers are Becoming More Common in Oklahoma*, The Frontier (Jan. 7, 2022), <https://www.readfrontier.org/stories/she-was-charged-with-manslaughter-after-a-miscarriage-cases-like-hers-are-becoming-more-common-in-oklahoma/>.
6. March of Dimes, *Data for Oklahoma*, Population of Women 15-44 Years by Race/Ethnicity: 2021, <https://www.marchofdimes.org/peristats/data?top=14&lev=1&stop=128&top=127@=99&sreg=40&obj=3&slev=4> (last reviewed December 2023).
7. Brianna Bailey, *Oklahoma is Prosecuting Pregnant Women for Using Medical Marijuana*, The Frontier (Sept. 13, 2022), <https://www.readfrontier.org/stories/oklahoma-is-prosecuting-pregnant-women-for-using-medical-marijuana/>
8. Kelly C. Young-Wolff, et al., *Trends in Self-reported and Biochemically Tested Marijuana Use Among Pregnant Females in California from 2009-2016*, 318 JAMA 2490 (2017).
9. Okla. Stat. tit. 10A §1-2-101(B)(3) (2022).
10. Meghan Boone & Benjamin J. McMichael, *State-Created Fetal Harm*, 109 Geo. L.J. 475 32 (2021) (finding that Tennessee's fetal assault law, which was in effect from May 2014 through June 2016, had a statistically significant negative impact on fetal and infant health and on the likelihood that mothers received prenatal care).
11. Rebecca L. Haffajee et al., *Pregnant Women with Substance Use Disorders—The Harm Associated with Punitive Approaches*, 384 N. Engl. J. Med. 2364 (2021); Laura J. Faherty et. al., *Association of Punitive and Reporting State Policies Related to Substance Use in Pregnancy with Rates of Neonatal Abstinence Syndrome*, 11 JAMA 2 (2019).
12. See March of Dimes, *2023 March of Dimes Report Card for Oklahoma*, <https://www.marchofdimes.org/peristats/reports/south-carolina/report-card> (last reviewed January 2024).
13. *Id.*
14. *Id.*; Okla. State Dep't of Health Maternal Mortality Review Comm., *Maternal Mortality in Oklahoma: Annual Report 2023 14* (2023), <https://oklahoma.gov/content/dam/ok/en/health/health2/aem-documents/family-health/maternal-and-child-health/maternal-health-task-force/MMRCAAnnualReport2023PRINT.pdf>
15. Okla. State Dep't of Health Maternal Mortality Review Comm. at 21.
16. See March of Dimes, *2023 March of Dimes Report Card for United States* (2023), <https://www.marchofdimes.org/peristats/assets/s3/reports/reportcard/MarchofDimesReportCard-UnitedStates.pdf> (last reviewed January 2024).
17. *Id.*
18. Press Release, Oklahoma Doctors Issue Public Letter Denouncing Prosecutions Involving Pregnancy and Allegations of Drug Use (Dec. 21, 2021), <https://s3.documentcloud.org/documents/21172739/oklahoma-doctors-issue-public-letter-denouncing-prosecutions-involving-pregnancy-and-allegations-of-drug-use.pdf>
19. Okla. State Dep't of Health Maternal Mortality Review Comm., *supra* note 18, at 21–23; American College of Obstetricians and Gynecologists, *Substance Use Disorder in Pregnancy* (2023).
20. *Id.* at 22
21. Journal Record Staff, *Partners in Oklahoma Aim to Help Babies Born with Addiction* (May 2, 2023), <https://journalrecord.com/2023/05/partners-in-oklahoma-aim-to-help-babies-born-with-addiction/>