



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 **South Carolina ranks second in the nation for criminalizing pregnancy outcomes and conduct during pregnancy**, with over 1 in 10 (12.9%) of all pregnancy-based prosecutions originating in the state.² This document provides an overview of observed trends in pregnancy-related prosecutions in South Carolina during the studied time period.

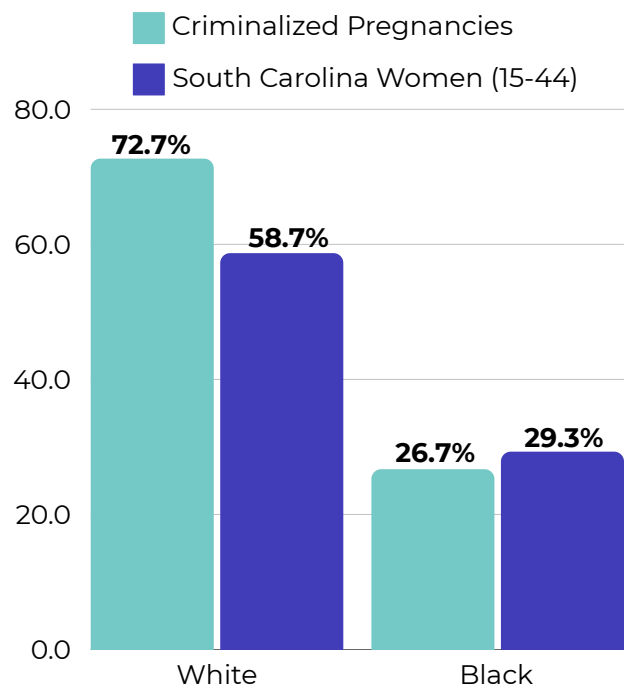
Background

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. South Carolina is one of only three states with judicial decisions that expanded the definition of “child” to include fetuses. However, even before the South Carolina Supreme Court held that fetuses are “people” for purposes of the criminal law,³ the state had a history of prosecuting pregnant people.

South Carolina was an originator of the hospital-to-criminal investigation pipeline that underpins modern pregnancy criminalization.

Amid the sensationalized and racialized “crack baby epidemic” of the 1980s and 1990s, South Carolina was an originator of the hospital-to-criminal investigation pipeline that underpins modern pregnancy criminalization. In 1989, the Medical University of South Carolina (MUSC) established an involuntary drug testing policy by which hospital staff alerted Charleston police each time a pregnant woman or her infant tested positive for cocaine. The hospital’s predominantly low-income and Black population experienced the brunt of these criminal child neglect investigations.⁴ Eventually, the state-operated hospital terminated the program in 1994 in response to a federal lawsuit citing Fourth Amendment violations, and in 2000, the Supreme Court affirmed that MUSC staff engaged in “unreasonable” searches by drug testing patients without consent and turning that information over to law enforcement.⁵ However, this victory alone was not sufficient in protecting pregnant South Carolinians from criminal prosecution.

Racial Breakdown of Arrests



Source: March of Dimes, *Data for South Carolina*, 2021⁶

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

South Carolina

Background cont.

Three years after MUSC's program ended, the Supreme Court of South Carolina expanded the definition of "child" in its child abuse and endangerment statute to include a fetus, citing prior interpretation of the state's wrongful death statute.⁷ The ruling paved the way for scores of women in South Carolina to be arrested and

charged with child neglect or endangerment under the guise of addressing prenatal substance use.⁸ These arrests demonstrate the coalescing of the fetal personhood movement and the war on drugs to criminalize people by virtue of their pregnancy status.

Arrests by County

Horry County, South Carolina subjected more pregnant people to criminal prosecution and pretrial incarceration for pregnancy-related charges than any other county in South Carolina. Like poverty and race, geography is also a determinant of pregnancy criminalization in South Carolina.

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

Top 3 South Carolina Counties

County	Arrests	Percentage of Arrests
Horry	36	20%
Spartanburg	20	11.1%
York	20	11.1%

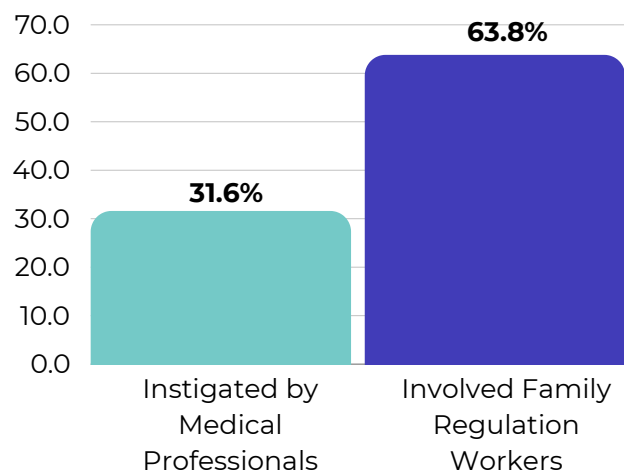
The Underpinnings of Criminalizing Pregnancy & Substance Use

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 South Carolina, allegations of prenatal substance use constituted 97.2% of all pregnancy-related arrests in the state.

The state brought several cases against new mothers for the sole use of marijuana—the most common controlled substance used in pregnancy—to self-manage common symptoms such as stress, anxiety, and nausea.⁹

Hospital and CPS Worker Involvement in Arrests



Most Common Substances Criminalized

1	Cannabis (35%)
2	Opiates (prescribed and unknown prescription) (22%)
3	Cocaine (17%)

South Carolina

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 infants at risk of worse health outcomes.¹⁰ As long as prosecutors are emboldened to use criminal laws to target pregnant people, pregnant South Carolinians will fail to seek critical healthcare during their pregnancies.¹¹ At present, South Carolina faces a maternal and infant mortality crisis. The state's infant mortality rate increased by a concerning 12% from 2020 to 2021.¹²

The state of maternal and infant health in South Carolina—and the South more broadly—is dire for people of color and lower-income communities.

The Black infant death rate in South Carolina is an alarming 11.9 deaths per 1,000 births compared to the rate of 4.8 for white infants.¹³ A similar racial disparity exists for pregnancy-related mortality rates; in 2019, the risk of death for Black birthing people was 67% higher than that of their white counterparts and the racial gap only continues to widen.¹⁴ The South Carolina Maternal Morbidity and Mortality Review Committee (SCMMRC) recently reported that mental health conditions—which includes substance use disorder—are among the top two underlying causes for maternal deaths.¹⁵

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

South Carolina's current infant mortality rate is 7.3 deaths per 1,000 births, ranking it fifth worst in the nation.¹⁶ The state's maternal mortality rate is 32.7 deaths per 100,000 live births, compared to the national rate of 23.5.¹⁷

The SCMMRC 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.¹⁸ But a recent investigation by The Post and Courier exposed the state's failings in this regard, noting that “[South Carolina] has only three programs that treat mothers and babies together.”¹⁹ The lack of adequate resources, justifiable fear of incarceration, and potential loss of parental rights deters expecting mothers in South Carolina 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. *Whitner v. State*, 492 S.E.2d 777 (S.C. 1997).
4. Between 1973 – 2005, South Carolina lead the country in pregnancy-related arrests and forced medical interventions. At the time, Black people made up 30% of the state's population, yet 74% of cases in the state were brought against Black women. See, Lynn Paltrow & Jeanne Flavin, *Arrests of and Forced Interventions on Pregnant Women in the United States, 1973–2005: Implications for Women's Legal Status and Public Health*, 38 J. Health Pol., Pol'y & L. 299, 309, 311–12 (2013).
5. *Ferguson v. Charleston*, 528 U.S. 1187 (2000).
6. March of Dimes, *Data for South Carolina*, Population of Women 15-44 Years by Race/Ethnicity: 2021, <https://www.marchofdimes.org/peristats/data?top=14&lev=1&stop=128&ftop=126®=99&sreg=45&obj=3&slev=4> (last reviewed December 2023)
7. *Ferguson*, *supra* note 5.
8. Jocelyn Grzeszczak & Eva Herscowitz, *Put to the Test: Pregnant women in SC Face Severe Consequences for Using Drugs*, The Post and Courier (Sept. 30, 2023), https://www.postandcourier.com/news/special_reports/put-to-the-test-pregnant-women-in-sc-face-severe-consequences-for-using-drugs/article_cc3738fa-4e62-11ee-95ff-c786149ce11d.html (last reviewed January 2024).
9. Emily Janakiram, *South Carolina is Ripping Infants Away from Their Mothers Over Pot Use*, Truthout.org (Nov. 9, 2023), <https://truthout.org/articles/south-carolina-is-ripping-infants-away-from-their-mothers-over-pot-use/>; 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).
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 the likelihood 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. Press Release, South Carolina Dep't of Health and Env't Control, Latest South Carolina Infant, Maternal Mortality Report Reveals Alarming Trends (April 12, 2023), <https://scdhec.gov/news-releases/latest-south-carolina-infant-maternal-mortality-reports-reveal-alarming-trends>.
13. See March of Dimes, *2023 March of Dimes Report Card for South Carolina*, <https://www.marchofdimes.org/peristats/reports/south-carolina/report-card> (last reviewed January 2024).
14. Lauren Sausser, *A Striking Gap Between Deaths of Black and White Babies Plagues the South*, The Atlanta Journal-Constitution (May 25, 2023), <https://www.ajc.com/life/health/a-striking-gap-between-deaths-of-black-and-white-babies-plagues-the-south/2HXCGRFHX5DRNM63MD23SDO43U/>
15. Press Release, *supra* note 12; South Carolina Maternal Morbidity and Mortality Review Comm., *Legislative Brief* (March 2023), <https://scdhec.gov/sites/default/files/Library/CR-013357.pdf>.
16. See March of Dimes, *2023 March of Dimes Report Card for United States*, <https://www.marchofdimes.org/peristats/assets/s3/reports/reportcard/MarchofDimesReportCard-UnitedStates.pdf> (last reviewed January 2024).
17. March of Dimes, *supra* note 13.
18. South Carolina Maternal Morbidity and Mortality Review Comm., *supra* note 15 American College of Obstetricians and Gynecologists, *Substance Use Disorder in Pregnancy* (2023).
19. Grzeszczak & Herscowitz, *supra* note 8 (last reviewed January 2024).