

Pregnancy-Related Prosecutions: Study Definition and the Parameters of this Report

This three-year study seeks to document pregnancy-related prosecutions. The study defines a pregnancy-related prosecution as one in which:

1. the criminal charge is based on allegations related to a pregnancy, pregnancy loss, or birth, and prosecutors argue those allegations meet an element of the criminal offense; or
2. the State imposes harsher and/or different penalties (e.g., parole or probation revocation, sentence enhancement, or modification to pretrial release conditions) on a person for being pregnant, even if the precipitating charge itself is not associated with pregnancy.

This initial report focuses on a subset of pregnancy-related prosecutions—cases in category one above, brought against a pregnant person in the first year after *Dobbs*. The report also focuses only on a subset of information about those cases—the geographic location and demographic information of the defendants and the charges and allegations made against them.

Allegations Not Facts

The primary data sources for this report are court files and police investigation reports. These documents are evidence of what police and prosecutors claim happened in a particular case. They are also evidence of the crime those actors believe occurred, what they believe they must prove in order to convict a defendant of that crime, and the range of punishment they will have the authority to seek if the defendant is convicted. When police and prosecutors make allegations, it can lead to guilty pleas, convictions, and punishment. These documents, standing alone, are not proof of the assertions they contain. Just because the prosecutor or investigator claims, for example, that a person took a particular drug during pregnancy or that the substance harmed the fetus does not mean that is true. But allegations matter. Understanding them teaches us a good deal about the nature and scope of pregnancy criminalization. Allegations start the criminal process and determine the scope of pregnancy criminalization. For that reason, they are the focus of this report.

Methods

Case Identification

This preliminary report includes cases that met four criteria. First, researchers must have had access to the charged person's name, date of case initiation, and county and state of indictment. Second, researchers required that the charging document confirm that the case met part one of the study's definition of a pregnancy-related prosecution as defined above. Third, the prosecution must have been initiated between June 24, 2022 and June 23, 2023. Fourth, the prosecution must have targeted the pregnant person.

The research team relied on several methods to identify cases: intakes from Pregnancy Justice, outreach, web searches, and bulk records requests. Pregnancy Justice attorneys are regularly contacted via their legal intake line concerning pregnancy criminalization cases, and at least sixteen cases in this study were identified this way. The research team also conducted extensive outreach with public defenders, the private criminal defense bar, reproductive justice advocates, academic institutions, and journalists to encourage them to share publicly-available information about prosecutions. In addition, the team created a list of Boolean search strings based on common phrases and keywords to regularly query legal and media databases. Finally, the team identified several jurisdictions where it knew pregnant people were being charged with pregnancy-related crimes and used public records requests to seek information on cases involving offenses that had previously been charged against pregnant people in that jurisdiction. In those jurisdictions, the team obtained the court files and, when available, investigation files for every charge of that nature and analyzed each one to determine whether they met our study criteria.

LIMITATIONS

Criminal legal data systems in the United States are notoriously opaque.¹³ There is no centralized national database for criminal cases, and the ability to identify cases varies significantly from jurisdiction to jurisdiction. For example, in Texas there are 254 counties and inquiries need to be made

on a county-by-county basis. Further, the vast majority of pregnancy criminalization charges are not brought under statutes that are explicitly pregnancy-related but rather are charged as child abuse or homicide. In these circumstances, it is impossible to know which cases are pregnancy-related without making generalized information requests and reviewing every single case to determine if it belongs in the dataset. Identifying every case charging a particular crime in any given jurisdiction can be tremendously difficult and time-consuming. Court files are not always accessible online, and even when they are, databases rarely permit searches for every instance of a particular charge. There are exceptions and, as noted above, where possible and when resources allowed, the research team collected and reviewed such information county- or state-wide in jurisdictions where pregnancy criminalization historically has been the most common.

Because the 210 cases identified here do not represent every pregnancy criminalization case brought during this period, this report includes only descriptive data. In the coming years, the team will utilize additional methods to identify, as comprehensively as possible, the scope of pregnancy criminalization in the three years after *Dobbs*.

Coding and Data Analysis

The coding protocol involved multiple steps and two analytic tools. The team first identified research questions that could be answered confidently based on the data available for this first initial report. The team then developed coding tools, which included codes in a qualitative software program (Dedoose) and a Qualtrics survey. A test run clarified relevant codes and ensured consistency across tools. To code each case, coders applied codes in Dedoose and completed the Qualtrics survey; then the

principal investigators reviewed the coding in both Dedoose and Qualtrics, corrected any errors, and marked the survey answers complete. During this process, the principal investigators provided ongoing feedback and remained in constant communication with the ten coders. The team chose this process over a more standard inter-rater reliability check because it concluded that, given the highly technical legal information central to the coding protocol, this closely-held review process would yield more accurate and consistent results. Once the surveys were complete, the data set was cleaned and analyzed in SPSS 29, leading to the results contained in this report.

The Relationship Between Prior and Current Research Methods

In September 2023, Pregnancy Justice published *The Rise of Pregnancy Criminalization*, documenting and analyzing 1,396 cases of pregnancy criminalization from 2006 to the *Dobbs* decision. The current research project builds upon and refines the methods used in that prior report. First and most importantly, the current research team has significantly more staffing and resources than prior efforts and is concentrating its efforts on a shorter time period. This has and will continue to enhance the team's ability to identify and comprehensively analyze cases. In addition, some coding variable definitions were added or refined from one study to the next and additional variables, particularly those that examine the charges and their possible penalties, were added to the analysis. For these reasons, the researchers cannot directly compare one set of results with the other. For example, while the research team is able to state that it has documented more pregnancy criminalization charges in the first year post-*Dobbs* than in any prior year, it cannot say whether that increase is due to the team's ability to locate and identify prosecutions or whether more prosecutions occurred because of shifts in the political and legal landscape surrounding pregnancy. The team suspects it may be both.

Questions for Further Research

This initial report focuses solely on the initiation of prosecutions that meet part of the study criteria. Many of the cases remain open at the time of this writing. Later reports will focus not only on cases in the coming years but also on providing a fuller picture of what happened in these cases. The research team intends to analyze bail, plea agreements, outcomes at trial, and sentences, as well as the relationship between the defendant's race and these variables. The team will also be devoting resources to the second part of our study definition and to additional qualitative work.