

Pregnancy Criminalization and Fetal Personhood

Pregnancy criminalization occurs when the state wields a criminal law to render acts associated with a pregnancy, pregnancy loss, birth, and/or associated healthcare the subject of criminal prosecution. While the *Dobbs* decision ushered in a wave of criminal abortion laws,⁶ pregnancy criminalization is nothing new. From 1973 to June 2023, at least 2,000 individuals across the United States have faced prosecution and punishment for circumstances surrounding their pregnancies and pregnancy outcomes. Pregnant people have been prosecuted when they took prescription medications on the advice of their physicians, when they had a substance use disorder, when they were shot, when mental health crises led to suicide attempts, and when they experienced miscarriages or stillbirths.⁷ Women have gone to prison, sometimes for decades, for these acts. In nearly every case, the criminal legal system treated the embryo or fetus as the victim of a crime. As is sadly characteristic of the criminal system overall, poor Black pregnant people and, in more recent decades, poor people regardless of race, have borne the brunt of these prosecutions.

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While laws that criminalize abortion have proliferated after *Dobbs*, these laws have never accounted for more than a handful of pregnancy-related prosecutions.⁸ Instead, prosecutors, by conceptualizing embryos and fetuses as potential crime victims and pushing the boundaries of other criminal statutes, have prosecuted pregnant people with general crimes like child abuse, neglect, or endangerment or homicide. These charges normalize the policing of pregnant people's behavior, mental health, and medical decision-making.

Without fetal personhood, pregnancy criminalization could not exist. Virtually every prosecution documented in this preliminary study, the over 1,800 previous pregnancy-related prosecutions from 1973 to June 2022, and every potential prosecution that could be charged for violating the scores of new criminal abortion statutes in the United States, rest on the idea that a fertilized egg, embryo, or fetus is a person separate and apart from the pregnant person who carries it. It is not surprising, then, that of the six states with the highest number of prosecutions in this report, all but one of them have explicitly enshrined fetal personhood in their civil and criminal laws through judicial decision, statute, constitutional amendment, or a combination of the three.⁹

Fetal personhood, as manifested through pregnancy criminalization, is not about protecting fetuses from harm. It is about controlling and punishing pregnant people, particularly women who do not conform to racialized ideals of motherhood.¹⁰ Far from making pregnancy, birth, and parenting safer and healthier, criminalization threatens all people's bodily autonomy,¹¹ their power to make reproductive healthcare decisions free from government interference, and their ability to live and parent in safe and healthy communities.¹²