

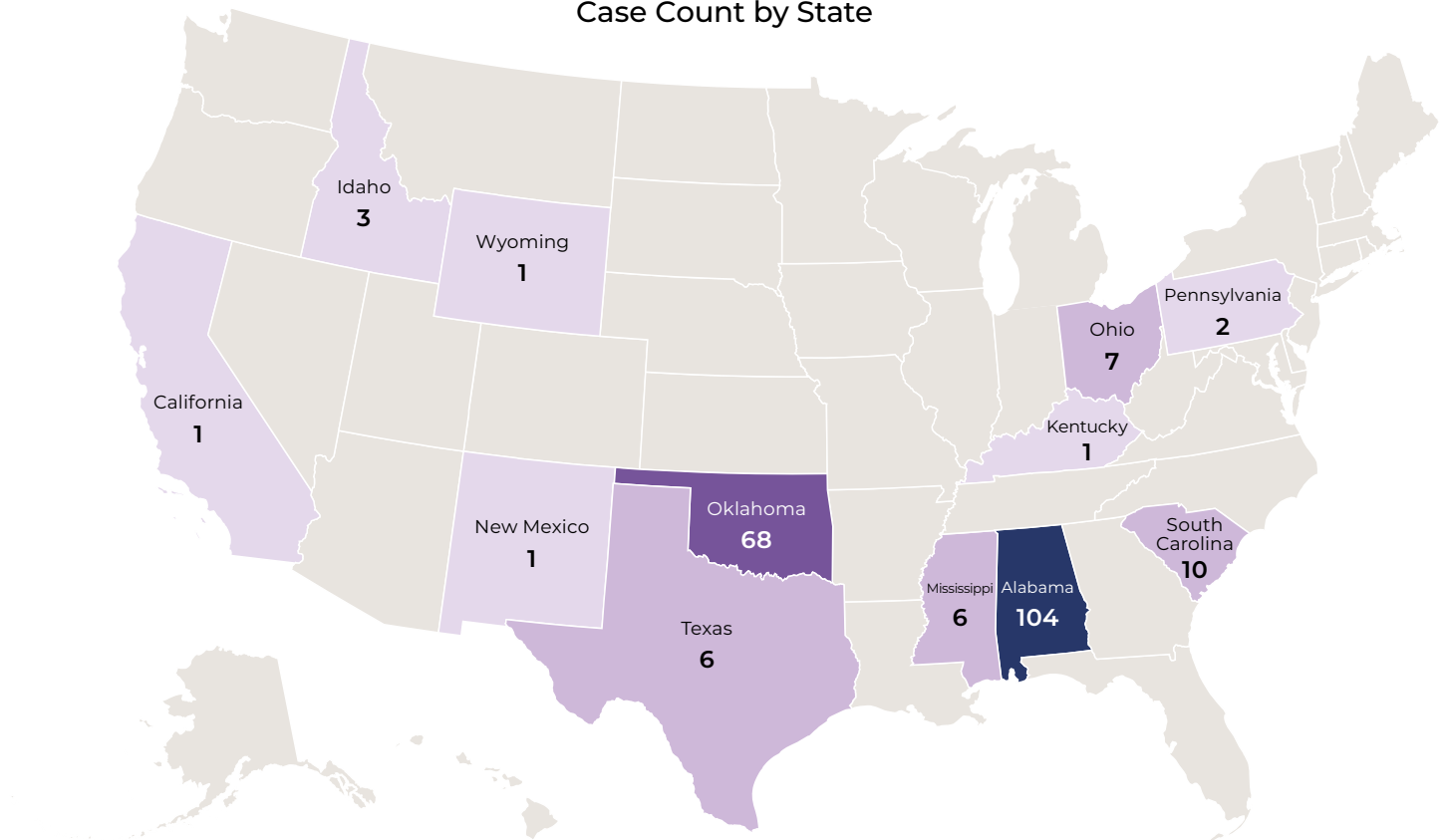
Preliminary Findings

Scope and Geography

Between June 24, 2022 and June 23, 2023, the first year after the *Dobbs* decision, at least 210 criminal cases were initiated charging pregnant people with crimes related to pregnancy, pregnancy loss, or birth. Documented prosecutions were initiated in twelve states—Alabama, California, Idaho, Kentucky, Mississippi, New Mexico, Ohio, Oklahoma, Pennsylvania, South Carolina, Texas, and Wyoming. While prosecutions were brought in all of these states, six collectively account for

the majority of the reported cases, with Alabama and Oklahoma accounting for the overwhelming majority. As shown in Figure A, cases documented in Alabama (104) represent nearly half of the documented prosecutions. Oklahoma represented nearly a third (68), followed by South Carolina (10), Ohio (7), Mississippi (6), and Texas (6), which continue to bring a notable number of prosecutions.

FIGURE A
Case Count by State



Maternal Mortality

These cases are all the more significant because the United States faces an urgent and dire maternal health crisis, with hundreds of people dying every year during pregnancy or shortly after. The country's maternal mortality rates far surpass those of other high-income countries.¹⁴ Over 80% of pregnancy-related deaths are preventable.¹⁵ Black women are three times more likely to die from a pregnancy-related cause than white women.¹⁶ Amidst this public health crisis, with options for terminating a pregnancy intentionally out of reach, many states fail to invest in or prioritize quality, affordable, and accessible healthcare for pregnant people. In fact, the states that have the highest number of documented prosecutions in this study are states with some of the worst maternal and infant health outcomes.¹⁷ These states also rank among the lowest in health care quality, measured in births by cesarean surgery for low-risk pregnancies, preventive care use, prenatal and postpartum care, and mental health screening.¹⁸ Despite this reality, failure to access care is held up as a personal failure. And rather than invest in care, these states continue to invest in prosecution and punishment.

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Race, Ethnicity, and Income Status

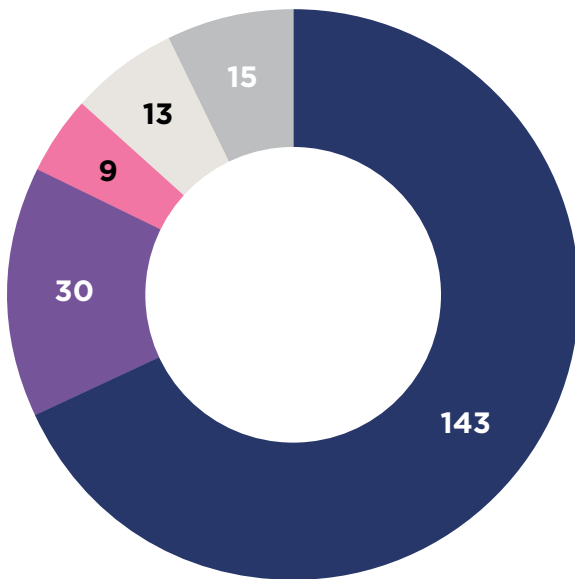
The United States's history of wielding the criminal law to control and punish reproduction has deep racist, patriarchal roots. The criminal law and its associated civil systems have long targeted the most marginalized women, whose humanity and motherhood have long been degraded. It originates in the rape and forced pregnancy of enslaved women¹⁹ and passes down through a history of obstetric violence²⁰ and forced sterilization,²¹ and continues today in the form of obstetric racism and unjustly high maternal mortality rates for Black women.²² The war on

drugs built on this long history of degradation and violence toward women, disproportionately Black but also poor Native American, Latinx, and white women.²³ Beginning in the 1980s, prosecutors relied on now-discredited narratives that in-utero exposure to crack cocaine would lead to a generation of destroyed children²⁴ to charge women who used crack cocaine during pregnancy with child abuse.²⁵ While this initial wave of prosecutions focused predominantly on poor Black women, as patterns of drug use shifted, so, too, did the prosecutions. The second wave, which began in the mid-2000s and continues today, expanded the target of pregnancy prosecutions to include opiates and methamphetamine and the predominantly white communities that use those drugs. While the racial demographics of the targets of pregnancy-related prosecutions have shifted over time, the income status of those targeted has not. Low-income communities bear the brunt of both pregnancy-related prosecutions²⁶ and criminal prosecutions overall.²⁷

The cases documented in this report signal a continuation of these trends. Information concerning the race of the defendants was dependent, like all the data, on information contained within court, police, or jail records. This information is notoriously unreliable, particularly

when it comes to recording ethnicity and multi-racial identity.²⁸ The files gathered reflected this truth. At times, documents reported inconsistent racial or ethnic identities for the same defendant, failed to separate race from ethnicity, or neglected to record race or ethnicity at all. To the extent that the files did contain data on race and ethnicity, they indicated, as shown in Figure B, that 143 of the 210 defendants were white, thirty were Black, thirteen were Native American, nine were Latinx, and fifteen had no information with respect to either race or ethnicity.

FIGURE B
Race



- White
- Black or African American
- Latinx
- American Indian or Native American
- No Information Available

Racial Construction & Protection of “Deserving Victims”

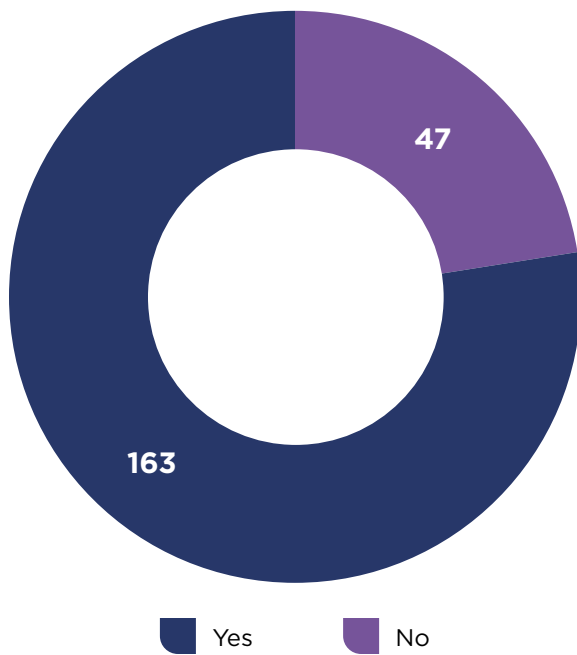
One way of understanding racial disparities in the criminal legal system is through the lens of whom the system punishes and punishes most harshly – typically Black defendants. But another way of understanding racial disparity in the system is *for whom* the system punishes most harshly: white victims. Thinking about the system’s racism from this perspective sheds light on how to understand the prosecutions of the poor white women whose cases are represented here.

The race of victims plays a prominent role in how the U.S. criminal legal system prioritizes cases, investigates, and punishes. The death penalty provides the quintessential example. In Southern states that applied the death penalty for rape, those sentences were overwhelmingly imposed on Black men for the alleged rape of white women.²⁹ To this day, prosecutors disproportionately seek and secure capital sentences for those who have killed white victims.³⁰

In the context of pregnancy prosecutions, the race of the victim will often be assumed to follow from the race of the defendant, that is, white mothers will often be assumed to have white children, while Black mothers will be assumed to have Black children.³¹ As a result, if the criminal legal system values white infants more highly as victims than Black infants, police, prosecutors, judges, and legislators will be willing to expend more resources on their behalf: surveilling, investigating, charging, diverting, prosecuting, supervising, and incarcerating white women to protect their white infants.³²

The available data indicate that slightly over three quarters of the defendants in this report are low income, as shown in Figure C. Individuals were coded as low income if counsel was appointed³³ or if there was some indication that they received a means-tested benefit like public housing, Temporary Assistance for Needy Families, Medicaid, or Supplemental Nutrition Assistance. Given prior research, this finding is unsurprising.³⁴

FIGURE C
Low-Income Status

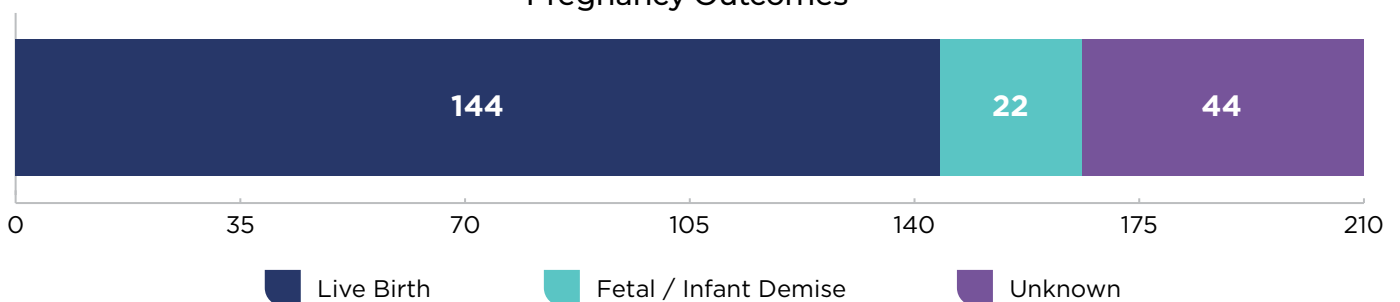


Pregnancy Outcomes

Of the 210 cases of pregnancy criminalization described in this report, 166 contained information concerning the outcome of the pregnancy. As shown in Figure D, pregnancy outcomes were split into two categories: cases with a live birth and no subsequent infant demise (144/166) and cases in which there was a fetal or infant demise (22/166).³⁵ Cases involving a live birth represent the overwhelming majority of documented pregnancy criminalization charges. Prior research shows that these cases often involve immediate separation of the mother and baby within days of giving birth,³⁶ to devastating and life-altering consequences for both. Many of these cases also lead to detention in jail without even the most basic postpartum physical or mental health care.³⁷

A significant minority of the cases involve an alleged fetal or infant demise. In conformity with our study definitions, a case was only included if it contained allegations related to a pregnancy, pregnancy loss, or birth and prosecutors argue those allegations meet an element of the criminal offense. Therefore, cases of infant demise or alleged harm to an infant, without these other elements, are not included in the study. The fetal or infant demise cases included in the study often involve pregnancies ending suddenly and tragically; people giving birth alone, losing consciousness, in pools of blood; and pregnant people with co-occurring psychiatric disabilities and substance use disorders experiencing devastating losses without the support of healthcare providers. In some of these cases, people chose to give birth outside a medical setting. In those cases, their preparations for giving birth, like securing supplies needed to give birth safely at home, have been transformed into evidence used to prove they committed a crime.

FIGURE D
Pregnancy Outcomes



Cases, Charges, and Allegations

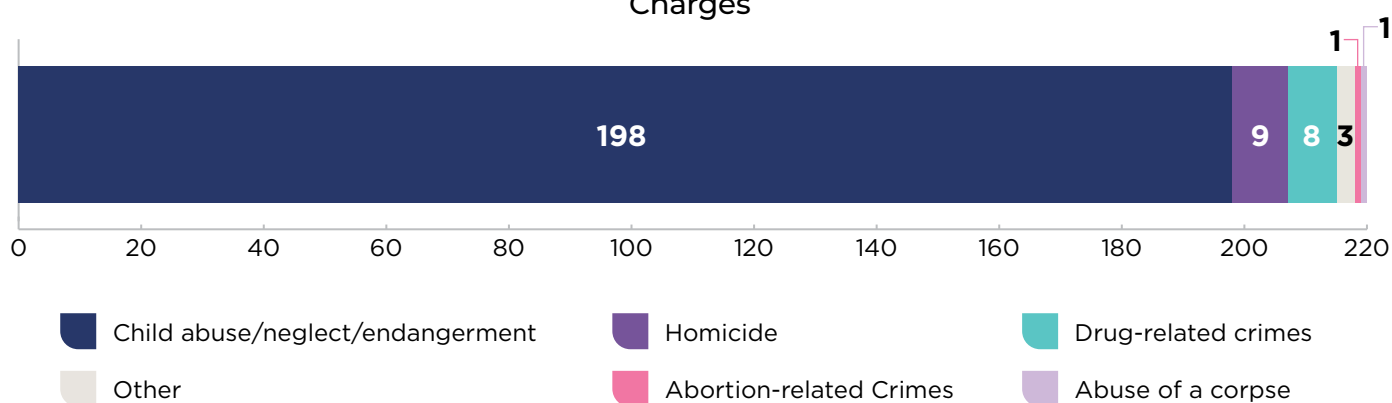
The research team next analyzed both what charges were brought and what allegations were made. The court and investigation files analyzed for this report contained extensive information regarding the criminal charges filed against all 210 defendants and the allegations made by police and prosecutors in these cases. Each of the 210 defendants faced at least one criminal charge, and several faced more than one. In total, the 210 defendants faced 220 charges for conduct related to pregnancy, pregnancy loss, or birth. Based on the researchers' prior knowledge of pregnancy criminalization as well as a preliminary review of the case files, the team created a list of allegations to track and coded the files if those allegations appeared. In total, the 210 cases contained 323 coded factual allegations in support of the state's theory that the defendants committed the crime or crimes charged. In addition, when files contained an allegation of substance use during pregnancy, we coded the substance alleged. While some cases alleged only one substance, many alleged exposure to multiple substances.

Charges

Prosecutors used a wide variety of criminal statutes to charge the defendants in these cases, often bringing more than one charge against an individual defendant. In total, the 210 defendants faced 220 charges for conduct related to pregnancy, pregnancy loss, or birth. As shown in Figure E, the majority of charges (198/220) asserted some form of child abuse, neglect, or endangerment. The remaining include nine

charges of criminal homicide, eight drug charges, one abortion-specific crime (under a now-repealed portion of a criminal abortion statute), one charge of abuse of a corpse, and three additional miscellaneous crimes. With one exception, all of the criminal charges applied general criminal laws (child abuse, neglect, or endangerment, homicide, drug-related crimes, or other general crimes) to prosecute pregnant people.

FIGURE E
Charges

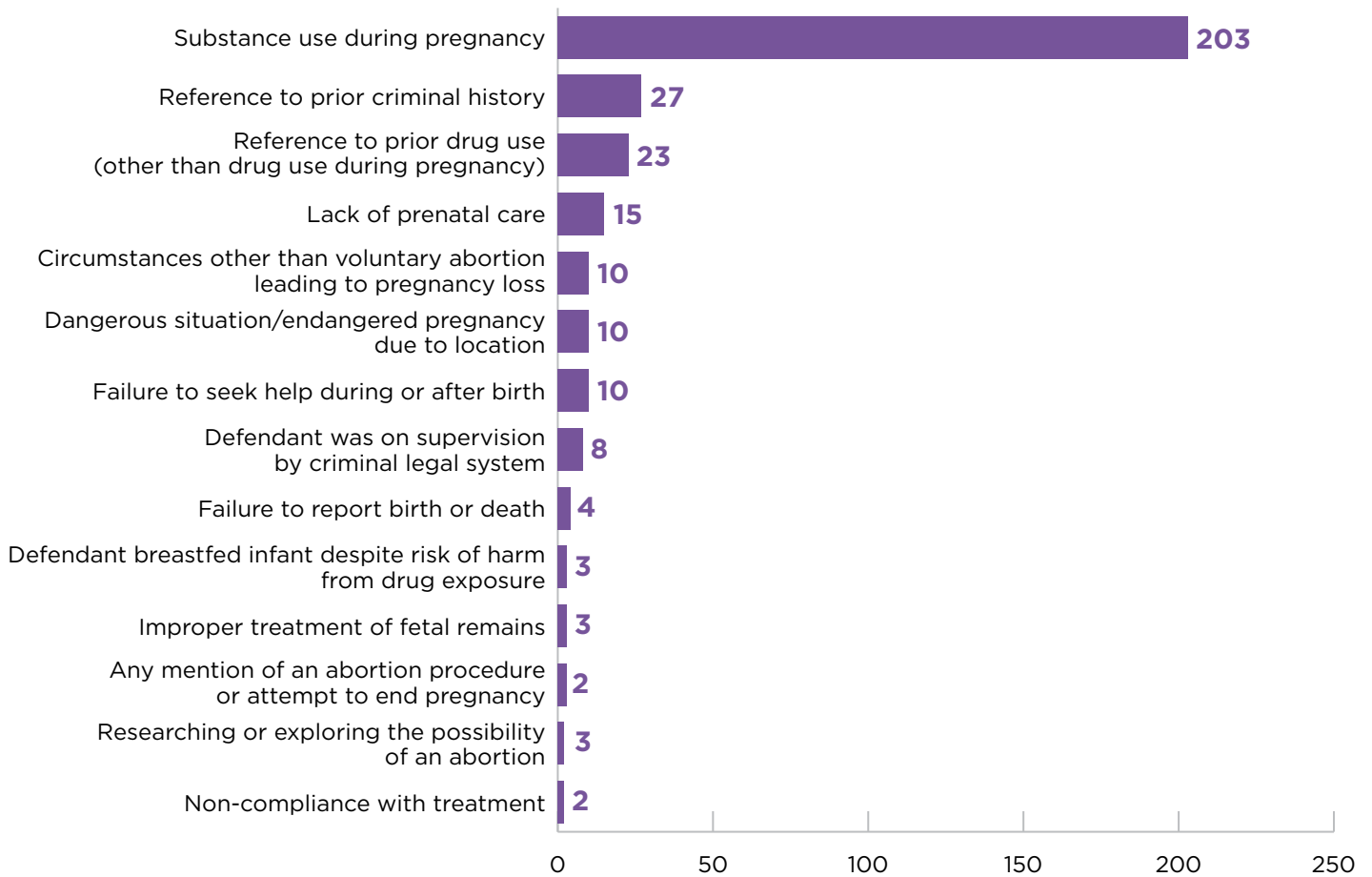


Allegations

Charging documents must specify the actions a person allegedly took to violate the law. As a result, charging documents, along with supporting police reports, affidavits, and other court documents, reveal a clearer picture of what acts police and prosecutors consider criminal when associated with pregnancy. The study

categorized allegations found in the assembled case files. These allegations and the frequency with which they appeared in the files are shown in Figure F. Because many cases contained multiple allegations, the total number of allegations (323) far exceeds the number of prosecutions (210).

FIGURE F
Allegations



CRIMINALIZING PRECARIOUS PREGNANCY AND BIRTH

The allegations in these cases are particularly notable for the way that they criminalize precarious pregnancy and birth and meet healthcare needs with punishment rather than care. For example, in three cases, police or prosecutors described the simple act of breastfeeding as evidence of a crime. It is also noteworthy that several women who appear to have faced serious health conditions, devastating pregnancy losses, and enormous trauma, were met not with offers of care but threatened with punishment for finding themselves in allegedly dangerous situations or allegedly not seeking help quickly enough in traumatic moments. Striking, too, in the midst of a wide-ranging crisis in maternal health care, is the condemnation of pregnant people for not accessing prenatal care. As shown in Figure F, in fifteen cases, prosecutors or police argued that pregnant people's failure to obtain prenatal care was evidence of a crime. In one case, police were called to the scene because a pregnant woman was overdosing. After administering Narcan, police charged her with abuse of her "unborn child." In another, an incarcerated pregnant woman wrote to the judge, begging to be transferred to a treatment facility. Her request was denied, and she gave birth in jail.

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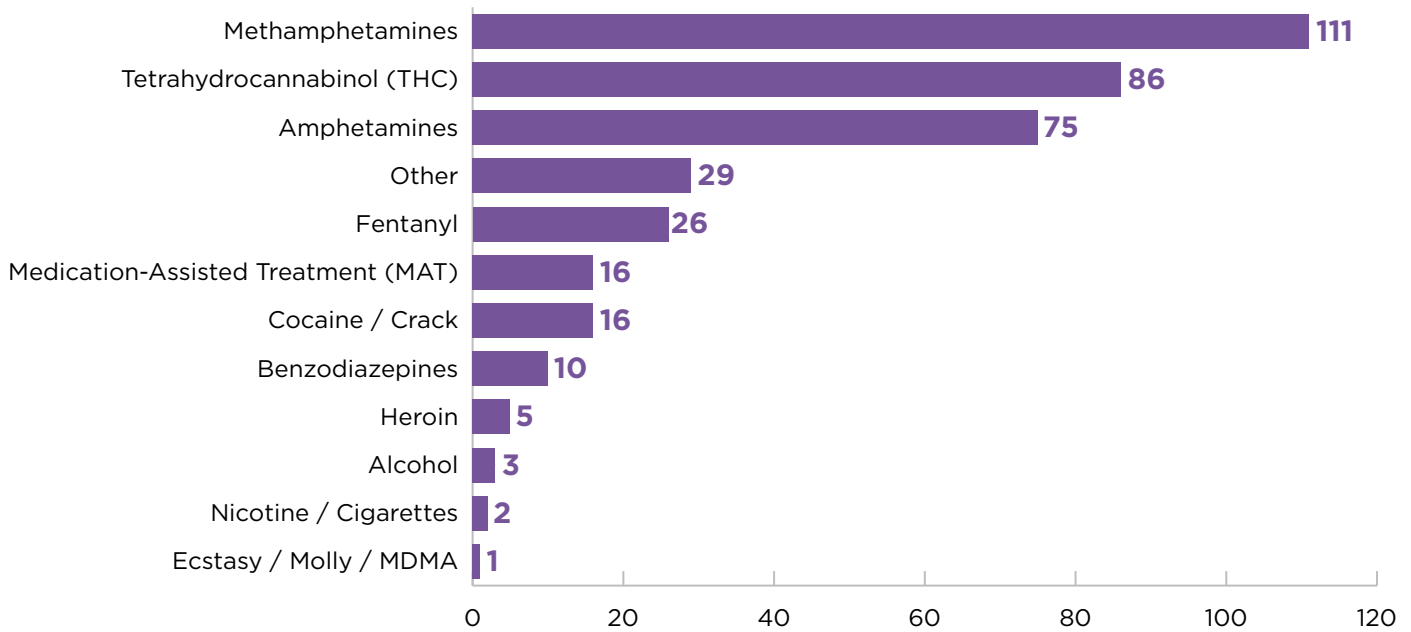
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PREGNANCY AND SUBSTANCE USE

As has been the case for decades,³⁸ nearly all the cases alleged the pregnant person used a substance during pregnancy. In 133 of those cases, substance use was the only allegation made against the defendant. As drug use patterns have changed, pregnancy prosecutions have shifted from targeting the use of crack cocaine³⁹ to focusing on the use of methamphetamines, amphetamines, marijuana, and opiates.⁴⁰ The data confirms these trends. Figure G details all the substances that prosecutors and police allege that pregnant people used in the 203 cases that allege substance use either alone or in combination with other allegations.

FIGURE G
Alleged Substances



It is significant that, in eighty-six cases, the police or prosecution alleged that the defendant took some form of THC during her pregnancy, and in thirty-one of those eighty-six cases, the only allegation supporting prosecution was THC use. Even more startling, in five of those cases, the court file included statements that the defendant had a medical marijuana card, indicating that she was being charged with taking legally prescribed medication.

Also striking is the continued use of criminalization rather than care to address opioid use. Opioid-related deaths are the leading cause of death among pregnant people, with mortality rates rising more than 80% between 2017 and 2020.⁴¹ Despite this crisis, pregnant people with substance use disorders⁴² face significant barriers to accessing care, treatment, and social support.⁴³ Criminalization only worsens this crisis. Women who use drugs are generally highly motivated to attempt to desist from drug use when they become aware of their pregnancy.⁴⁴ For these

reasons, continued use may indicate that a pregnant person may both need and want voluntary treatment. But largely out of fear of criminalization and family separation, many pregnant people avoid healthcare settings, even when they desire care.⁴⁵ More than one woman in this study made precisely this choice, stating that her decision to give birth at home resulted from her fear of criminal charges or family separation.

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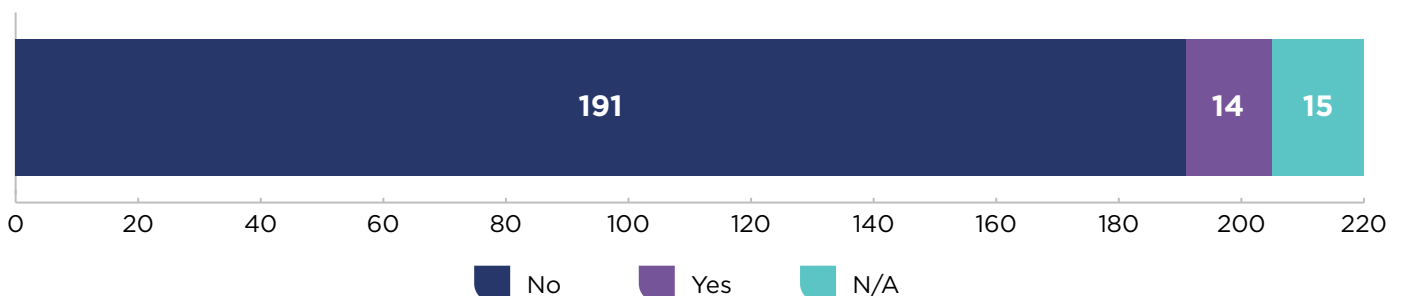
Prosecuting Unrealized Risk

Those who support pregnancy-related prosecutions purport to do so in the name of protecting the fetus from harm perpetrated by the pregnant person. But the data belie this claim. Prosecutors overwhelmingly charged pregnant people with offenses that allow them to obtain convictions without proving that the pregnant person actually harmed the fetus or infant. The lack of a harm requirement was present in 191 of the 220 charges that alleged conduct related to pregnancy, pregnancy loss, or birth, as shown in Figure H.⁴⁶ In general, under these statutes,⁴⁷ the only burden on the prosecution is to prove that the defendant engaged in conduct that exposed the embryo or fetus to “risk.” These statutes, however, do not clearly define reasonable and unreasonable risks. Instead, police and prosecutors typically rely on lay, rather than medical, assessments of risk.⁴⁸ As a result, defendants can be found guilty even if the pregnancy results in a healthy child and even when the science does not support the assumption that a positive drug test proves the fetus was harmed.⁴⁹

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FIGURE H
Do Statutes Require Proof of Harm?



Like other pregnancy-related charges, these “no harm” prosecutions do not involve mere slaps on the wrist. They carry the risk of severe punishment. For example, the sixty-eight Oklahoma defendants charged with Child Neglect, Delinquency, or Abuse, for being pregnant or giving birth and testing positive for a substance face sentences up to life in prison if found guilty. Similarly, ninety-three of the Alabama defendants charged with Chemical Endangerment of a Minor were charged under the subsection of that statute that defines guilt based only on a showing of exposure. Those ninety-three women, if convicted, could be sentenced to prison for up to ten years. These findings strongly suggest that, rather than focusing on fetal harm, these prosecutions seek to control and punish pregnant people.

The Role of Abortion and Self-Managed Abortion

Consistent with prior data, very few documented prosecutions involve an explicit abortion-related charge.⁵⁰ One pregnancy-related prosecution in the dataset charged a person with performing a self-managed abortion under a now-repealed portion of a criminal abortion statute.⁵¹ In that case, the defendant was accused of taking an abortion pill with the intent to end her pregnancy. While that case is the only explicit abortion-related crime, four other cases include allegations pertaining to abortion, suggesting that even when prosecutors do not or cannot charge abortion-specific crimes, they wield criminal law to condemn and punish abortion. These defendants, three of whom faced homicide charges and one of whom was charged with abuse of a corpse, had experienced pregnancy outcomes under emergency circumstances at home. Their case files referenced their possession of abortion medication or their attempts to obtain an abortion. Although it is not clear how the state intends to use that evidence, it appears that, in the homicide cases, the prosecution may use this information to prove the defendants’ intent to kill.⁵² These cases show that even when abortion is not charged, pregnant people’s contemplation of abortion can be weaponized against them.

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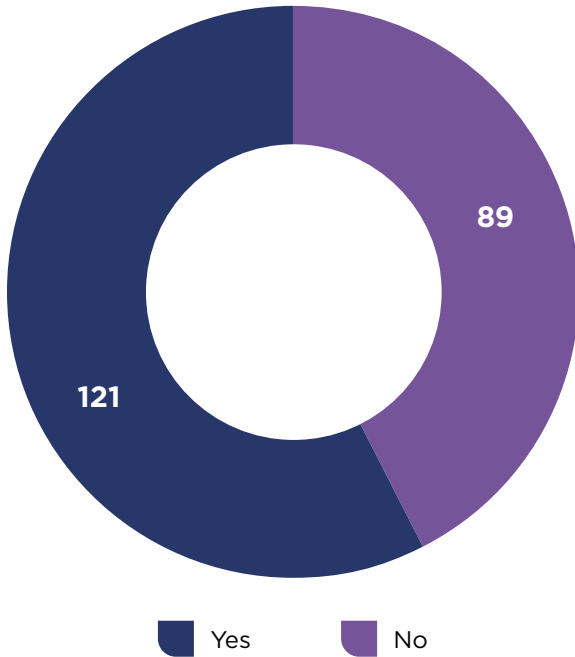
The Role of Healthcare Providers

Pregnancy criminalization continues to co-opt healthcare providers as law enforcement to achieve compliance with its aims. Pregnant people are often drug tested without their knowledge or consent during pregnancy and/or during labor and delivery.⁵³ The results of these tests are shared with family policing agencies.⁵⁴ Those agencies, in turn, often share that information with law enforcement.⁵⁵ While the case files in this study rarely reveal precisely who called either the family policing agency or the police, the files indicate that healthcare systems and system actors play a key role in these prosecutions. To understand this role, the study determined whether the files contained information obtained or disclosed in a medical setting. We coded a file as containing this information if it included statements by healthcare providers, drug test results that clearly came from a medical setting, descriptions of events that took place in a hospital or other healthcare setting, or prosecution witness lists that included doctors and nurses. As detailed in Figure J, 121 of the 210 files contained such information.

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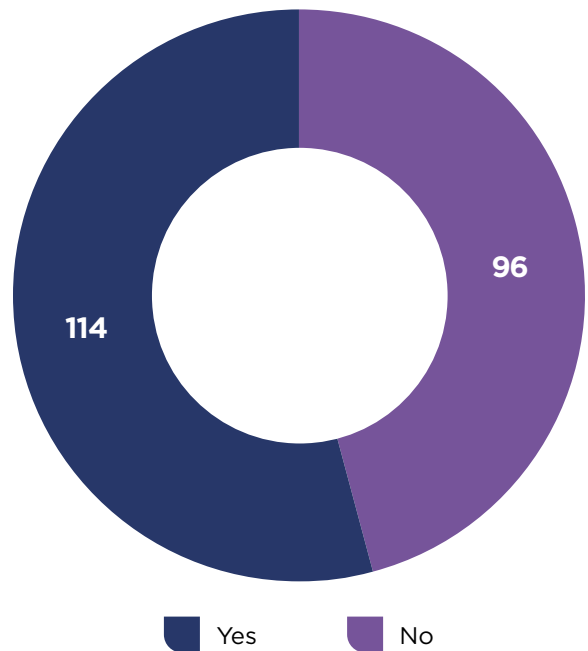
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FIGURE J
Information Obtained in a Medical Setting



crimes. The family policing system’s involvement plays no role at trial, even as it may play an important role in instigating the investigation or obtaining facts used by the prosecution. For this reason, these figures likely undercount the number of defendants who experienced intervention by the family policing system. Further, it is well documented that the family policing system is heavily involved in policing pregnancy, particularly in the context of substance use. Infants represent the fastest-growing age group in foster care, accounting for more than 20% of placements each year⁵⁷—most associated with parental substance use.⁵⁸ The family policing system overwhelmingly burdens Black families, and its involvement in policing pregnancy is no different. Past studies show Black pregnant women are more likely to be referred to family policing agencies compared to white pregnant women.⁵⁹

FIGURE K
Family Policing System Involvement



The Role of the Family Policing System

While pregnancy-related prosecutions, as defined here, focuses on the use of criminal law and criminal systems to punish pregnancy-related conduct, the criminal system works hand in hand with the family policing system to surveil and punish pregnancy-related conduct.⁵⁶ For this reason, the study examined case files for any indication of involvement with the family policing system. As shown in Figure K, 114 of the 210 files indicated such involvement. Still, this data likely underestimates both the role of the family policing system in these cases and the depth of the system’s policing of pregnancy. The court and police investigation documents in this study tend to focus on facts necessary to prove the charged