



Alabama

The State of Pregnancy Criminalization in the First Year After *Dobbs*



From June 2022 to June 2023—the first year after the Supreme Court’s *Dobbs v. Jackson Women’s Health Organization* decision, which overturned *Roe v. Wade*—prosecutors initiated at least 210 cases across the country charging individuals with crimes related to their pregnancy, pregnancy loss, or birth—the highest number of documented cases in a single year.¹

Nearly half (104) of the prosecutions recorded nationwide originated in Alabama.

This document provides an overview of observed characteristics in pregnancy-related prosecutions in Alabama during the first year after the *Dobbs* decision.²

Background

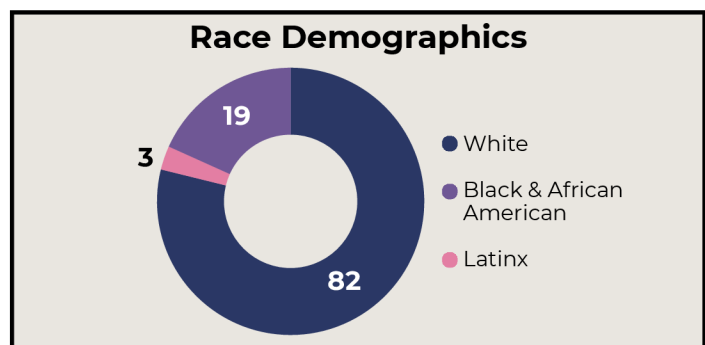
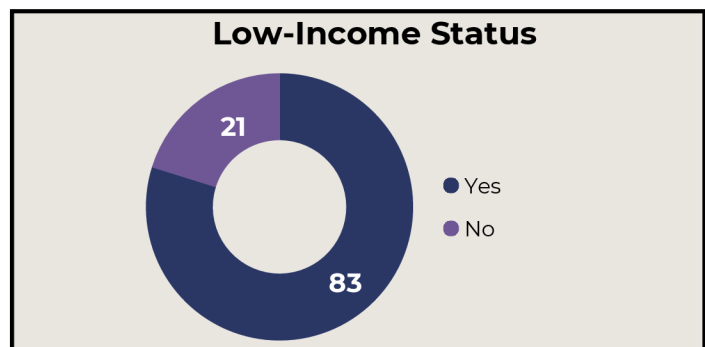
Since its passage in 2006, prosecutors have used Alabama’s “chemical endangerment of a child” law to subject hundreds of pregnant people to criminal prosecution based on allegations of prenatal substance use.³ The law, which sought to protect children from environments where they could be exposed to drugs or controlled substances, made no mention of pregnant women or fetuses.⁴ Nonetheless, prosecutors have used the law to punish pregnant women who test positive for drugs under the premise that the term “child” includes a fetus, and a womb is an “environment.”⁵ In 2013, two women challenged this interpretation of the statute and appealed their convictions to the Alabama Supreme Court. The court held that under state law the word “child” included a fetus at any stage of pregnancy.⁶

Alabama Counties with Pregnancy-Related Prosecutions	
County	Prosecutions
Etowah	16
Cullman	11
Morgan	8
Jackson	7
Other (27)	62
Total	104

Criminalization Impacts Low-Income Alabamians

Criminalization punishes those least served by our healthcare and social welfare systems, historically targeting low-income, Black and brown communities.⁷ And while the racial demographics of those targeted by pregnancy criminalization has shifted over time, their income status has not.

Nearly 4 in 5 prosecutions involved a pregnant Alabamian who faced substantial financial hardship.⁸



Criminalizing Pregnancy and Substance Use

Fueled by a punitive and carceral approach to substance use, pregnancy criminalization overwhelmingly involves allegations of substance use during pregnancy. In Alabama, 103 of 104 prosecutions involved an allegation of prenatal substance use. In three-quarters of the cases (77), it was the only allegation made.

Most Frequently Alleged Substances	
1	Methamphetamines (54)
2	THC (39)
3	Amphetamines (33)

Research and expert consensus hold that punitive responses to prenatal substance use do not promote public health benefits.⁹ Alabama’s criminal response to substance use and pregnancy directly opposes national and local health leaders’ recommendations for improving health outcomes.¹⁰ The Alabama Maternal Mortality Review Committee (AL-MMRC) affirms that punitive drug testing and reporting create hostile treatment environments, and the issue should be addressed through education, prevention and community-based treatment.¹¹

In nine prosecutions, police or prosecutors alleged that the pregnant person used some form of Medication-Assisted Treatment (MAT) during their pregnancy, which is the standard of care for pregnant people with substance use disorder.¹²

Pregnancy Criminalization and Maternal and Infant Health

Pregnancy criminalization in Alabama occurs within the context of a statewide crisis in women’s health and reproductive care. Alabama’s current infant mortality rate is 5.6 per 1,000 births, ranking it 38th in the nation.¹³ The state’s maternal mortality rate is 38.6 per 100,000 live births, compared to the national rate of 22.3.¹⁴ Overall, it is among the lowest-ranked states on health system performance and coverage, access, and affordability indicators for women’s healthcare.¹⁵

Faced with the justifiable fear of incarceration and potential loss of parental rights, expectant parents in Alabama are deterred from pursuing the medical care they need and deserve.

The state of maternal and infant health in Alabama is dire for people of color and lower income communities. The Black infant death rate in Alabama is an alarming 11.4 deaths per 1,000 births compared to the rate of 5.3 for white infants.¹⁶ A similar racial disparity exists for maternal death rates; Black people are twice as likely to die during pregnancy or following birth than their white counterparts.¹⁷ The AL-MMRC recognizes that system-level factors such as poverty, limited resources related to substance use disorders and inadequate care, amongst others, are key contributors to the state’s maternal health crisis.¹⁸ Laws and policies that attach criminal liability to pregnant women’s conduct only worsen this crisis.¹⁹

References

1. Wendy A. Bach and Madalyn K. Wasilczuk, *Pregnancy as a Crime: A Preliminary Report on the First Year After Dobbs*, Pregnancy Justice (Sep. 23, 2024).
2. All data provided by this document should be considered provisional and subject to change. For further information about the methods used in this study (inclusion and exclusion criteria, data collection, and limitations), see *id.* at 8–9.
3. Nina Martin, *Take a Valium, Lose Your Kid, Go to Jail*, ProPublica (Sept. 23, 2015), <https://www.propublica.org/article/when-the-womb-is-a-crime-scene>.
4. Amnesty International, *Criminalizing Pregnancy: Policing Pregnant Women Who Use Drugs in the USA* 8 (2017), <https://www.amnesty.org/en/wpcontent/uploads/2021/05/AMR5162032017ENGLISH.pdf>.
5. *Id.* at 37.
6. *Ex parte Ankrom*, 152 So. 3d 397 (Ala. 2013).
7. Dorothy E. Roberts, *Punishing Drug Addicts Who Have Babies: Women of Color, Equality, and the Right of Privacy*, 104 Harv. L. Rev. 1419, 1435-36 (1991); Wendy A. Bach, *Prosecuting Poverty, Criminalizing Care* 47-58 (2022); Grace E. Howard, *The Pregnancy Police: Conceiving Crime, Arresting Personhood* 79-80 (2024); Khiara M. Bridges, *Race, Pregnancy and the Opioid Epidemic: White Privilege and the Criminalization of Opioid Use During Pregnancy*, 133 Harv. L. Rev. 770, 848-49 (2020).
8. Individuals were considered low-income if counsel was appointed or records indicated they received a means-tested benefit (e.g., SNAP, Medicaid).
9. Emilie Bruzelius et al., *Punitive Legal Responses to Prenatal Drug Use in the United States: A Survey of State Policies and Systematic Review of their Public Health Impacts*, 126 Int'l J. of Drug Pol'y 104380 (2024).
10. Pregnancy Justice, *Medical and Public Health Group Statements Opposing Prosecution and Punishment of Pregnant People* (rev. June 2023), <https://www.pregnancyjusticeus.org/wp-content/uploads/2023/09/Medical-Public-Health-Statements-2023.pdf>; Ala. Dep't of Public Health & Bureau of Family Health Servs., *2020 Maternal Mortality Review* (2022), https://www.alabamapublichealth.gov/perinatal/assets/2020_fina_lannual_mmr.pdf. [hereinafter "2020 Maternal Mortality Review"].
11. 2020 Maternal Mortality Review at 24.
12. See American College of Obstetricians and Gynecologists, Comm. Opinion No. 711, *Opioid Use and Opioid Use Disorder in Pregnancy* (2021), <https://www.acog.org/clinical/clinical-guidance/committee-opinion/articles/2017/08/opioid-use-and-opioid-use-disorder-in-pregnancy>. In 2016, the Alabama Legislature amended the chemical endangerment law to exclude prescription drugs. However, pregnant women using illegal substances, or using controlled ones beyond the bounds of their prescription, still face criminalization by virtue of their pregnancy status.
13. See March of Dimes, *2024 March of Dimes Report Card for Alabama*, <https://www.marchofdimes.org/peristats/assets/s3/reports/reportcard/MarchofDimesReportCard-Alabama.pdf> (last reviewed November 2024) [hereinafter "2024 Ala. Report Card"].
14. *Id.*
15. Sara R. Collins et al., *2024 State Scorecard on Women's Health and Reproductive Care*, Commonwealth Fund (July 18, 2024), <https://www.commonwealthfund.org/publications/scorecard/2024/jul/2024-state-scorecard-womens-health-and-reproductive-care>.
16. 2024 Ala. Report Card, *supra* note 13.
17. Alander Rocha, *Report: Alabama has Highest Rates of Maternal Mortality Among Southern States* (Aug. 2, 2023), <https://alabamareflector.com/2023/08/02/report-alabama-has-highest-rates-of-maternalmortality-among-southern-states/>.
18. *2020 Maternal Mortality Review*, *supra* note 10 at 10.
19. Bruzelius et al., *supra* note 9.