



Oklahoma

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 a third (68) of the prosecutions recorded nationwide originated in Oklahoma.

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

Background

Oklahoma has joined the ranks of states like Alabama and South Carolina that prosecute individuals for pregnancy-related criminal charges at high rates. Beginning in the 2010s, advocates saw a sharp increase in women arrested and charged with felony child neglect based on allegations of prenatal substance use. These cases, often based solely on a mother or infant’s positive toxicology as evidence of neglect, involved women criminalized for both live births and pregnancy losses.³ And in 2020, the Oklahoma Court of Criminal Appeals recognized a “viable” fetus as a “child” for purposes of the state’s neglect statute, opening the door for more cases of pregnancy-related charges.⁴

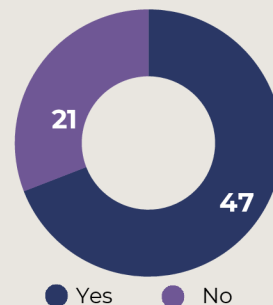
Oklahoma Counties with Pregnancy-Related Prosecutions

County	Prosecutions
Kay	33
Comanche	9
Other (13)	26
Total	68

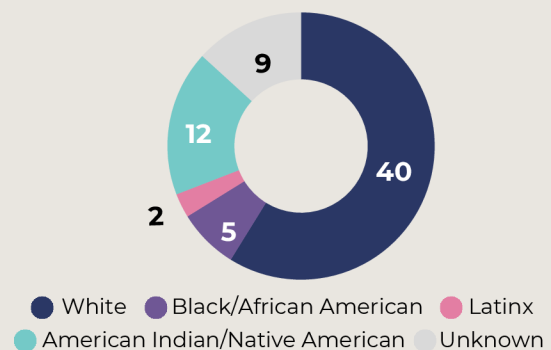
Criminalization Impacts Low-Income Oklahomans

Criminalization punishes those least served by our healthcare and social welfare systems, historically targeting low-income, Black and brown communities.⁵ And while the racial demographics of those targeted by pregnancy criminalization has shifted over time, their income status has not. Nearly 3 in 4 prosecutions involved a pregnant Oklahoman who faced substantial financial hardship.⁶

Low-Income Status



Race Demographics



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 Oklahoma, all 68 prosecutions involved an allegation of prenatal substance use, and in nearly two-thirds of the cases (40), it was the only allegation made.

Top 3 Alleged Substances

- 1** THC (41)
- 2** Methamphetamines (39)
- 3** Amphetamines (30)

In 22 cases, the police or prosecutor alleged that THC was the only substance the pregnant person used, and, of those cases, 5 individuals possessed a valid, state-issued medical marijuana license at some point during their pregnancy.⁷

Research and expert consensus hold that punitive responses to prenatal substance use do not promote public health benefits.⁸ Oklahoma's criminal response to substance use and pregnancy directly opposes national and local health leaders' recommendations for improving health outcomes.⁹ The Oklahoma Maternal Mortality Review Committee (OMMRC) affirms that the appropriate response to prenatal substance use is to address it with treatment, education and compassionate care.¹⁰

Pregnancy Criminalization and Maternal and Infant Health

Pregnancy criminalization in Oklahoma occurs within the context of a statewide crisis in women's health and reproductive care. Oklahoma's current infant mortality rate is 6.9 per 1,000 births, ranking it 42nd in the nation.¹¹ The state's maternal mortality rate is 31.9 per 100,000 live births, compared to the national rate of 22.3.¹² Overall, it is among the lowest-ranked states on health system performance and coverage, access, and affordability indicators for women's healthcare.¹³

Half of Oklahoma's counties qualify as maternity care deserts, and an alarming 10 prosecutions involved an allegation that the pregnant person failed to obtain prenatal care.¹⁴

The state of maternal and infant health in Oklahoma is dire for people of color and lower income communities. The Black infant mortality rate in Oklahoma is an alarming 11.5 deaths per 1,000 births, more than twice that of the mortality rate for white infants.¹⁵ A similar racial disparity exists for maternal death rates in Oklahoma; Black and Indigenous people are still 3 times more likely to die post-birth than white birthing people.¹⁶ The OMMRC recognizes that substance use disorders, poverty, stigma, and residence in a care desert, amongst other factors, contribute significantly to pregnancy-related mortality.¹⁷

Laws and policies that attach criminal liability to pregnant women's conduct only worsen this crisis..¹⁸

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

References

1. Wendy A. Bach and Madalyn K. Wasiczuk, *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. Cary Aspinwall, *These States are Using Fetal Personhood to Put Women Behind Bars*, The Marshall Project (July 25, 2023), <https://www.themarshallproject.org/2023/07/25/pregnant-women-prosecutions-alabama-oklahoma>; Kassie McClung & Brianna Bailey, *She was Charged with Manslaughter After a Miscarriage. Cases Like Hers are Becoming More Common in Oklahoma*, The Frontier (Jan. 7, 2022), <https://www.readfrontier.org/stories/she-was-charged-with-manslaughter-after-a-miscarriage-cases-like-hers-are-becoming-more-common-in-oklahoma/>.

4. *State v. Green*, 474 P.3d 886 (Okla. Crim. App. 2020); *State v. Allen*, 492 P.3d 27 (Okla. Crim. App. 2021); *State v. Akers*, No. S-2021-378 (Okla. Crim. App. Jan. 27, 2022).

5. 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).

6. Individuals were considered low-income if counsel was appointed or records indicated they received a means-tested benefit (e.g., SNAP, Medicaid).

7. In 2024, the Oklahoma Court of Criminal Appeals held that pregnant women with valid medical marijuana cards cannot be prosecuted for cannabis use. See *State v. Aguilar*, 24 Okla. Crim. (App. 2024).

8. 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).

9. 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>; Press Release, Oklahoma Doctors Issue Public Letter Denouncing Prosecutions Involving Pregnancy and Allegations of Drug Use (Dec. 21, 2021), <https://www.pregnancyjusticeus.org/wp-content/uploads/2025/02/Oklahoma-doctors-letter.pdf>.

10. Okla. State Dep't of Health Maternal Mortality Review Comm., *Oklahoma Maternal Health Morbidity & Mortality: Annual Report 2024 27* (2024), <https://oklahoma.gov/content/dam/ok/en/health/health2/aem-documents/family-health/maternal-and-child-health/maternal-health-task-force/MMRC%20Annual%20Report%202024.pdf> [hereinafter “OMMRC 2024 Report”].

11. See March of Dimes, *2024 March of Dimes Report Card for Oklahoma*, <https://www.marchofdimes.org/peristats/assets/s3/reports/reportcard/MarchofDimesReportCard-Oklahoma.pdf> (last reviewed November 2024) [hereinafter “2024 Okla. Report Card”].

12. OMMRC 2024 Report, *supra* note 10 at 16.

13. *Id.* at 6; 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>.

14. March of Dimes, *Nowhere to Go: Maternity Care Deserts Across the US* 9 (2024), https://www.marchofdimes.org/sites/default/files/2024-09/2024_MoD_MCD_Report.pdf.

15. 2024 Okla. Report Card, *supra* note 11.

16. OMMRC 2024 Report, *supra* note 10 at 17.

17. *Id.* at 26.

18. Bruzelius et al., *supra* note 8.