

Pregnancy as a Crime

An Interim Update on the First Two Years After Dobbs



From June 2022 to June 2024 — the first two years after the Supreme Court’s decision in *Dobbs v. Jackson Women’s Health Organization*, which overturned *Roe v. Wade* — prosecutors initiated at least 412 cases across the country charging individuals with crimes related to their pregnancy, pregnancy loss, or birth.

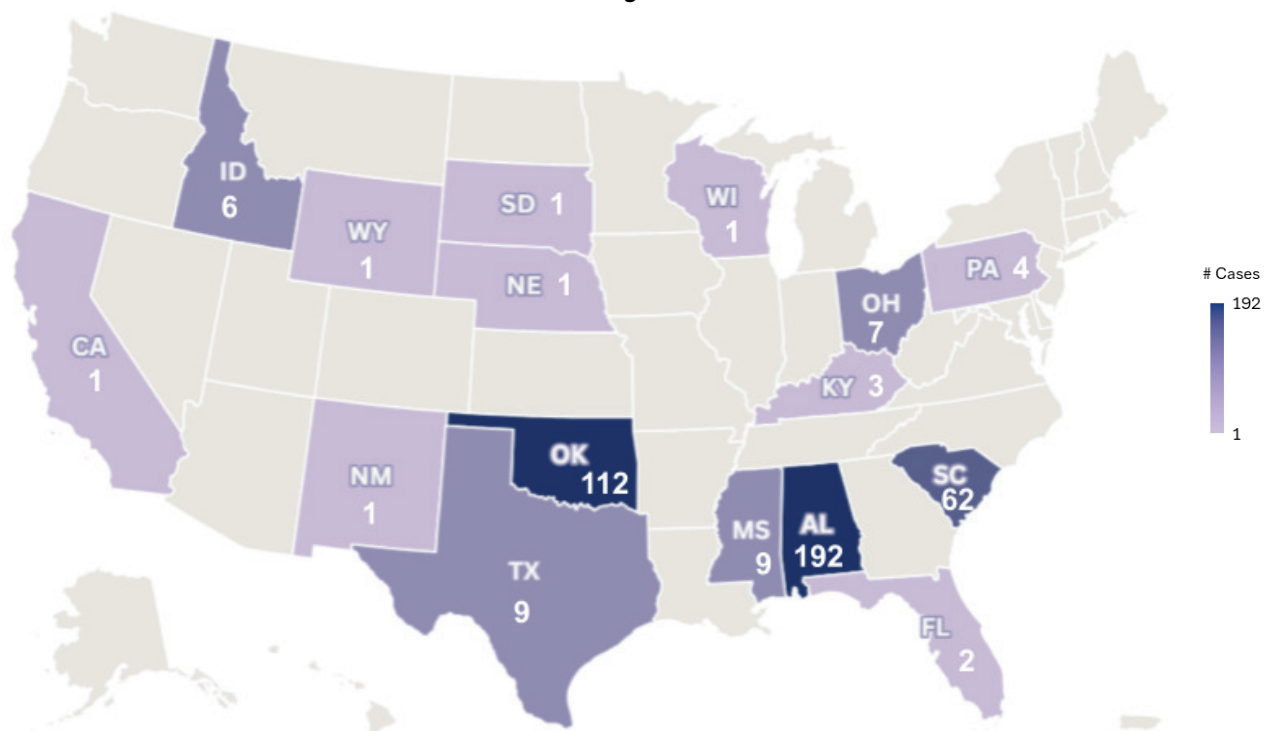
This document provides a preliminary update on pregnancy-related prosecutions in the U.S. during the first two years after the *Dobbs* decision. This update focuses on pregnant people and the charges and allegations brought against them. These data are part of the Pregnancy Prosecutions Tracking Study, a research study examining pregnancy criminalization in the three years after *Dobbs*.¹

In the first two years after *Dobbs*, prosecutors initiated at least 412 cases charging pregnant people with crimes related to pregnancy, pregnancy loss, or birth.

Geography

Prosecutors initiated cases in 16 states: Alabama, California, Florida, Idaho, Kentucky, Mississippi, Nebraska, New Mexico, Ohio, Oklahoma, Pennsylvania, South Carolina, South Dakota, Texas, Wisconsin, and Wyoming. While prosecutions were brought in all of these states, to date, the majority of the reported cases occurred in Alabama (192) and Oklahoma (112).

Case by State



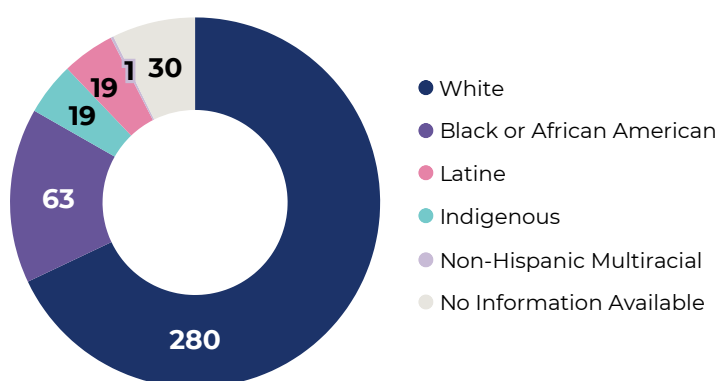
Race/Ethnicity

To the extent that the files did contained data on defendant's race and ethnicity, 280 of the 412 defendants were reported as white, 63 as Black, 19 as Indigenous, 19 as Latine, 1 as non-Hispanic multiracial, and in 30 cases, no information was reported with respect to race or ethnicity.²

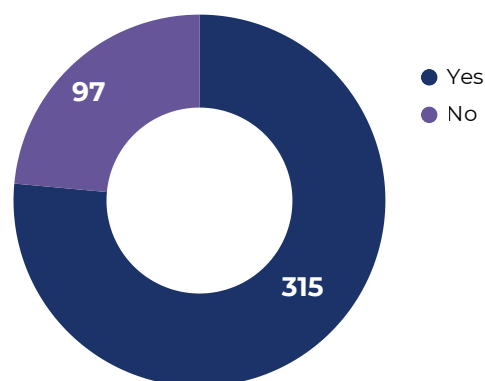
Economic Status

More than three-quarters of the defendants were low-income individuals. We took indicators such as receiving court-appointed counsel or receiving a means-tested benefit like public housing, Temporary Assistance for Needy Families, Medicaid, or Supplemental Nutrition Assistance into account.

Race Demographics



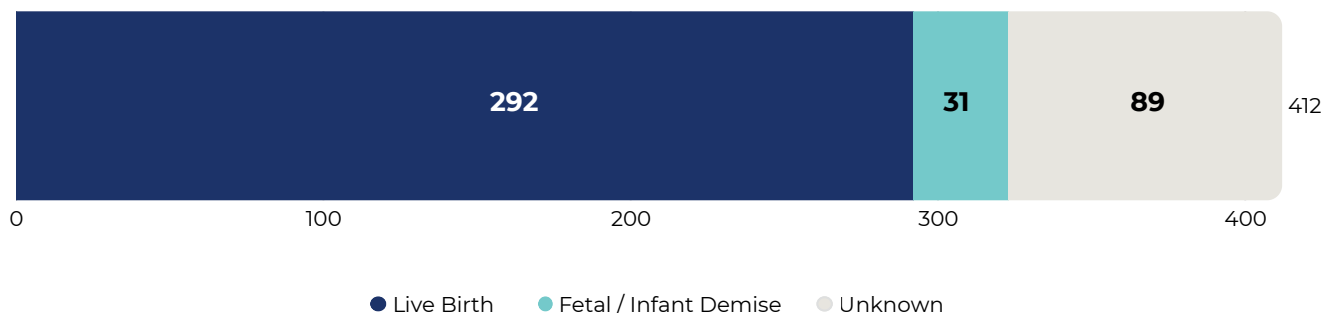
Low-Income Status



Pregnancy Outcomes

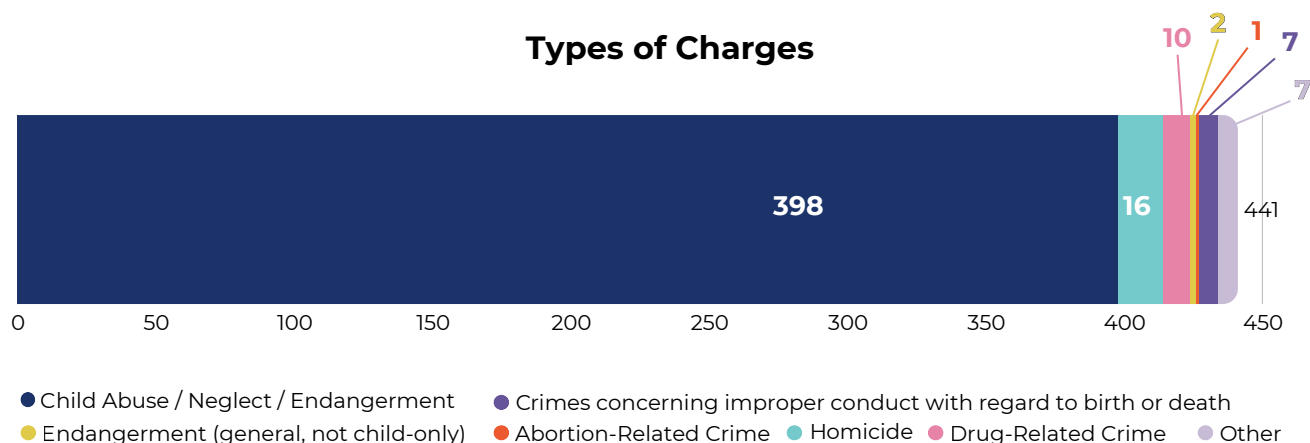
Of the 412 documented cases of pregnancy criminalization, 323 contained information concerning the outcome of the pregnancy. Most cases involved a live birth, representing 292 of the 323 cases. Thirty-one cases involved fetal or infant demise. Thirty-one cases involved fetal or infant demise.

Pregnancy Outcome



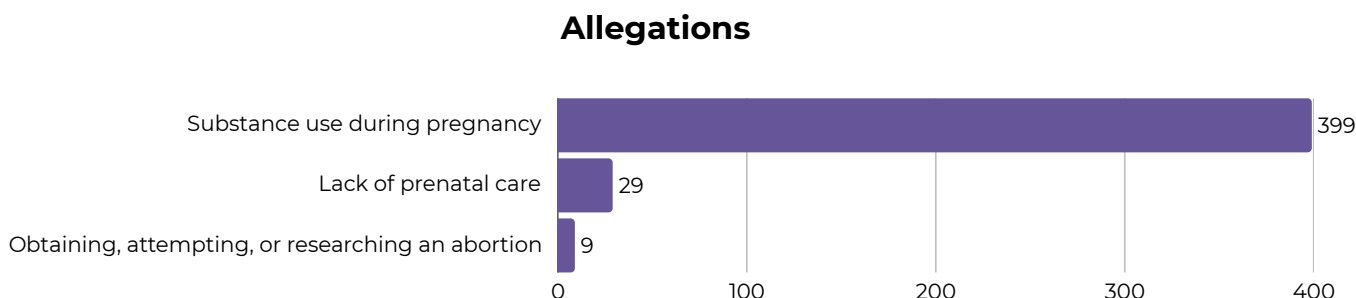
Charges

Prosecutors used a variety of criminal statutes to charge the defendants in these cases, often bringing more than one charge against an individual defendant. In total, the 412 defendants faced 441 charges for conduct related to pregnancy, pregnancy loss, or birth. The majority of charges (398/441) asserted some form of child abuse, neglect, or endangerment.



Allegations

Charging documents (along with supporting police reports, affidavits, and other court files) reveal a clearer picture of what acts police and prosecutors consider criminal when associated with pregnancy. Our study categorized allegations found in the assembled case files and below we have highlighted three notable allegations.



Substance Use During Pregnancy and Prenatal Care

As has been the case for decades, nearly all the cases alleged that the pregnant person used a substance during pregnancy. In 268 cases, substance use was the only allegation made against the pregnant person. In the midst of a wide-ranging crisis in maternal healthcare and despite maternal healthcare deserts across the country, prosecutors or police argued that pregnant people's failure to obtain prenatal care was evidence of a crime. This was the case in 29 of 412 cases.

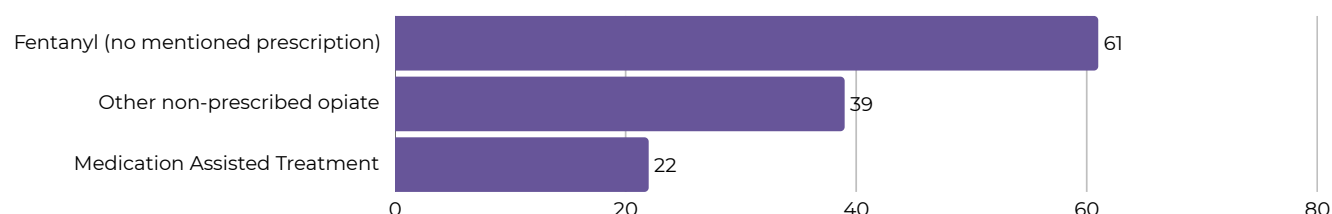
Abortion

Nine cases included allegations pertaining to abortion, such as possession of abortion medication or attempts to obtain an abortion. Although it is not clear how the state intends to use that evidence, these cases show that even when abortion is not charged, pregnant people's contemplation of abortion can be weaponized against them. Even when prosecutors do not or cannot charge abortion-specific crimes, they wield criminal law to condemn and punish abortion.

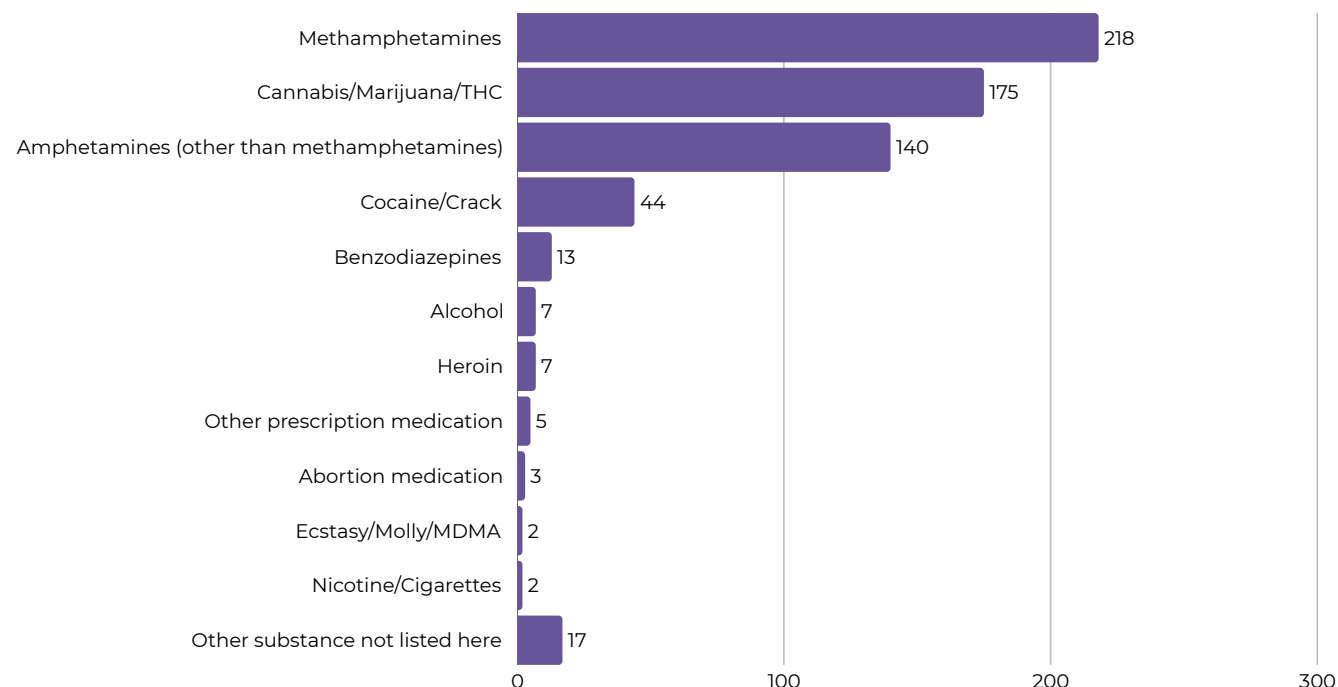
Substances Alleged

As drug use patterns changed, pregnancy prosecutions shifted from targeting the use of crack cocaine to the use of methamphetamines, amphetamines, marijuana, and opiates.

Opioid-Related Alleged Substances



Non-Opioid-Related Alleged Substances



No Proof of Harm Required

Supporters of pregnancy-related prosecutions claim these prosecutions protect the fetus from harm perpetrated by the pregnant person. However, prosecutors overwhelmingly charged pregnant people under statutes that allow them to obtain convictions without proving that the pregnant person actually harmed the fetus or infant. In 378 of the 441 charges, proof of harm was not required.

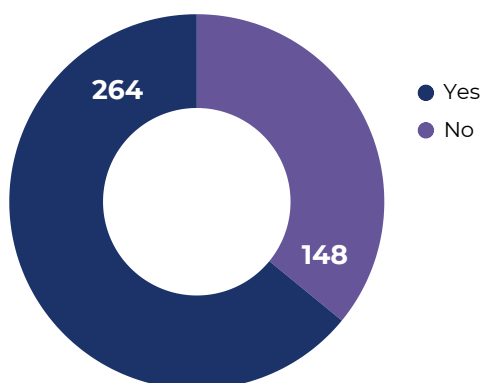
Proof of Harm Required



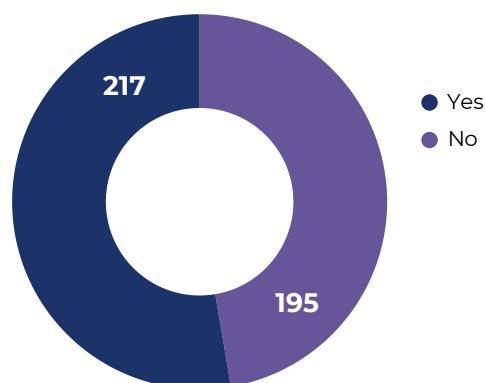
Healthcare and Family Policing Systems

Our data indicate that pregnancy criminalization engages multiple systems to support prosecutions, notably the healthcare and family policing systems. In 264 cases, information supporting criminal prosecution was obtained or disclosed in a medical setting. In 217 cases, the family policing system was involved in the case. These data suggest the criminal legal system works closely with the healthcare system and family policing system to surveil and punish pregnant people.

Information Obtained in a Medical Setting



Family Policing System Involvement



Methods

These preliminary data are part of the Pregnancy Prosecutions Tracking Study, a research study examining pregnancy criminalization in the United States in the three years after the *Dobbs* decision. The research is co-led by Pregnancy Justice, Professor Wendy A. Bach, and Professor Madalyn Wasilczuk, and builds off our first report.³

The research team relied on several techniques to identify cases: intakes from Pregnancy Justice, outreach, web and media searches, and records requests. Our data include cases that met four criteria: researchers had access to the charged person's name, date of case initiation, and county and state of indictment; the charging document confirmed that the case met part one of the study's definition of a pregnancy-related prosecution;⁴ the prosecution occurred between June 24, 2022 and June 23, 2024; and the prosecution targeted a pregnant person. Trained researchers coded cases according to a standardized protocol to develop our preliminary dataset. Data were analyzed using R. For more information and notes on study limitations, please see our first report, *Pregnancy as a Crime*.

Allegations Not Facts

The primary sources for our data are court files and police investigation reports. These documents detail what police and prosecutors alleged happened in a particular case. These documents, standing alone, are not proof of the assertions they contain – but when police and prosecutors make allegations, it can lead to guilty pleas, convictions, and punishment. Understanding allegations teaches us a great deal about the nature and scope of pregnancy criminalization.

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. Information concerning the race of the defendants was dependent, like all the report data, on information contained within court, police, or jail records. This information is notoriously unreliable, particularly when it comes to recording ethnicity and multiracial identity. 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.
3. 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), *supra* 1, at 8–9.
4. 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.

Acknowledgments

This research is co-led by Pregnancy Justice and co-Principal Investigators Professors Wendy A. Bach and Madalyn Wasilczuk. The postdoctoral fellow on the study is Kendra Hutchens at the University of Tennessee Knoxville. The research team at Pregnancy Justice is Dana Sussman; Michele Ko; Fikayo Walter-Johnson; and Imaan Khasru. Laurel Beaty and Sarah Castillo conducted data analysis.

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