

A Companion Resource to

Legislative and Policy Blueprint: Challenging Pregnancy Criminalization and Moving Toward Dignity

Introduction:

Pregnancy Justice defends and advances the rights of pregnant people, whether they give birth, experience a pregnancy loss, or have an abortion. Pregnancy criminalization occurs when the state uses a criminal law to render conduct during pregnancy, pregnancy loss, birth, and/or associated healthcare the subject of criminal prosecution. For decades, pregnant people have faced arrests and prosecution based on their pregnancies or birth outcomes. From 1973 to 2022, when abortion was ostensibly a fundamental right under the U.S. Constitution, Pregnancy Justice identified over 1,800 cases of pregnancy criminalization across the United States. The 2022 *Dobbs v. Jackson Women’s Health Center* decision, holding that abortion is no longer a fundamental right and allowing states to criminalize the provision of abortion, elevated the urgency of Pregnancy Justice’s anti-criminalization work. In the first two years after the *Dobbs* decision, Pregnancy Justice identified 412 cases of pregnancy criminalization, an undercount, across the United States. Nearly all of these prosecutions utilized non-abortion-related criminal laws to prosecute pregnancy.

While the post-*Dobbs* landscape has primarily focused on criminalizing the provision of abortion care, attempts to explicitly criminalize the pregnant person for seeking or accessing abortion care have increased dramatically. In 2025, an unprecedented 15 state bills were introduced that would allow criminal homicide charges for abortion seekers. In addition, bills were introduced that would give “equal protection” rights to embryos and fetuses, a continued escalation of the dangerous legal ideology that seeks to establish full rights to fertilized eggs, embryos, and fetuses, which we will refer to as “prenatal personhood” throughout this document. The message is clear—the anti-abortion movement is moving with a precise focus on state law to enshrine full prenatal personhood, with the intertwined goals of banning abortion, imposing stereotypical gender roles, erasing LGBTQ+ people, and criminalizing pregnant people. This expansion has far-reaching consequences beyond pregnancy criminalization: states with the harshest abortion restrictions are losing doctors and healthcare providers, often in regions that were already dealing with a shortage of maternal health providers. The loss of healthcare providers and the criminalization of abortion have a profound impact on the overall health of a state’s residents: it harms people who need healthcare, erodes public health infrastructure, and results in women dying.

Pregnancy Justice’s work is situated at the cross-section of multiple policy failures: where the racially motivated War on Drugs, the curtailing of social safety nets and public benefits, maternal mortality, the expansion of punitive family policing, and the rise of prenatal personhood meet. For years, Pregnancy Justice has challenged the notion that someone should lose their rights because of pregnancy—centering those who are most likely to experience rights violations: poor people, women who use drugs, and women of color—because the state views embryos or fetuses as having more legal rights than women and pregnant people.

For access to the full legislative blueprint, request a copy by emailing your name and affiliation to: PJPolicy@pregnancyjusticeus.org.

Who This Blueprint Is For:

This blueprint is for state advocates, lawmakers, and legislative staff who believe that people should not lose their rights because of pregnancy, who believe in the safety and wellness of pregnant people, their babies, and their communities, and who share a commitment to reproductive justice, defined by SisterSong as “the human right to maintain personal bodily autonomy, have children, not have children, and parent children in safe and sustainable communities.” More precisely, this blueprint was written with the input of state-based advocacy coalitions, local organizers, and state legislative staff, and with them in mind. This blueprint cannot meet every need or answer every policy question; there are a plethora of state-specific factors that influence what is appropriate and useful in each state. In addition to those variables, there are also dedicated experts in each state who understand their region’s specific challenges and opportunities; those advocates and organizations are the best leaders for any legislative or policy initiative. Local, grassroots organizers and advocates understand the intricacies of their state’s landscape, and introducing legislation without their full collaboration and buy-in jeopardizes its effectiveness. The ecosystem of reproductive rights and justice advocacy is vast, and there are many committed organizations doing work in this space.

The Challenge:

This rise in criminalization is happening alongside attacks on maternal health infrastructure, heightened maternal mortality, increased surveillance, and threats to in-vitro fertilization (IVF). This blueprint connects the dots across these issues with the legal theory undergirding it: “prenatal personhood,” which uses state law to create legal rights for fertilized eggs, embryos, and fetuses, putting pregnant people’s lives and autonomy at risk. This legal trend is dangerous for everyone.

The Opportunities:

This blueprint will focus on the areas in which Pregnancy Justice has developed a unique expertise: specifically, the ways in which pregnant people’s rights are violated through laws, policies, and practices that give separate legal rights to fertilized eggs, embryos, and fetuses. **Providing model legislation, policy interventions, and opportunities for reform, centering the needs of pregnant people and their families to improve health and well-being for mothers, babies, and communities.** This blueprint provides opportunities to affirmatively protect the rights and dignity of pregnant people through social safety net pilot programs, legislation that can clarify pregnant people’s rights after miscarriages, stillbirths, and abortions, legislation that protects pregnant people navigating substance use, and challenging myths from the War on Drugs.

The blueprint can help state advocates, lawmakers, and legislative staff answer questions and learn how to talk about issues like these:

Are there examples of effective state or municipal-level approaches to pregnancy and substance use disorder? Have other states worked on this issue before?

How can advocates challenge the prenatal personhood legal theory and protect women and pregnant people in our state from prosecution or family separation?

How can state lawmakers respond to legislation about child tax credits that begin at “conception” and why does it matter?

How can states ensure that pregnancy loss and its aftermath is not criminalized?

What are the threats to IVF and reproductive technology in our state? How can each state protect access?