

## **Criminalization of Pregnant People and People Who Facilitate Access to Abortion Care**

Treaty bodies have repeatedly condemned the use of criminal laws to address reproductive health issues, and called on the U.S. to stop criminalizing abortion care providers, people who facilitate access to care, and pregnant people for seeking an abortion, conduct deemed “risky” to their pregnancy, or their pregnancy outcomes. Since the U.S.’s last UPR review, the overturn of *Roe v. Wade* and the Trump Administration’s policies have rolled back reproductive health and rights, dramatically increasing the use of criminal law against pregnant people.

### **Escalating Criminalization**

**Providers:** Currently, over 30 states have laws criminalizing the provision of abortion care; this patchwork of state laws creates confusion and the threat of criminal prosecutions deters care. This includes delays or denials of emergency care for pregnancy complications, and exodus of providers from hostile states, which is creating and exacerbating existing maternity care deserts.

**Pregnant people:** Law enforcement and prosecutors persistently disregard or circumvent prohibitions against criminally charging people for ending or losing a pregnancy. Additionally, many states have granted rights to fetuses, recasting fertilized eggs, embryos, and fetuses as crime victims so prosecutors can punish people for conduct deemed “risky” to their pregnancy or for its outcome, including abortion, miscarriages, and stillbirths.

- In the year following the *Dobbs* (2022) decision, at least 210 individuals faced pregnancy criminalization, namely, they were charged with a crime alleging harm to their pregnancy or for the loss of that pregnancy, the highest number ever documented in a single year. Prosecutors use existing statutes, including child abuse, homicide, and neglect statutes to punish people.
- A significant proportion of people facing pregnancy criminalization are turned into law enforcement by health care workers deputized to report their own patients when they seek prenatal care or care for obstetrical emergencies. These reports have led to criminal prosecutions, incarceration, civil commitment, and termination of parental rights for pregnant people. Hospitals should be sanctuaries of care, not sites of surveillance. However, this increasingly punitive landscape makes people too afraid to visit their clinicians, leading to preventable deaths.
- Most pregnancy-related prosecutions involve underlying allegations of substance use during pregnancy. Every major medical association in the country warns that punitive responses to substance use disorders deters treatment and leads to adverse outcomes. In fact, deaths by overdose and suicide are the leading cause of pregnancy related deaths in the nation. The Special Rapporteur on the Right to Health has recommended that States decriminalize drug use because criminalization violates the right to health and other human rights.
- Attempts by the past administration to protect patients’ sexual and reproductive health information from being used by law enforcement have been challenged by conservative

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activists and struck down by judges selected for their conservative ideology.

**Support Networks:** Individuals and organizations who help people access abortion are being threatened with criminal prosecution or civil penalties through the adoption of specific legislation and mis-use of other laws.

- People have been prosecuted or sued for helping friends or family access abortion.
- Two states explicitly criminalize helping minors cross state lines for abortion, and another authorizes civil lawsuits against helpers that offer a “bounty” incentive to plaintiffs.
- States are attempting to criminalize the sharing of information about abortion, including WHO protocols on safe self-managed abortion and referrals to out-of-state providers.

**Disparate Impact on Marginalized Communities:** Criminalizing pregnancy or providing, seeking, or supporting abortion care, lead to adverse maternal health outcomes. Punitive responses disproportionately affect people marginalized due to race, immigration status, or poverty, compounding systemic failures and discrimination in care that drive maternal mortality.

- Following a 2018 visit to the United States, the Special Rapporteur on Extreme Poverty expressed concern that pregnant women in poverty are disproportionately criminalized and subjected to interrogations that strip them of privacy rights.

## Recommendations

**Abolish criminalization of pregnancy.** Immediately abolish all laws, policies, and practices criminalizing or penalizing abortion, and pregnant people based on actions deemed “risky” to their pregnancy or its outcome through punitive legal systems.

**Protect helpers and support networks.** Abolish laws chilling abortion support, including by prohibiting prosecutions for providing information, funds, travel, or medication, and eliminating bounty-style provisions that incentivize private parties to sue those who facilitate abortion care.

**Guarantee privacy and confidentiality in the healthcare system.** Repeal mandatory reporting laws targeting pregnant people. Ensure privacy protections extend to data held by private entities, such as tech and medical corporations, so people’s reproductive health information cannot be used in proceedings against them.

**Expand access to comprehensive care.** Guarantee universal, affordable access to respectful, voluntary, and evidence-based health care, including abortion, contraception, maternal care, and non-judgmental, trauma-informed substance use treatment.

**Address racial and socioeconomic disparities.** Implement policies to reduce maternal mortality and morbidity, including removing barriers to healthcare. Eliminate discriminatory criminal justice and family policing practices disproportionately affecting Black, Indigenous, and low-income communities, and people living with disabilities.