



# The Rise of Pregnancy Criminalization

## How Anti-Abortion Language in Law Promotes the Criminalization of Pregnancy

### The State Weaponizes Pregnancy to Enforce Control Over Pregnant People

In June 2022, the U.S. Supreme Court took the extreme step of eliminating the federal, constitutionally protected right to abortion in their ruling on *Dobbs vs. Jackson Women's Health Organization*. This decision sparked outrage and fear as states enacted a patchwork of abortion bans. The grave and lethal consequences of this ruling for pregnant people seeking abortion care have become increasingly apparent. What is less apparent, but affects more people, is the impact of this ruling on pregnancy criminalization more broadly. Since *Dobbs*, there has been a dramatic increase in the use of state laws to criminalize pregnant people, including for their actions during pregnancy and for pregnancy outcomes beyond abortion, such as miscarriage and stillbirth.

Pregnancy criminalization occurs when state actors, such as police, prosecutors, healthcare workers, [family regulation workers](#), or judges, deprive pregnant people of their rights on the supposed grounds of protecting “unborn life.” Pregnant people are most often criminalized for drug use, pregnancy loss, or having or seeking an abortion. Prior to 2022, [Pregnancy Justice](#), the leading legal advocacy organization fighting to protect pregnant people’s rights, identified nearly 1,400 cases of criminalized pregnancy over the span of 16 years. In the first year after *Dobbs*, prosecutors initiated at least 210 cases charging pregnant people with crimes related to pregnancy, pregnancy loss, or birth. It’s clear that pregnancy criminalization is accelerating, as the *Dobbs* ruling and the resulting abortion bans only leave pregnant people more vulnerable to arrest, prosecution, and conviction.

### The Link Between Anti-Abortion Rhetoric & Pregnancy Criminalization

The rise in pregnancy criminalization is fueled in large part by the concept of “fetal personhood,” which often underpins anti-abortion laws, including legislation recently proposed in Montana, [HB316](#). Fetal personhood is a radical concept which aims to give legal rights to fertilized eggs, embryos, and fetuses, which effectively takes away the rights of the pregnant person to make decisions about their life and future. This concept is a central part of the strategy to ultimately ban all abortion care. More than three quarters (76.9%) of pregnancy criminalization cases occurred in states that had embraced fetal personhood language by expanding the definition of child abuse to include fertilized eggs, embryos, and fetuses.

Despite the underlying motive to criminalize abortion, the concept of fetal personhood also impacts people with *wanted* pregnancies and those who experience pregnancy loss - exposing them to punishment for their behaviors while pregnant and investigations into their pregnancy outcomes. Notably, pregnancy outcomes other than abortion, including birth and pregnancy loss, have been significantly *more* likely to result in criminalization. The threat of criminalization is greater for people of color, people with low incomes, and people who use drugs. More than 9 in 10 criminalization cases involved allegations of the co-occurrence of pregnancy and substance use and, astonishingly, one-quarter of cases involved the alleged use of legal substances, such as prescription painkillers, nicotine, or alcohol.

## Criminalization Cases in the News

In states that seek to control pregnancy outcomes, pregnancy loss is treated as a highly suspicious event, as illustrated by several cases recently in the news.

### Tifton, Georgia - March 2025

First responders attend to a call about an unconscious, bleeding woman outside an apartment complex. After determining she'd had a miscarriage, she was transported to a hospital. A witness at the scene reported she placed fetal remains in the dumpster. Soon after, the woman was charged with concealing the death of another person and abandonment of a dead body, despite clear evidence she'd experienced a tragic medical emergency. Charges were dropped the following month.<sup>1</sup>

### San Antonio, Texas - December 2024

A Texas woman spent five months in prison after experiencing a miscarriage in a restaurant bathroom stall. After restaurant employees contacted authorities, the woman and fetal remains were taken to a hospital. The woman was detained, charged with abuse of a corpse, and remained in prison for five months before charges were dismissed. She was held in jail despite the medical examiner's determination she had a miscarriage and the fetus was nonviable.<sup>2</sup>

[1] Sherman, C. (2025, April 4). Charges dropped against US woman found unconscious after miscarriage. *The Guardian*. <https://www.theguardian.com/us-news/2025/apr/04/georgia-miscarriage-charges-dropped>

[2] Odisho, T. (2025, May 22). Texas woman spent months in prison for having a miscarriage in restaurant bathroom before her charges were dismissed. *Latin Times*. <https://www.latintimes.com/texas-woman-spent-months-prison-having-miscarriage-restaurant-bathroom-before-her-charges-were-583633>

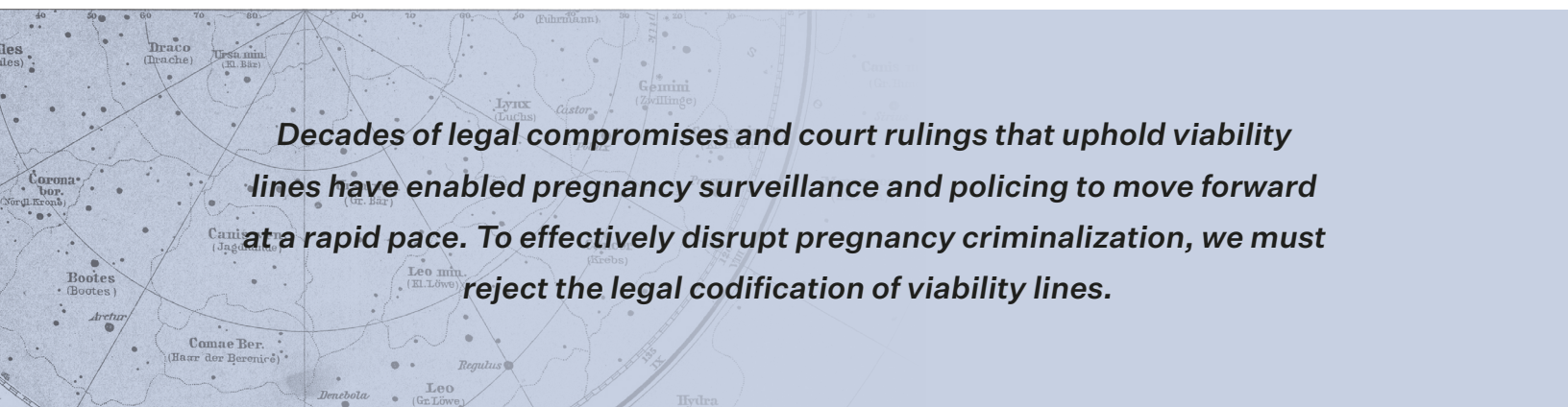
## The Role of Viability in Pregnancy Criminalization

Central to arguments that support pregnancy criminalization is the belief that, at some point during pregnancy, the government has authority over an individual's pregnancy. This authority overrides the pregnant person's civil and human rights and gives the state a vested interest in *all* actions of the pregnant person, including but not limited to abortion. The point during pregnancy at which some believe the government gains this authority is the line of "viability."

Fetal viability is often thought to be when a fetus *might* survive outside the uterus, but in reality, it is inconsistently defined and erratically applied. According to the American College of Obstetricians and Gynecologists (ACOG), "Viability is just one factor that patients and health care professionals use when considering whether to proceed with or end a pregnancy, and gestational age is only one factor considered when estimating viability...ACOG strongly opposes policy makers defining viability or using viability as a basis to limit access to evidence-based care."<sup>3</sup>

Despite strong opposition from healthcare providers and advocates, lawmakers persistently seek to define and legislate the viability line. By doing so, governments can...

- ✦ Give embryos and fetuses legal rights, which makes a pregnant person's behavior punishable for anything people think might "hurt" a fetus;
- ✦ Assert decision-making over a pregnant person's medical care;
- ✦ Force doctors to perform medical treatments on a pregnant person against their will, including keeping a dying pregnant person on life-support;
- ✦ Investigate every pregnancy or pregnancy loss as a potential crime scene.



***Decades of legal compromises and court rulings that uphold viability lines have enabled pregnancy surveillance and policing to move forward at a rapid pace. To effectively disrupt pregnancy criminalization, we must reject the legal codification of viability lines.***

[3] Understanding and navigating viability. (n.d.). <https://www.acog.org/advocacy/facts-are-important/understanding-and-navigating-viability>

## The Potential for Pregnancy Criminalization in Montana

To date, pregnancy criminalization has been infrequent in Montana. According to Pregnancy Justice, there have been only four cases of pregnancy criminalization in Montana during the past two decades. (All but four states had at least one criminalization case during the same time period.) Despite these relatively low numbers, Montana is primed for lawmakers to promote and enforce laws to control people's pregnancies. Montana is one of eleven states with a broad personhood provision in our legal code. The Montana Abortion Control Act, issued in 1999, "reaffirms the tradition of the state of Montana to protect every human life, whether unborn or aged, healthy or sick." Positively, Montana courts have generally found the Control Act and its provisions to be unconstitutional.

With the passage of CI-128 in November 2024, Montana enshrined a viability line in its state constitution, effectively banning abortion after "viability." Montana lawmakers have already attempted to exploit the viability limit by introducing [HB609](#), an abortion travel ban that would criminalize pregnant people seeking abortion care after viability, as well as those who help them, by restricting travel within Montana and across state lines, all in the name of "fetal rights."

The harmful effects of this newly enshrined viability line could extend beyond abortion care. For example, current Montana state laws invalidate a person's advance healthcare directive (a legal document which details your wishes regarding end-of-life care) during pregnancy, based on the potential for fetal survival. The viability line now enshrined in the state constitution reinforces this harmful law, and could result in more pregnant individuals receiving treatment against their wishes. The state could also more intensely monitor and prosecute the behaviors of pregnant people, especially regarding substance use. Unfortunately, a positive bill that would have expanded legal protections for pregnant people seeking treatment for substance use disorders, [HB50](#), stalled in the 2025 legislative session after the bill sponsor abruptly resigned.

***Pregnant people should be embraced with support, not control. Nobody should fear arrest because of their pregnancy or any pregnancy outcome. Pregnancy should never result in the loss of rights of the pregnant person.***





## Additional Reading

Unless otherwise noted, information for this brief was gathered from research conducted by **Pregnancy Justice** and **Patient Forward**. Pregnancy Justice is a national legal nonprofit that advances and defends the rights of pregnant people, no matter if they give birth, experience a pregnancy loss, or have an abortion. Patient Forward is a national strategy and advocacy organization working to eliminate barriers for people seeking abortion care later in pregnancy. For information on pregnancy criminalization, we recommend the following resources that informed this brief. All can be found at **[pregnancyjusticeus.org/our-approach/research/](https://pregnancyjusticeus.org/our-approach/research/)**.

**The Rise of  
Pregnancy  
Criminalization**

**Pregnancy as a Crime:  
A Preliminary Report  
on the First Year After  
Dobbs**

**The Role of the Viability  
Line in Pregnancy  
Criminalization**

**Current Legal  
Landscape for  
Pregnancy Justice**



MONTANANS FOR CHOICE

# Take Action

[mtchoicetakeaction.org](https://mtchoicetakeaction.org) | [contact@mtchoicetakeaction.org](mailto:contact@mtchoicetakeaction.org)