

**PREGNANCY JUSTICE**

# Beyond Abortion: The Consequences of Overturning Roe

November 18, 2022

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Executive Director



CENTER FOR BIOETHICS

## Ethics Grand Rounds



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# About Pregnancy Justice

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## Our Mission

We work to ensure that no one loses their rights because of pregnancy or because of their capacity for pregnancy, focusing on pregnant people who are most at risk of state control and criminalization: those who are low-income, of color, and drug-using.

We've maintained this mission since we were first established in 2001 as National Advocates for Pregnant Women.

## Our Strategies

- Legal Advocacy including
  - Criminal Defense of Pregnant People
  - Protecting Pregnant People's Constitutional and Civil Rights
- Organizing
- Public Education
- Research and Documentation



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## *Dobbs v. Jackson Women's Health Organization*

What it does:

Overturns *Roe v. Wade*

Requires Rational Relationship Review of Laws Addressing Abortion

Returns the issue of abortion to state legislative bodies

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## *Dobbs v. Jackson Women's Health Organization*

Rational Relationship Review: Laws regulating abortion must be sustained if there is a rational basis on which the legislature could have thought that it would serve legitimate state interests. One of these is “respect for and preservation of prenatal life at all stages of development”

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In other words, consistent with the dissent’s stark warning, states in the guise of respecting and protecting prenatal life, states now have the tools to unlock every form of gender discrimination imaginable.



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## *Dobbs v. Jackson Women's Health Organization*

What the majority opinion doesn't do: Evaluate or address the consequences of its decision on the health, lives, and constitutional status of women and all people with the capacity for pregnancy.

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Rather than address the consequences, the majority states:

*The dissent has much to say about the effects of pregnancy on women, the burdens of motherhood, and the difficulties faced by poor women. These are important concerns. However the dissent evinces no similar regard for the State's interest in protecting fetal life*



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## *Dobbs v. Jackson Women's Health Organization*

In fact the very beginning of the dissenting opinion acknowledges that the State has legitimate interests from the outset of the pregnancy in protecting” the “life of the fetus that may become a child.” As the dissent points out, however, recognizing that legitimate interest is not the same as permitting it to be used to deny the personhood of pregnant women.

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## *Dobbs v. Jackson Women's Health Organization*

As the Dissent Observes:

*Whatever the exact scope of the coming laws – one result of today's decision is certain: The curtailment of women's rights, and their status as free and equal citizens.*

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## Beyond Abortion: Forced Medical Interventions



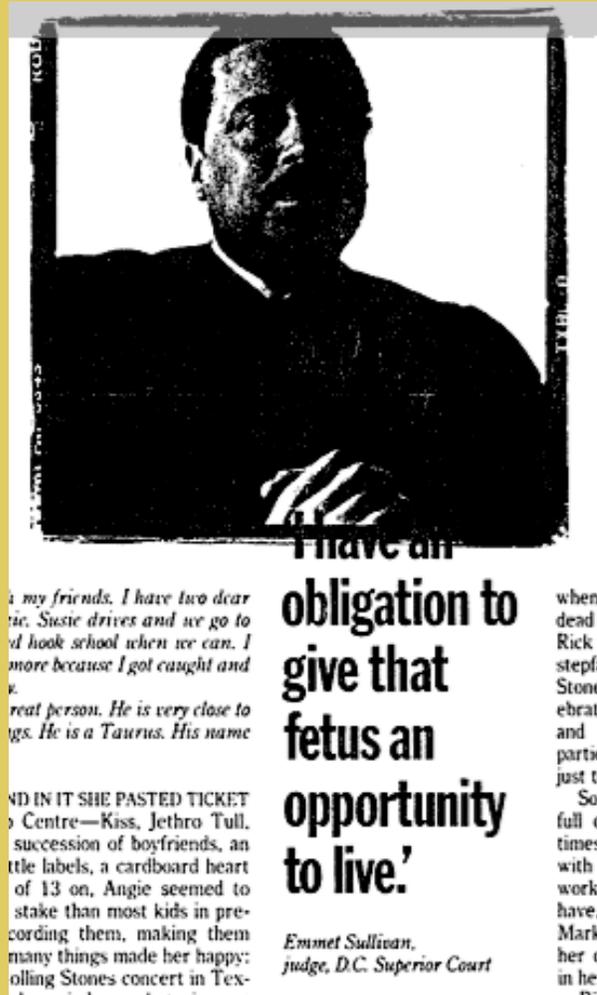
In re AC (Angela Carder)



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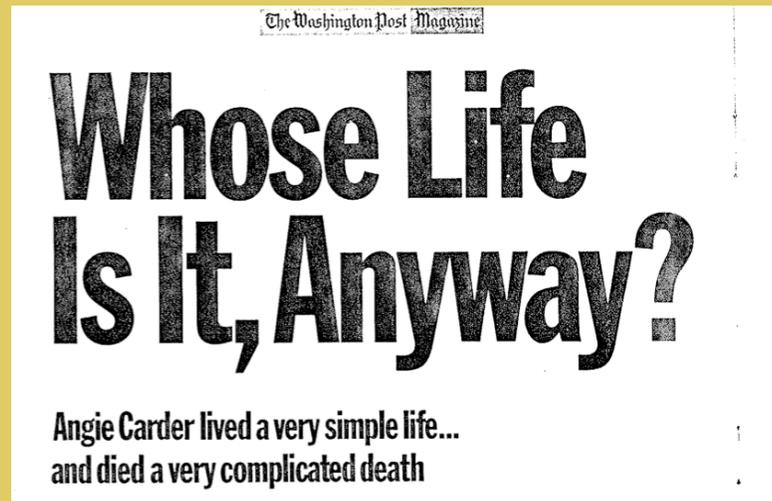
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# Beyond Abortion: Forced Medical Interventions

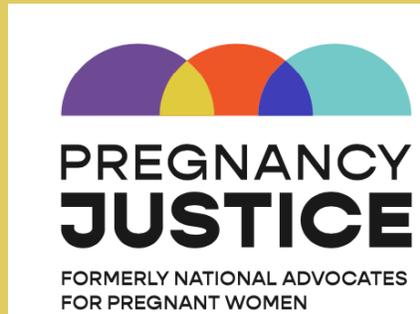


*Condolences are extended to those who lost the mother and child.*

DC Appellate Court (3-member panel)



In re AC (Angela Carder)



## Beyond Abortion: Forced Medical Interventions

**In Re AC, 573 A.2d 1235 (1990), District of Columbia Court of Appeals.**  
Argued en Banc September 22, 1988. Decided April 26, 1990.

All patients, including pregnant one have a right to bodily integrity, medical decision making and due process.

*We hold that in virtually all cases the question of what is to be done is to be decided by the patient the pregnant woman on behalf of herself and the fetus. If the patient is incompetent or otherwise unable to give an informed consent to a proposed course of medical treatment, then her decision must be ascertained through the procedure known as substituted judgment. Because the trial court did not follow that procedure, we vacate its order and remand the case for further proceedings.*

In re AC (Angela Carder)

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***Foreclosing  
the Use of  
Force: A.C.  
Reversed***  
*by George J. Annas*



## Beyond Abortion: Forced Medical Interventions

*In re A.C.*, Judge Belson Dissenting

*“The interests of a viable unborn child can afford [a] compelling reason[.]”* for depriving a pregnant woman of her rights. Why? Because, according to Judge Belson:

*“The expectant mother has placed herself in a special class of persons . . . .”*



*“I submit, a woman who carries a child to viability is in fact a member of a unique category of persons.”*

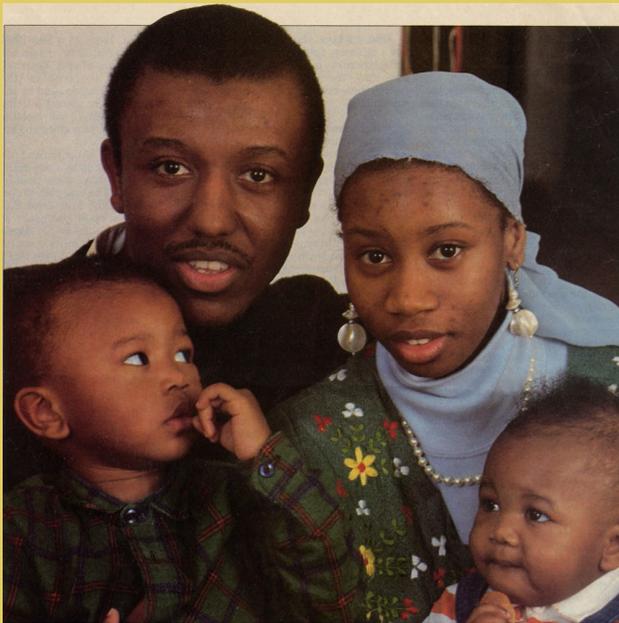


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# Beyond Abortion: Forced Medical Interventions

“All that stood between the Madyun fetus and its independent existence, separate from its mother, was put simply, a doctor's scalpel.”



"I never dreamed they could do that . . . The experience was "a nightmare for me."

"I felt overpowered. I felt they were dominating me. I felt I was being raped."

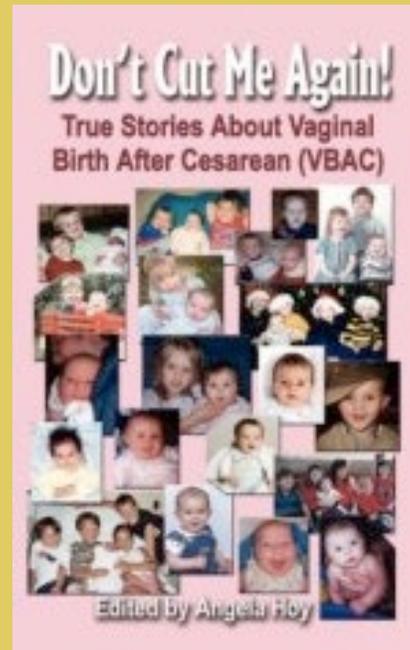


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**In re Madyun Fetus**, 114 Daily Wash. L. Rptr. 2233 (D.C. Super. Ct. Oct. 29, 1986).

# Forced Medical Interventions



“Whatever the scope of Ms. Pemberton's personal constitutional rights in this situation, they clearly did not outweigh the interests of the State of Florida in preserving the life of the unborn child.”

<https://player.vimeo.com/video/4895023?h=48d8c6c655>



# Forced Medical Interventions

THURSDAY, JAN 14, 2010 10:15 ET

## The best interests of the fetus

Florida gave Samantha Burton's "unborn child" its own doctor and legal representation, while she got nothing

## Pregnant Woman Fights Court-Ordered Bed Rest

ACLU Asks if Pregnant Women Can Be Penalized For Drinking, Speeding, Poor Eating

BY SUSAN DONALDSON JAMES

Jan. 14, 2010



**Pregnant woman's involuntary hospitalization raises legal, ethical, medical questions**

Burton v. State 49 So. 3d 263 (Fla .App 2010)



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# Beyond Abortion: Forced Medical Interventions

## New York hospital's secret policy led to woman being given C-section against her will

The Staten Island University hospital offered doctors instructions for performing procedures without a pregnant woman's consent, the Guardian has learned

- Because of the physiologic dependence of the fetus on the pregnant woman, the burden of consequences of her actions on the fetus should be taken into account by her doctors and staff.
- In some circumstances, the significance of the potential benefits to the fetus of medically indicated treatment may justify using the means necessary to override a maternal refusal of the treatment.

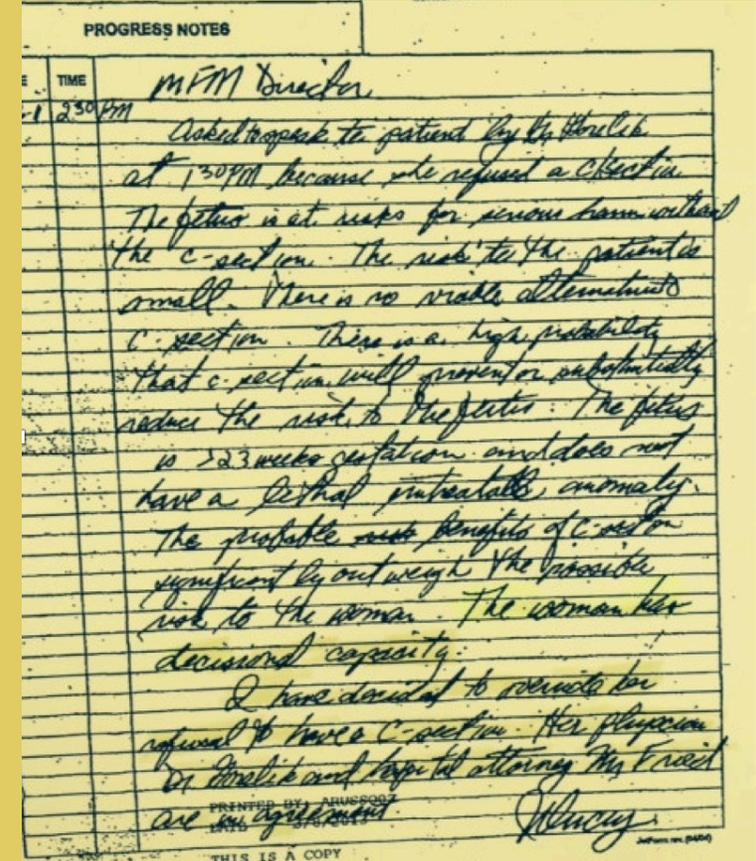
By ANEMONA HARTOCOLLIS MAY 16, 2014



Rinat Dray is suing, saying that doctors at Staten Island University Hospital threatened her.  
Yana Puskova for The New York Times



Rinat Dray filed a lawsuit, claiming Staten Island University Hospital performed a C-section against her will  
(Credit: CBS 2)



[Dray v. Staten Island University Hospital et al. \(2011\)](#)

## Beyond Abortion: Criminalization



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# Beyond Abortion: Criminalization

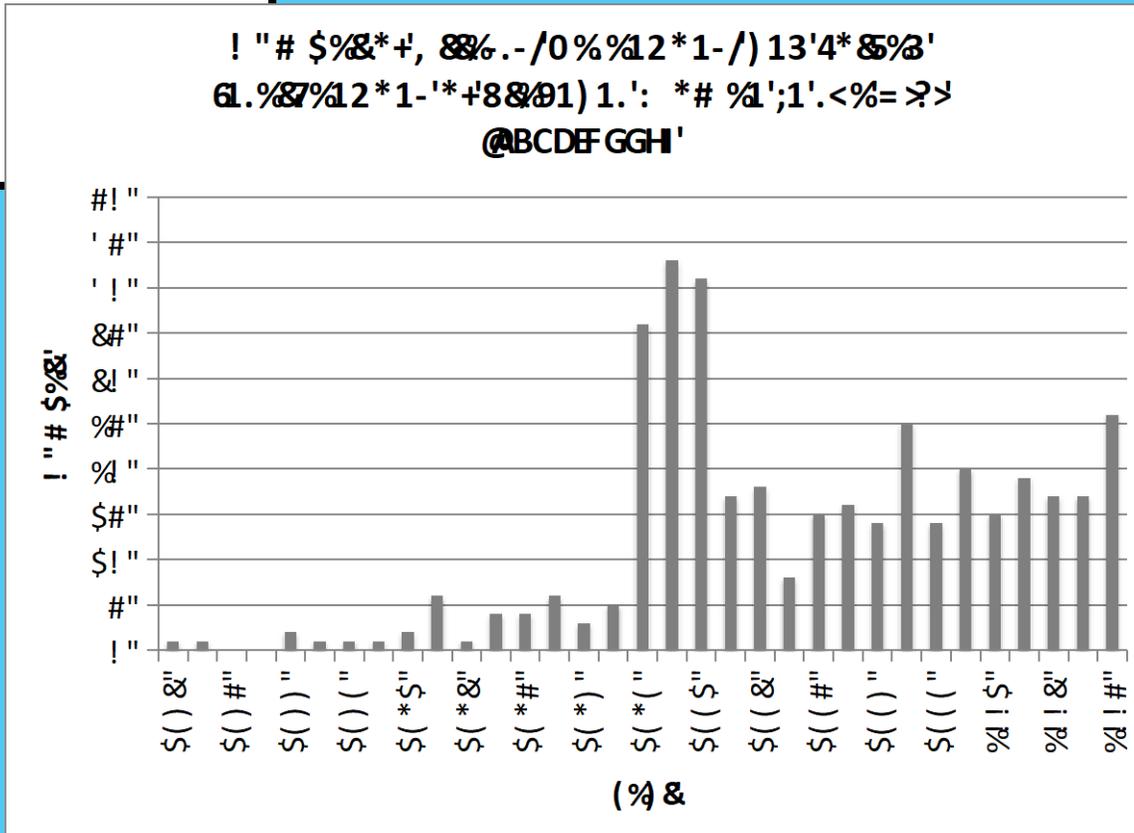
RESEARCH ARTICLE | APRIL 01 2013

## Arrests of and Forced Interventions on Pregnant Women in the United States, 1973–2005: Implications for Women's Legal Status and Public Health

Lynn M. Paltrow; Jeanne Flavin

J Health Polit Policy Law (2013) 38 (2): 299–343.

<https://doi.org/10.1215/03616878-1966324>



# Beyond Abortion: Criminalization

72% of the targets for arrest, detention, and forced interventions were low-income women

59% of the women were re of color

52% were Black

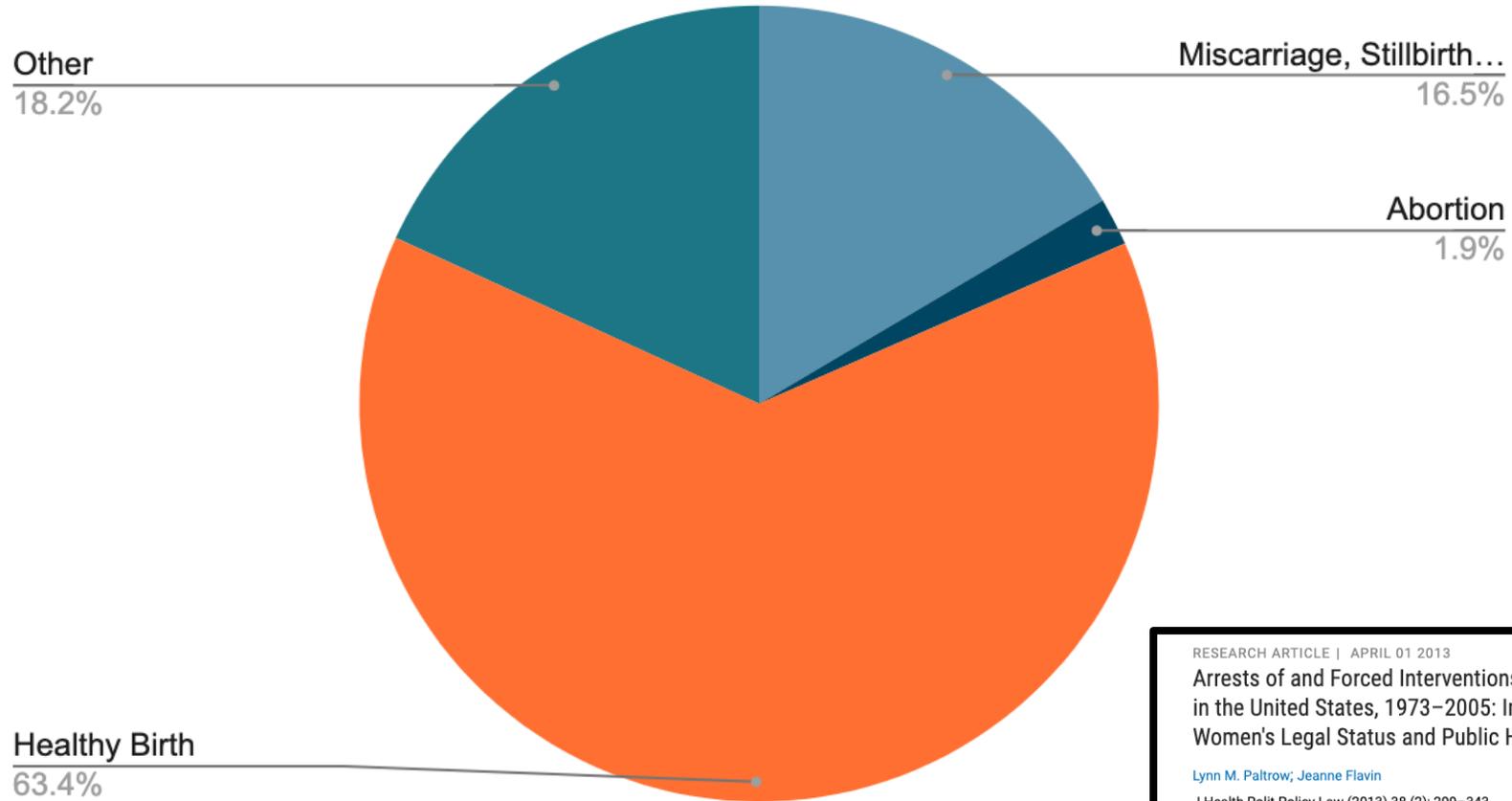


Neglect charges against Britta Smith for using crack cocaine while she was pregnant with Brittaney, now 7 months, were dropped. KEITH GRAHAM'S



# Beyond Abortion: Criminalization

## Pregnancy Outcome



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## Beyond Abortion: Criminalization \_\_\_\_\_

**Nearly half of all Black women were reported to the police or other authorities by health care providers . . . compared to less than one-third of white women**



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# Beyond Abortion: Criminalization

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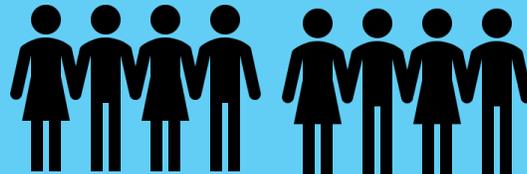
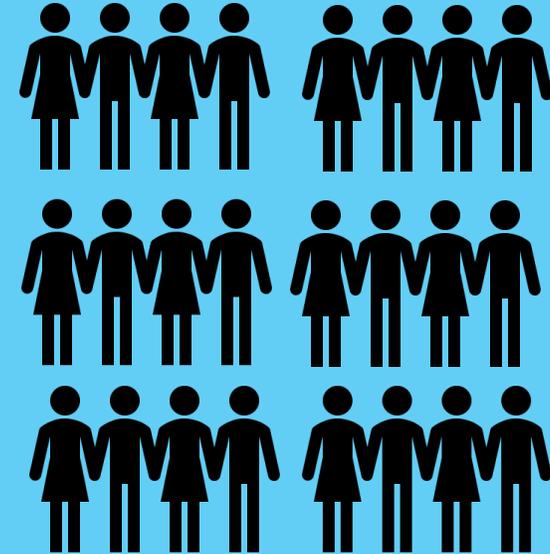
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New Pregnancy Justice Study Expected In Spring 2023



More than 1,7000 cases since 1973

# Beyond Abortion: Criminalization

Currently, over 80% of the arrests and prosecutions of pregnant women NAPW is documenting come from states that have passed abortion bans like Mississippi's.



[1] State Bans on Abortion Throughout Pregnancy, Guttmacher Institute (May 1, 2021), <https://www.guttmacher.org/state-policy/explore/state-policies-later-abortions>; States with Gestational Limits for Abortion, Kaiser Family Foundation (Aug. 1, 2020), <https://www.kff.org/womens-health-policy/state-indicator/gestational-limit-abortions/>.

[2] Jason Breslow and Sarah McCammon, The Governor Of Texas Has Signed A Law That Bans Abortion As Early As 6 Weeks, National Public Radio (May 19, 2021); Timothy Bella, Texas governor signs abortion bill banning procedure as early as six weeks into pregnancy, Wa. Po. (May 19, 2021).



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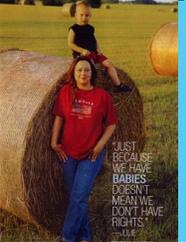
# Beyond Abortion: Criminalization

## Charges include:

- Murder/Manslaughter/Depraved Heart Homicide/Feticide
- Attempted Murder/Manslaughter etc.
- Criminal Abortion
- Child Neglect/ Child Endangerment,
- Child Abuse
- Fetal Assault
- Assault With a Deadly Weapon
- Abuse of a Corpse
- Chemical Endangerment of a Child
- Delivery of drugs to a minor (through the umbilical cord)/Introducing a Controlled Substance Into the Body of Another Person
- Failure to report birth/death
- Improper disposal of fetal remains

## For Being Pregnant and:

- Self-managing an abortion
- Experiencing a miscarriage, stillbirth, or neonatal death
- Attempting Suicide
- Drinking Alcohol or Using Drugs
- Disclosing Past Use of Alcohol or Drugs
- Falling down a Flight of Stairs
- Being HIV Positive
- Driving Without a Seatbelt and Being in a Car Accident
- Fleeing Police
- Being in a Dangerous Location or Situation
- Not Getting Prenatal Care
- Refusing to Follow Medical Advice for Bedrest
- Having or Planning to Have a Home Birth
- Refusing/Delaying Cesarean Surgery and other Forms of forced treatment.



# Beyond Abortion: Civil Child Protection



The Case of Alicia Beltran: <https://www.youtube.com/watch?v=X95W7p93Phc>



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# Beyond Abortion: Family Separation/Civil Child Protection



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# Beyond Abortion: Outlawing IVF & Contraception



*Stephen Billy, the vice president of state affairs for Susan B. Anthony Pro-Life America, advises lawmakers not to discuss regulating in vitro fertilization and contraception with voters when discussing the current law. They can revisit the topic in a few years' time, he tells them.*



# Beyond Fear

## Providing Care and Protecting Confidentiality

*You are safe here, and my only concern is your health. The medical care you need is the same whether you're having a spontaneous miscarriage or you took pills to end your pregnancy. I only need information like your current physical symptoms and your medical history to take care of you, and this information remains confidential.*

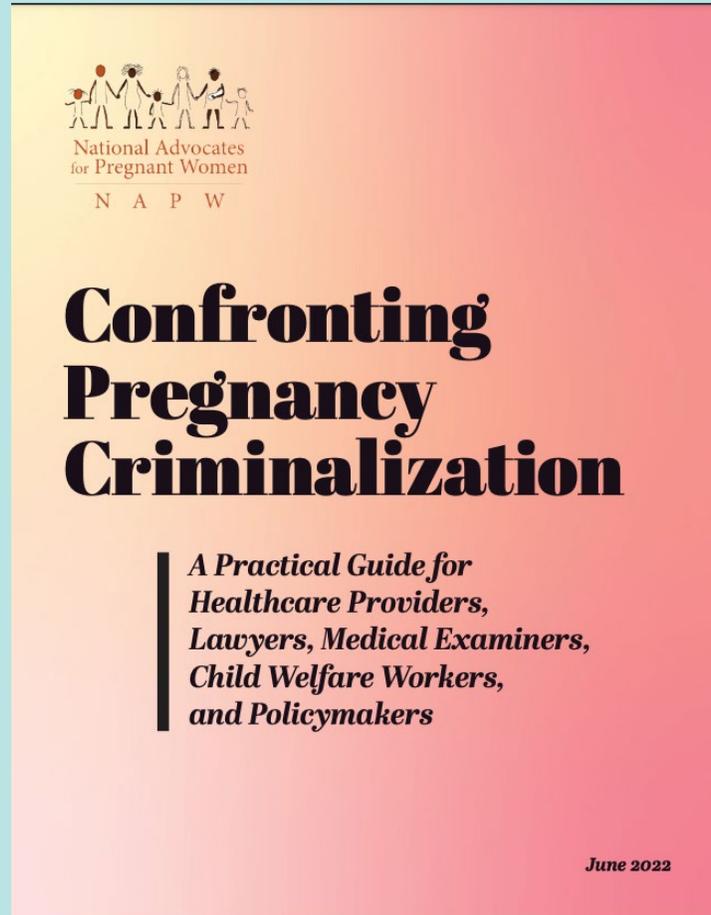
Katy Watson, et. al. – NEJM Supporting, Not Reporting – Emergency Department Ethics in a Post-Roe Era  
<https://www.nejm.org/doi/full/10.1056/NEJMp2209312>

American College of Emergency Physician's Code of Ethics: "Personal information may only be disclosed when such disclosure is necessary to carry out a stronger conflicting duty, such as a duty to protect an identifiable third party from serious harm or to comply with a JUST law."

AMA code of ethics "In exceptional circumstances of unjust laws, ethical responsibilities should supersede legal duties."

# Confronting Pregnancy Criminalization

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Practical guidance for disciplines at the intersections of pregnancy criminalization.

Written by  
Pregnancy Justice  
(Formerly NAPW).

**Beyond Dobbs . . . . .** \_\_\_\_\_

**You can make a difference.  
Join our fight for health,  
rights, and justice.**

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Executive Director

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