

Criminalizing Pregnancy

Social and Behavioral Epidemiology

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ABSTRACT

In 1977 the state of California issued the first indictment against an American woman for the use of drugs while pregnant. Since that time “fetal abuse” prosecutions have steadily increased and the allegations have expanded to include charges of child abuse, child endangerment, murder, attempted murder and manslaughter.

LAWS

Text of the Law: Sec. 1841. Protection of unborn children: Whoever engages in conduct that violates any of the provisions of law listed in subsection (b) and thereby causes the death of, or bodily injury to, a child, who is in utero at the time the conduct takes place, is guilty of a separate offense under this section.

Reality of the Law: A woman who obtained the contraceptive *Depo Provera* later experiences a miscarriage. She is held in jail for year on murder charges; A pregnant woman who attempts suicide survives, but because she lost the pregnancy she is arrested on charges of murder.

Text & Intent of the Law: Chemical endangerment of a minor through the act or instance of knowingly exposing a child to chemicals or controlled substances and thus causing harm is a punishable offense.

Reality of the Law: Between 2008 and 2012 sixty new mothers have been prosecuted under the Chemical Endangerment laws. This includes live and stillbirths, as well as miscarriages.

DEMOGRAPHICS

Geographic Disparity

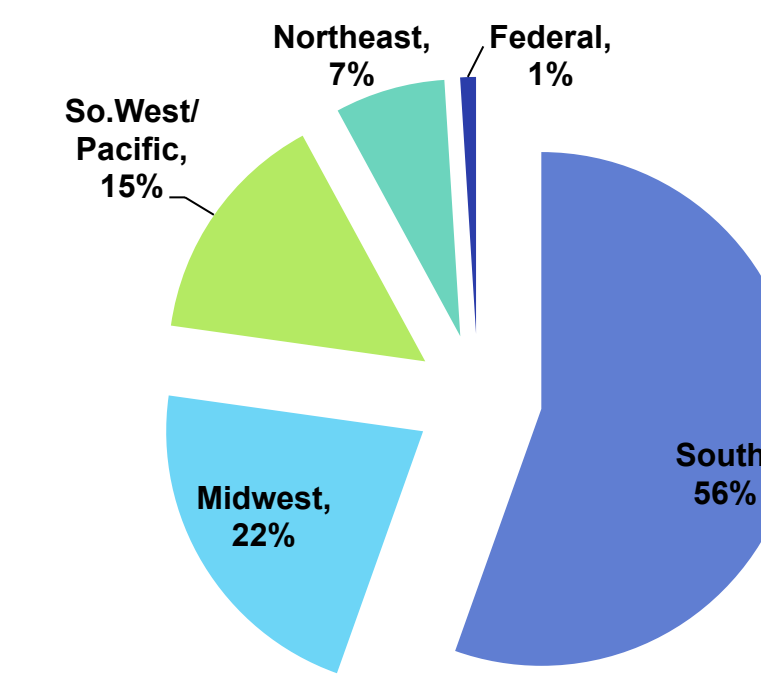
National Advocates for Pregnant Women obtained statistics regarding state legal actions between 1973 and 2005 against 413 women in 44 states and the District of Columbia (Figure 1). Ten states accounted for over two thirds of the total number of cases. South Carolina had the majority of the cases (n = 93), followed by Florida (n = 56), Missouri (n = 29), Georgia (n = 16), Tennessee (n = 15), Wisconsin (n = 15), Illinois (n = 14), Nevada (n = 11), New York (n = 11), and Texas (n = 10). Delaware, Maine, Minnesota, Rhode Island, Vermont and West Virginia had no cases. Due to limitations in arrest records these numbers are believed to be underreported.

Racial Disparity

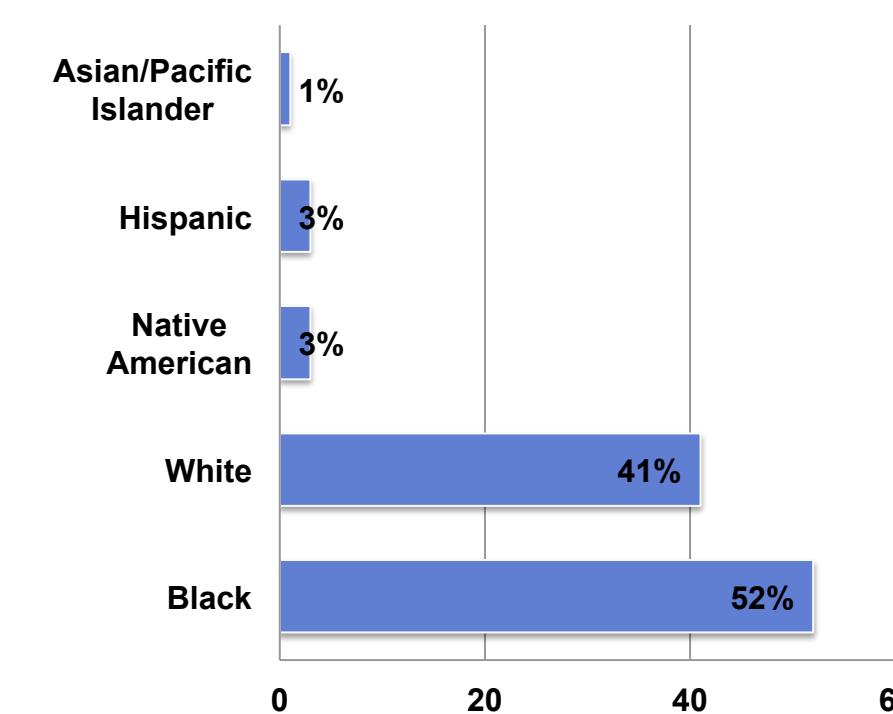
Between 1973 and 2005 African Americans accounted for 30 percent of the population of South Carolina, with 68 percent of the population white, however, 74 percent of the legal actions in the state were brought against African American women, with 25 percent of legal actions being brought against white women. In Florida 15 percent of the state's population was African American, and 81 percent of the population was white, however, 75 percent of the legal actions were brought against African American women, with 22 percent of legal actions being brought against white women. (Figure 2) In total, 59 percent of legal actions were brought against women of color – African Americans, Native Americans, Hispanic, and Pacific Islanders/Asian, with 41 percent of the legal actions being taken against white women.

Case Characteristics

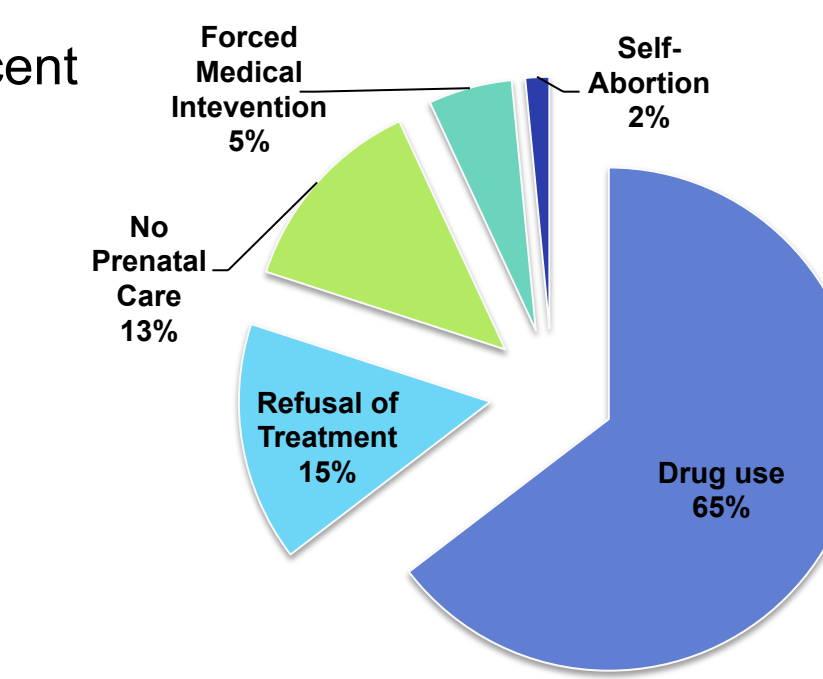
The predominate reasons for the legal actions were allegations of illegal drug use - 65 percent; refusal of treatment orders – 15%; lack of prenatal care (13%); forced medical interventions – 5%; and self-abortion – 2%. (Figure 3)



Geographic Characteristics
Figure 1.



Racial Characteristics
Figure 2.



Case Characteristics
Figure 3.

ACTIONS

Instead prosecutorial and punitive actions against these vulnerable women we need to advocate for social and economic change to enable pregnant women to make informed choices in the best interest for them and their child. We need to address the extreme interpretations of **Unborn Victims of Violence Act** and the **Child Endangerment Laws**. Paramount is the need to protect women's constitutional rights under the: **Eighth Amendment – The freedom from cruel and unusual punishment**. Alicia Beltran refused to continue to take Suboxone during her pregnancy. She was arrested, led into a courtroom, handcuffed and shackled at the ankles, where a county judge ordered her to spend 90 days in a drug treatment center. **Fourteenth Amendment – The right to privacy and due process of law**. Laura Pemberton desired a vaginal delivery following a prior C-section. Her physician refused. She arranged for a home delivery with a midwife. She was arrested, taken to the hospital where a forced C-section performed. **Equal protection of the law**. Florida v. Johnson state drug trafficking statute was used to prosecute the mother for the transmission of drugs to the fetus via the umbilical cord. Delivery of drugs to a minor is clearly prohibited, however a woman of ordinary intelligence will not read a drug delivery statute and believe that she could be prosecuted for taking drugs because the umbilical cord is a delivery system to the minor (fetus).

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