



The Future of Criminal Prosecution for Self-Induced Abortion and Pregnancy Endangerment

Grace E. Howard, San Jose State University

The intensifying avalanche of restrictive U.S. abortion laws since 2012 has made it more difficult for many people to terminate their pregnancies. These restrictions have also had the effect of increasing what are considered illegal abortions. But the face of illegal abortion has shifted since the 1973 *Roe v. Wade* decision by the Supreme Court. Today's procedures rarely resemble the back-alley abortions of the past, given the availability of medications that can effectively induce abortions and the rise of the internet as a tool women can use to procure such medications and to learn how to use them. Some things, however, have not changed. Just as pregnant women were sometimes prosecuted after aborting or attempting to abort pregnancies in the pre-*Roe* era, pregnant women today are still sometimes prosecuted for similar acts, even if the exact methods are different.

In the United States, pregnancy occupies a contradictory socio-legal space. For many, pregnancy and resultant parenthood are much desired (and encouraged) conditions. But being pregnant can also result in the loss of important constitutional rights, including rights to privacy, liberty, and free religious expression, along with rights to due process, freedom from cruel and unusual punishment, and equal protection. Because of the potential for such lost rights, my research argues that pregnancy legally creates a lower class of person – a situation I call “pregnancy exceptionalism.” Pregnant women hold a tenuous position under the law if they go outside legally recognized methods of abortion, either by choice or because are otherwise unable to access those methods. An examination of recent instances in which pregnant women have been prosecuted offers possible clues as to future directions of the law, insofar as reductions in pregnancy prevention services continue along with erosion of legal options for ending pregnancies.

Prosecuting Pregnant Women

Three states – Alabama, South Carolina, and Tennessee – have expanded criminal law through legislatures or courts to include what they define as “unborn children.” My research on these three states has identified nearly 900 cases of arrest of pregnant or formerly pregnant people for terminating, attempting to terminate, or otherwise causing harm to their pregnancies between 1973 and 2016. In all three states, arrests of pregnant women for these offenses occurred before formal definitions were entered into the code of law.

Other states have taken similar steps. To date, every state but Vermont and Delaware has participated in the arrest and prosecution of pregnant women, allegedly in defense of their embryos and fetuses. Most of these arrests have involved pregnant women or newborns who tested positive for drugs, but cases involving attempted suicide have also been documented. One woman who attempted to evade the police was additionally charged with reckless endangerment of a minor because she was running while pregnant.

Mysteriously, two women were charged with crimes against their “unborn children” but were later released
October 3, 2018

when they were found not to have been pregnant in the first place. Other arrests occurred when pregnant women attempted to abort their pregnancies illegally, or were accused of doing so.

Prosecutions of pregnant women have gotten little public attention, with some exceptions in cases where medical providers reported women who were later prosecuted:

- In Indiana in 2013, a woman named Purvi Patel was hiding a pregnancy from her conservative Hindu parents. She expressed some ambivalence about the pregnancy and texted a friend about procuring abortion pills online. After having a miscarriage at her family's restaurant, Patel placed the fetus in the dumpster. She eventually went to the hospital, where police interrogated her. Later, she was arrested for causing the fetus's death, convicted and sentenced to two concurrent 20-year sentences. An appeals court later vacated the feticide charge and reduced her sentence to 18 months.
- In Tennessee in 2015, Anna Yocca allegedly attempted to perform a self-induced abortion using a wire clothes hanger. At 24 weeks pregnant, Yocca would have needed to travel to Washington, New York, Maryland, or Colorado to obtain a legal abortion. When she began to bleed heavily, her boyfriend drove her to the emergency room. She received medical care and her baby survived, although the baby was born prematurely and likely to have lifelong disabilities. After Yocca's healthcare providers notified police that Yocca made "disturbing" statements about wanting to end the pregnancy, she was charged and arrested for attempted murder.

Key Questions for Continued Research

As nascent research proceeds on prosecutions of pregnant women dealing with new legal restrictions, many important questions remain to be investigated:

- How and why are people pursuing illegal abortion in the United States?
- How has illegal abortion changed since *Roe v. Wade*, both legally and practically?
- How are state legislatures and courts addressing illegal abortion?
- What are the characteristics of criminal cases brought against women who have sought or procured illegal abortion?
- What are the legal arguments used in making these criminal prosecutions?

No matter the answers to these questions, it is already clear that as legal abortion becomes harder to access, women will likely seek extra-legal means of terminating undesired pregnancies, even if such efforts may result in their prosecution and imprisonment. As researchers examine the safety of newer medications and technologies for self-induced abortions, they must also explore the legal risks and treatment facing people who make use of those methods. The possibility that a new Supreme Court majority may overturn *Roe v. Wade* or further eviscerate legal abortion rights warrants a thorough examination of the precedents that will go into adjudicating cases like those of Puri Patel and Anna Yocca that, while rare in the past, may appear more frequently in the future. More research now can help all concerned be better prepared for the new legal as well as medical world that may arrive as legal abortions become more circumscribed in the United States.