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SPECIAL REPORT

SELF-CARE, CRIMINALIZED

THE CRIMINALIZATION OF SELF-MANAGED ABORTION FROM 2000 TO 2020

The Authors

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About If/When/How: Lawyering for Reproductive Justice

If/When/How: Lawyering for Reproductive Justice is a legal services and advocacy organization. We work to transform the law through training, support, and organizing, so all people have the power to determine if, when, and how to define, create, and sustain families with dignity.

Resources

- If you or anyone you know is in legal trouble due to their abortion or has questions about the law, If/When/How's Repro Legal Helpline provides free and confidential legal services; visit reprolegalhelpline.org or call 1-844-868-2812.
- If you or someone you know is being criminalized for an abortion, pregnancy loss, or for something that happened during pregnancy and you need resources, such as bail, legal fees, or practical support, reach out to the Repro Legal Defense Fund at reprolegaldefensefund.org.
- If you want to talk to a health care provider about your miscarriage or abortion, call or text the M+A Hotline at 1-833-246-2632.
- For information about how you can reduce your digital footprint and keep your private information safe, refer to digitaldefensefund.org.

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INTRODUCTION

The United States is in the midst of a completely avoidable human rights crisis. Since the U.S. Supreme Court issued its decision in *Dobbs v. Jackson Women's Health Organization* in June 2022, the country has been thrown into a state of legal chaos regarding abortion access; states are racing to either enact draconian restrictions or create protections for abortion care. Caught in the crossfire are the millions of people who will need abortion care in states where it is being moved out of reach and, in many cases, criminalized. Abortion seekers are increasingly left to figure out where they can turn and whom they can trust to get the care they need. As the threat of death or injury from unsafe abortion has waned for abortion seekers, the threat of criminal charges for offenses including homicide has taken precedence.

It is an axiom of the reproductive justice theoretical framework that *Roe v. Wade* was never enough to guarantee universal abortion access. And yet, legal protections for the right to seek an abortion are deeply significant to people's access to care. This is borne out by the experiences of abortion seekers and their loved ones all around the country. Many of the predictable effects of stripping constitutional protection from seeking abortion care have come

to pass, such as denial of miscarriage care as health care providers and hospital administrators debate how proximate peril must be for an abortion to be considered lawful. Some observers predict a worsening of the already dire maternal injury and death rates among Black and Indigenous birthing people as more are forced to continue pregnancies in a health system tainted with racist hostility and indifference.¹ Other potential health consequences, like people dying preventable deaths from unsafe means to induce an abortion, will ideally remain in the pre-*Roe* past due to the advent of medication abortion, should it continue to be widely accessible. But the law and its interpretation set the precedent for all of these potential outcomes.

In the melee of this changing landscape, abortion seekers, people who would help them, and those who would punish them for doing so all must somehow interpret the law to determine the extent of their power. The stakes of this analysis are raised dramatically by the fact that abortion is set apart from other forms of health care and regulated by the use of criminal statutes in many states.

The use of criminal codes to regulate abortion is hardly new, dating back to the mid- to late 1800s.

But the constitutional protections laid out in *Roe* and subsequent cases have meant that most people who came of age in the United States after 1973 have little context for what it means for abortion to be criminalized. As a result, there has been confusion among media, lawmakers, and even advocates of what prohibitions on abortion mean: who they apply to, what they prohibit, and what punishments they prescribe. As this research demonstrates, any use of the criminal law to regulate abortion care creates a risk that abortion seekers will be punished, often in defiance of the law. But overstating the risk of criminalization for seeking an abortion when it is not a crime creates its own risks, making people afraid to seek care and access systems of support lawfully available to them.

This project elucidates the practical reality of the criminalization of abortion for abortion seekers by focusing on criminal proceedings against individuals who self-managed their abortions or helped someone else do so from years 2000 to 2020. During that time period, medication abortion was available to safely and effectively end a pregnancy and abortion rights ostensibly enjoyed constitutional protection — a blatant contradiction of abortion opponents’ claims that it is possible to criminalize a procedure without criminalizing the people who seek it.

Overturing *Roe* did not merely unwind nearly 50 years of law. Justice Alito’s claim in the *Dobbs* majority opinion that the decision was restoring the law to its pre-1973 state willfully misreads both the past and the present. Today’s abortion seekers find themselves in a country with a much more elaborate

and far-reaching culture of criminalization. The scale of mass incarceration makes the United States the leading country in terms of its number of people in custody. And this culture of hyperpunishment also includes the normalization of surveillance by nominally nonpunitive entities like the family regulation system (sometimes officially titled the “child protective” or “child welfare” system), the immigration system, and public benefits systems, which have enormous coercive power in people’s lives. Not only that, but the rhetoric of abortion opposition has markedly shifted to be much more confrontational and even violent, analogizing abortion to murder and genocide and normalizing terroristic threats and actual violence against abortion providers.² Simply put, the impetus and apparatus to enforce newly enacted abortion bans is far greater than was imaginable at the time of *Roe*, intensifying threats for abortion seekers.

But the genesis of this project was actually much earlier than the current crises. Since its inception in 2015, the SIA Legal Team* maintained a running list of cases of people criminalized for self-managing an abortion or helping a loved one do so, gleaned from a variety of public sources.[†] This list provided a useful starting point for analysis in our 2017 report *Roe’s Unfinished Promise*, but even then, the need for a more methodologically rigorous collection of cases was apparent. Given the criminal legal system’s ability to obscure cases related to abortion, it was always clear that there were more prosecutions related to self-managed abortion than met the eye or made the media. The importance of uncovering them to understand — and combat — the factors that lead to criminalization of people’s reproductive lives

* The Self-Induced Abortion (SIA) Legal Team began as a consortium of small national or regional organizations that had been supporting people criminalized for self-managing abortions. It became an independent entity to focus on litigation, policy advocacy, research, and direct legal support in 2017, and merged with If/When/How: Lawyering for Reproductive Justice in 2019.

† We acknowledge a debt of gratitude to Lynn Paltrow and Jeanne Flavin’s research documenting the criminalization of pregnancy. From 2008 to 2016, several of the researchers involved in this report contributed to and learned from that seminal work, and learned from and mentored the many staff, fellows, and interns of National Advocates for Pregnant Women, now Pregnancy Justice. We hope that this work builds upon previous findings and advances our collective understanding of reproductive criminalization.

was obvious even when constitutional protection of the right to seek abortion care appeared to be on the ascendency after *Whole Woman's Health v. Hellerstedt* in 2016. It became only more urgent as the reversal of *Roe v. Wade* became a possibility, then a certainty, and finally a reality.

At the same time we recognize the need for data, we also recognize the importance of ensuring that all our research endeavors are guided by the lodestar of creating *real change for real people facing real danger*. This research is contextualized within the work of If/When/How: Lawyering for Reproductive Justice, a nonprofit that seeks to transform the legal landscape to ensure that everyone has the rights and resources they need to determine if, when, and how to create and sustain families. The organization's work includes but is not limited to efforts to end the criminalization of people who self-manage their abortions. Our holistic approach includes running a legal helpline, criminal defense and civil litigation, policy advocacy, and a legal defense fund. Our proximity to the stakes informs our research ethics; the people at the center of these cases, many of whom we know through our work, have faced serious trauma at the hands of the criminal legal system. It also gives urgency to the research as a means of helping abortion seekers understand risk and avoid harm from the state, and clarity to the interplay between the law-as-written and the law-as-lived.

This research set out with a theory: that the best way to understand the criminalization we are likely to see — and already have seen — in the absence of *Roe* is by examining and identifying trends in the criminalization that occurred in the presence of its protections. Additionally, based on our own experiences researching, litigating, and advocating at the intersection of the state's power to criminalize and people's power to make decisions about their reproductive lives, we had

two interrelated hypotheses. First, that people's *experiences* of the law — whether they are protected or targeted for criminalization — are likely to be only loosely related to what the law actually says. Second, that trends in criminalization of self-managed abortion are likely to mimic the patterns of marginalization that exist in our society on the basis of race, class, immigration status, and other markers. Both of these hypotheses flow from the notion that criminalization is about controlling *certain groups of people*, not behaviors.

Our hope is that this research, by exposing the laws and practices that lead to people being criminalized for exercising their human right to bodily autonomy, illuminates a path forward that rejects the notion that punitive legal systems should have any role in health care whatsoever. We hope, too, that, in the interim, this research provides useful information to abortion seekers and the many individuals, activist networks, and health care providers who support them, to understand and avoid the threats that exist due to the law.

Whether they want to leave the state for abortion care or stay and self-manage, *it's critical* that abortion seekers and those who would support them have a clear-eyed understanding of the potential risks they face.

DATA SOURCES & METHODS

This research examined public criminal court records and media reports from cases between 2000 and 2020 in which someone was criminally investigated or arrested for allegedly self-managing their own abortion or helping someone else do so. The study was reviewed by an institutional review board (IRB) and determined to be exempt because it involved review of public records and no human subjects. Throughout research reporting, any data that would identify individuals criminalized was masked to protect the people at the center of cases.

The study began with a pilot phase (July 2020 to December 2020) that laid the foundation for the methods used and informed the research timeline and process. Following this pilot period, the research had two distinct, but overlapping, data collection and analysis phases. The first phase (January 2021 through May 2022) focused on identifying and collecting corresponding public records for cases. The second phase (September 2021 to March 2023) concentrated on coding, reviewing, and analyzing details from each case's compiled public records and the whole sample.

The first phase of this research focused on identifying as many cases as possible that fit the following established sample inclusion parameters:

- initial law enforcement contact occurred between January 1, 2000 and December 31, 2020 in one of the 50 states, AND
- the criminal penalties or investigation involved direct or indirect allegations of a person's own self-managed abortion, OR
- the criminal penalties or investigation involved direct or indirect allegations of helping another individual self-manage.

Any cases identified of individuals criminalized for physical violence against a pregnant person, irrespective of whether the violence was intended to end the pregnancy, were excluded from the sample and not categorized as “helper” cases.

For this first phase of the research, four main methods were employed to identify cases to include in the final sample:

1. collecting all public materials for the 21 cases already known to If/When/How since the

publication of *Roe's Unfinished Promise*,³ the 2017 report that laid the statutory and case knowledge foundation upon which this research was built.

2. searching media and legal databases to identify nonfederal cases that were reported by local or national online or print media or had legal opinions written about them. This search helped uncover media reports of criminal investigations that may not have resulted in arrests and cases that proceeded under misapplied statutes. For this method, the research team developed a list of keywords and phrases informed by statutory language, knowledge of phrases and issues raised in reporting and legal opinions, and a review of media on the original 21 known cases. The final list included about 350 keywords and combined phrases that were used to research historical media reports and legal opinions from 2000 to 2020 on five distinct media or legal databases,* one topically relevant media site that does not always appear in database searches,† and two anti-abortion websites that have historically published information about cases.‡
3. networking with attorneys during trainings conducted during the collection phase. During these trainings and a webinar done for If/When/How's Reproductive Justice Lawyer's Network (RJLN) — a nationwide group of legal professionals mobilizing for reproductive justice — members of the research team or If/When/How's law and policy department provided information about this project and offered ways for attorneys to reach out directly with information about any cases that should be investigated further.
4. requesting data from specific state courts and corrections departments about cases that proceeded under state statutes. The report this study builds upon, *Roe's Unfinished Promise*, identified three types of laws that currently exist or existed at the time of that report's publication and could be or have been used to criminalize self-managed abortion: laws explicitly criminalizing self-managed abortion,§

laws criminalizing providing abortions misapplied to people who end their own pregnancies,¶ and fetal harm laws lacking adequate exemption for the pregnant person.** In total, *Roe's Unfinished Promise* identified 35 of these laws that exist or existed across 26 states. In order to identify any cases that proceeded under such statutes, public data and reporting mechanisms of court systems and departments of corrections in all 26 states with such statutes were researched. Given that this submethod could only focus on cases that made their way into the court system or resulted in a conviction, all requests were made to either a state's administrative office of courts, individual county courts, or a state's department of corrections. If an office had a public records mechanism to conduct the search, public requests for information were filed about cases under that state's statute(s) of interest from 2000 to 2020. For each case that emerged, all public information available was requested to further investigate if and how allegations of self-managed abortion played a role in the case. Depending on the details of the case, the determination was made to include or exclude the case from the sample.

As expected, this method of requesting data from state courts and departments of corrections was fruitful in some states and agencies, but not across all. Justice system data is uniquely difficult to gather and compare across jurisdictions, even though much of it is public record. Depending on the state and agency, certain case data may not be searchable, compiled based on statute of conviction or charge, or centrally available. As a result, not all states could produce data because they didn't have case information compiled by charging statute and may not be required by their public records laws to compile new information. For some states where data was searchable, the case lists may have

* Lexis+ (three internal Lexis+ databases were used - Lexis+ News database, Lexis+ Legal News database, Lexis+ Cases - to cover media reports and legal opinions), NewsLibrary, ProQuest, Newspapers.com, Google News.

† Rewire News Group.

‡ LifeNews, LifeSite News.

§ Arizona, Delaware, Idaho, Nevada, New York, Oklahoma, and South Carolina.

¶ Alabama, Arizona, Indiana, Kentucky, Massachusetts, Michigan, Minnesota, Mississippi, Nevada, New Mexico, North Carolina, Ohio, Oklahoma, Tennessee, Utah, Virginia, and West Virginia.

** Arkansas, Indiana, Iowa, Massachusetts, Michigan, Mississippi, Missouri, Oklahoma, Rhode Island, Utah, and Washington.

only been available for certain time periods and not as far back as the year 2000. In these instances, data for any time period available was requested. In states with no centralized case management system, the research team conducted outreach and formally requested records with every county court in that state depending on their search capabilities. This, however, resulted in varying information within states depending on the capabilities of each county's data system. Additionally, some states could only report aggregated case data. This resulted in knowledge of the number of cases that proceeded under the statute(s) of interest but no ability to investigate and confirm if they involved allegations related to self-managed abortion. Given that not all cases filed under the statutes researched involved allegations of self-managed abortion, these aggregate case numbers were not included in the count unless the cases could be verified as relating to a suspected or actual self-managed abortion.

The research team made the best possible effort to contact and request data from 25 states with statutes of interest. In one state, data was not requested due to pending legal matters. This decision was made from an abundance of caution to limit any effect that alerting state actors of outside scrutiny may have on pending legal matters.

This method was a feature of the research in and of itself, providing valuable insight into how and if case information by statute is kept, maintained, and made publicly available in various jurisdictions. What we learned reveals how bureaucracy, an unavoidable element of the criminal system, acts as a barrier to justice by making it difficult for injustices to even come to light.

Employed together, these methods allowed the research team to cast a wide net to capture as many cases as publicly available. These methods

were comprehensive, but were still constrained by the immense difficulty inherent in documenting and investigating these cases. The *Limitations* section further discusses this difficulty and why the final case number will always include an acknowledgment of a case undercount.

Once a case was identified through any of the methods deployed, the research team built individual case files by collecting any and all publicly available media reporting as well as criminal case records and public legal decisions for those cases that proceeded to court. All media reporting and public legal decisions were collected through searches on the same databases used to identify cases (except for the anti-abortion websites), and criminal case records were requested from the court(s) of case jurisdiction. The final case files used to analyze each case consisted of all substantive and nonduplicative public records collected. To establish the full sample and determine if cases would be included, two members of the research team consulted about each case to decide on inclusion or exclusion. The collected public documents for the cases included in the research sample were analyzed further and remain in If/When/How's possession.

Data Analysis

To analyze the cases that ultimately made up the sample, the research team developed an extensive codebook based on the quantitative and qualitative features of each case. The codebook variables aimed to provide information on who was being targeted by criminalization; how these cases made their way into and through the criminal system; details about involved people and how self-managed abortions were scrutinized or raised; and the ramifications of criminal interventions on people's lives.

Information was coded from all public documents obtained about a case. If an investigation involved more than one individual (for example, helper(s) and the individual whose abortion was allegedly self-managed), these cases were coded and counted separately using their own case files or collected public records. While infrequent, if there was conflicting information between what appeared in a media report and a court document, the court document was relied on as the final source.

Among the more than 100 variables, two variables require a deeper explanation. First, case year was defined and coded as the year in which law enforcement contact began in a case. As a result, for cases that proceeded through the court process, the case year was not always the same as the year a case was filed at the court; there may have been a gap between when an investigation and a court case began. Second, the race variable was developed based on federal Office of Management and Budget (OMB) categories for race and ethnicity. The OMB categories inform the race and ethnicity categories for the 2020 U.S. Census, providing an opportunity to compare to this nationally representative sample. In addition, the OMB categories most closely correlate to how race and ethnicity is largely categorized on criminal court documents or criminal case databases. Race and ethnicity are important demographic indicators in this research and speak to criminalization disparities.

However, depending on the types of records available for a case and how far it proceeded beyond the investigation stage, race was not always explicitly named. Initially, the research team coded race directly as reported explicitly from public records or known through institutional knowledge, but the sample still yielded 12 adult cases where race was unknown. To reduce the number of unknowns, the research team then developed a secondary race variable — race interpreted from public records —

and recoded any cases where race was unknown but could be reasonably interpreted from the public files. Three case files where a person's race was originally coded as unknown included photos of the defendant that, combined with context, provided enough information to code these cases as non-Hispanic white, and one case included enough context about a person's geography and immigration status to code as Hispanic. As a result, the unknowns were further limited to eight adult cases. This recoded race variable was used throughout reporting and for bivariable analyses by race.

All case coding and narratives were reviewed by a second member of the research team, and any questions were resolved through an iterative and transparent process. Discrepancies or questions about how a variable was or should be coded were documented and reviewed in regular meetings; coding was revised if needed. While we were meticulous throughout the coding process, errors undoubtedly still exist.

Quantitative details that were coded were further analyzed with Stata 17 statistical software,⁴ using descriptive, univariable, and bivariable analyses to examine variable distribution and association. Data from the full case sample was analyzed when appropriate. But, while cases involving minors (as defined by the state of jurisdiction) were identified through media research and included in the full sample count, these cases have limited publicly available information due to the privacy considerations in the juvenile court system. Therefore, much of the data analysis focused on the adult-only subsample to further limit missing information that was not commonly released for cases involving minors. Subgroup analyses were then conducted for adult-only cases as well as cases involving helpers versus those involving the individual whose abortion was allegedly self-

managed. Additional subgroup analysis focused on cases that had differing court system outcomes.

The research team further conducted qualitative content analysis based on *apriori* and emergent themes that were also coded from the case files. In addition to the codebook, after reviewing and coding each case file, case narratives outlining each case's pathway into and through the criminal process were written. These narratives captured case nuances that were impossible to build into the codebook and provided case studies to be further analyzed and used in report writing. Case narratives were used to illustrate common features of the cases, focus the research on individual case experiences, showcase features of and lasting consequences related to the criminal process, and provide a qualitative understanding of criminalization.

Limitations

Despite this research's comprehensive methodology, the number of cases uncovered is likely still an undercount. Case data requested was not received from all jurisdictions and offices. And while the media research was comprehensive, not all cases are reported by media and identifying those that are is not an exact science. Finally, people are often investigated and arrested under charges not meant to apply to allegations of self-managed abortion due to police or prosecutors misapplying the law. As a result, even while this research is based on rigorous legal landscape analysis, the possibility of unlawful charges makes case identification difficult. The states and statutes researched were within the capacity of this project, but the keyword list developed did uncover some cases reported by media or with legal opinions that fell under misapplied law. While further research into cases that fell under additional niche statutes could be warranted, it is beyond

the scope of this project to investigate all cases under some of the broad laws that are misapplied to allegations of self-managed abortion, such as murder, manslaughter, or homicide. Scholars of public health and the law have previously noted undercounts in cases involving misapplications of law related to pregnancy and abortion.⁵

The research team conducted univariable and bivariable analyses to gain a descriptive understanding of the cases and understand possibly significant associations between variables, specifically by race, income, and self-managed abortion method. In some cases, court documents or media reports were not available and certain basic demographic details about someone were unknown. The research team considered missing data when drawing any conclusions about patterns related to the full sample or analyzed subsamples. Given the sample size and accounting for missing data, bivariable associations were analyzed and reported with care and consideration for these limitations.

Additionally, while the materials collected provide an adequate and valuable amount of data and information, the research team recognizes that not all aspects of someone's case proceedings and life make it into public documents. Using publicly available information was a decision based on ethical considerations and to understand what details courts focus on and media publicize to construct these cases. This research approach informed our research questions and, importantly, limited further intervention into the lives of people criminalized.

Terminology

The following fundamental terms are used with these associated definitions or reasoning:

Self-managed abortion

An abortion that occurs outside of the clinical medical system and without the help of a licensed health care provider. This is not the same as a telemedicine abortion or an abortion done using telehealth services in a jurisdiction where these services are legal. A self-managed abortion can be done using a variety of methods. Within this research, various methods of self-managing were documented and analyzed across cases.

Medication abortion

An abortion completed through the use of abortifacient medications, including the following combinations: mifepristone alone, misoprostol alone, or mifepristone and misoprostol together.

“Alleged” or “suspected” self-managed abortion

Because this research is solely based on accounts available through the public record in order to understand how the state is criminalizing self-managed abortion, the research team consistently uses the phrases “alleged” or “suspected” unless information is available confirming from the individual or their attorney that the self-managed abortion was intended.

Criminal legal system

This term refers to the legal system that responds to injurious conduct through the imposition of criminal penalties by the state. It encompasses criminal investigations, prosecutions, sentences of incarceration, and alternatives to incarceration. This phrase is used instead of “criminal justice system” because the research team recognizes that the outcomes of the system, both for the accused and for the victims it is supposed to vindicate, seldom end with justice.

As with all life experiences, *multiple factors* are involved in a person's decision to self-manage an abortion.

SELF-MANAGED ABORTION DETAILS & REASONS

People self-manage abortions for a variety of reasons, and If/When/How has long conceptualized this range of reasons within a framework of “push” and “pull” factors.⁶ Factors like restrictive policies, affordability, distance to clinics, and interpersonal violence “push” people away from accessing clinical care. Affordability, privacy, safety, and control can “pull” someone toward self-managed care. And people’s decisions to self-manage often include a combination of these factors working together.

While information from court records and media accounts of cases is seldom fully informed by the accused’s motivations, opinions, and feelings, some of the cases provided a window into the circumstances and factors that led to someone self-managing their abortion. Some of the reasons for self-managing that emerged included affordability of self-managed care versus clinical care; the belief that someone was too far along in their pregnancy for clinical care in their state; the inaccessibility of clinical care due to abortion policy restrictions in the individual’s home state; the distance to a clinic; and the pregnant person’s experience with interpersonal violence or trauma. These findings reinforce the “push” and “pull” framework and are also consistent with existing research

and scholarship about self-managed abortion decision-making.⁷

In early 2012, a mother living in Pennsylvania was approached by her 16-year-old daughter, who was pregnant and didn’t want to be. The mother and daughter began looking for options to end the pregnancy. The mother called a local women’s center and searched online for local abortion facilities, but the closest clinic was 75 miles away and out of state. Due to Pennsylvania’s 24-hour waiting period requirement at the time, any trip to an in-state clinic would also require two visits and an overnight stay. Traveling for the abortion would mean missing work, and the family only had one car that adults in the home shared to get to jobs. In addition, the woman’s daughter did not have health insurance. All of this led the woman and her daughter to an online overseas pharmacy that sold the same medication they would receive from an abortion provider for \$45.

The abortion medication — both misoprostol and mifepristone pills — arrived within days and the woman’s daughter took them both per the instructions. After initially experiencing bleeding consistent with a miscarriage, the daughter

experienced abdominal pain. As a precaution, the mother took her to the local emergency room. They told the health providers about the medication and how they obtained it — the daughter didn't want to tell hospital workers she had taken the pills, but her mother insisted they do so she could get the care she needed. The daughter received care that day and on a follow-up visit two days later. Without notifying the mother or daughter, the emergency room providers notified the police.

A few days later, police showed up at the woman's home to begin a criminal investigation. After being read her Miranda rights, the mother was interviewed by police and detailed the events that led to her daughter's visit to the ER. The woman explained that she didn't know she needed a prescription to buy the pills, which police alluded to being required. The same day that police interviewed the woman at her residence, family regulation system social workers also interviewed her daughter. There was no indication that the daughter was temporarily removed from the woman's custody as the woman remained living with her husband and two daughters throughout the case proceedings. After these interviews, police also did not immediately arrest the woman.

But, almost two years later, in late 2013, police filed a criminal complaint charging the woman with four crimes related to helping her daughter end her own pregnancy: one felony count of medical consultation and judgment, one misdemeanor count of pharmacy unlawful acts, one misdemeanor count of endangering welfare of children, and another misdemeanor charge of simple assault. The woman was arrested and released from custody while awaiting trial on \$25,000 bail.

Represented by retained counsel, the case came to a close with a guilty plea about eight months later. As the woman told one reporter after sentencing,

her lawyer planned to negotiate a plea deal in which she would plead guilty to the misdemeanor charges alone to limit her prison time. But, because endangerment offenses are reported on background checks for caregiving work, she learned that pleading to those charges would automatically result in the loss of her job as a care aid. She and her attorney instead negotiated a guilty plea to the abortion-related felony charge and the pharmacy-related misdemeanor count in exchange for the withdrawal of the remaining two charges.

While the woman qualified for probation based on her lack of a criminal history, the judge sentenced the woman to incarceration. At sentencing, he argued that the case was about the unlawful practice of abortion: "What we have here, we can argue until the cows come home of the right to an abortion. ... In some sense, this was practicing medicine without a license. A practitioner might be able to perform this, but a lay person is not permitted to take this kind of responsibility which is a huge responsibility. ... Regardless of our viewpoints, we have to enforce the law as it exists in Pennsylvania. This was somebody taking life and law into their own hands and not to be taken lightly." The woman was sentenced to 9 to 18 months in a county prison with eligibility for automatic and immediate work release, a \$1,000 total fine, 40 hours community service, and 12 months probation for the misdemeanor charge to run concurrently.

Despite the widespread media reporting on the case, the woman at its center only spoke to one reporter after experiencing a barrage of unwanted attention related to her case. She spoke to this reporter right before beginning her prison sentence and corrected some of the initial misinformation reported about her profession, discussed how scared she was to go to prison and be away from her family, and talked about

how difficult the case had been on her family. Living in a small rural area and having her name associated with an “illegal abortion” in the media was particularly hard for her: “That was very upsetting for my family. It has been awful.”

A confluence of factors led this woman to help her daughter self-manage. For example, after the mother and her daughter confronted various “push” factors that led them to consider self-managed abortion, they were “pulled” in that direction due to affordability and information that affirmed the medical safety of the medication abortion regimen. This allowed them to assert their own agency at the final stage of their decision-making process. And while the decision to end a pregnancy was seemingly not complicated, their journey to self-managed care involved a number of hurdles and influences, further illustrating the multiple and intersecting factors that can be part of this decision.

In another case, the person who allegedly ended her pregnancy also expressed a combination of “push” and “pull” factors as part of her decision. However, her case illustrates strong “pull” factors — such as her desire to manage her own care in private due to her distrust of the formal medical system — that are not always in the forefront of public dialogue about self-managed abortion:

In early 2005, a woman living in Arizona found out she was pregnant. The woman had no intention of carrying the pregnancy to term and also knew doing so could endanger her health. The health risks she faced were the result of years of sexual abuse as a child and a previous pregnancy loss. This experience left her with scarring in her uterus and fallopian tubes; doctors told her that carrying a pregnancy to term would be both unlikely and life-threatening. Related to this trauma, the woman did not like doctors or hospitals, and she didn’t have health insurance and could

not afford prenatal care or a clinical abortion. She worried about the pain and depression that accompanied previous miscarriages. The accumulation of these experiences, feelings, and logistical barriers resulted in the woman taking steps to end the pregnancy on her own. She took over-the-counter herbs she believed could induce a miscarriage and one mifepristone pill.

The woman claimed her pregnancy ended in a stillbirth at her home. With the assistance of her live-in friend, they buried the fetal remains in their backyard. But, after learning about the abortion and burial, an acquaintance reported the woman and her friend to police, who opened a criminal investigation. After the pathologist’s report was inconclusive as to whether the death occurred in utero, police interviews and interrogations focused on whether the fetus was stillborn or born alive.

The case was presented to a grand jury, which included testimony from the police detective about the woman’s efforts to self-manage her abortion as evidence. The grand jury indicted the woman on one count of conspiracy to conceal a dead body; the woman’s friend was indicted on one count of concealment of a dead body and one count of conspiracy to commit concealment for his role. The woman’s attorney presented a thorough defense, including an initial challenge to the inclusion of the self-managed abortion details in the grand jury proceedings as “misleading, irrelevant and prejudicial” and the argument that the charge could not be applied to the case.

A jury found her guilty; her friend’s case ended in a guilty plea to an amended charge. After receiving a guilty verdict, the woman challenged her conviction at the state appellate court level. The appellate court sided in her favor, reversing and vacating her conviction after determining

that the state legislature did not intend for the concealment statute to apply to fetal remains.

Not every case offered such a detailed account of an individual's reasons for self-managing their abortion. And, in many of the cases, a person's decision to self-manage was not explicit or was indistinguishable from their decision to want and seek an abortion in general. For example, in public records in at least five cases, individuals who self-managed their own abortion cited their inability to raise more children as a factor.

While these details give insight into why people were motivated to end their pregnancies, they do not fully explain why they self-managed instead of seeking clinical care. For some of these people, the financial concerns that made the prospect of raising another child impossible also made more affordable self-managed options appealing; however, this was not explicitly stated in all of these cases.

While most of our overall analysis focuses on adult cases due to the privacy within the juvenile court system, one case that received widespread media attention that involves minors includes another important factor, deception by a crisis pregnancy center, as one of the motivating reasons for the self-managed abortion.

In 2004, a 16-year-old in Michigan became pregnant by her 16-year-old boyfriend. The two teenagers were worried that their parents would be disappointed in them if they found out about the pregnancy. However, in their state at the time, teenagers were required to either involve a parent or go through the judicial bypass process in order to access a clinic-based abortion. Seeking more information about their options, the couple called a crisis pregnancy hotline to learn more. The hotline gave them misinformation, including claiming that they would be required to tell their

parents even if they went through the judicial bypass process. As a result, the couple came up with a plan to end the pregnancy on their own. The girl allegedly consented to her boyfriend beating her with a bat to end the pregnancy.

After the miscarriage occurred, the teenagers told their mothers because they didn't know what to do with the fetal remains. The teenagers didn't tell their parents exactly how the pregnancy ended, but the parents called a local hospital to get advice on how to discard the remains from the miscarriage. The hospital claimed there were no regulations. Not wanting to throw the remains away, they buried them in a family member's yard.

A few weeks after the miscarriage, the girl attended a school conference where she talked about the incident. After learning about the abortion, an adult facilitator at the conference contacted the police, who were eventually led to the buried remains. A criminal investigation was opened, and an autopsy was done before anyone was arrested or charged. The county medical examiner determined that the gestational age of the fetus to be in the second trimester and not viable at the time of the miscarriage. The medical examiner's report concluded the "fetus died from the blunt impact of the beatings."

Neither the teenage girl nor the parents who helped with the burial faced any charges. However, the boyfriend was arrested and charged under a felony statute criminalizing intentional conduct against a pregnant individual resulting in miscarriage or stillbirth. He was tried as a juvenile.

Despite the case's privacy at the court level, there was widespread media coverage at the time. In one national media interview, the boy's defense attorney told reporters that an accumulation of factors led to the situation. The attorney outlined

that the young people were “totally desperate” after receiving incorrect information, not receiving comprehensive and accessible sex education at school, living in a state with a parental involvement law and no funding for abortions, and being afraid to tell their parents. In this same vein, after the boy was ultimately convicted, he was sentenced to serve a two-year sentence of probation. A distinctive condition of his sentence, which was strongly opposed and questioned by his attorney, included a requirement to complete community service at a local crisis pregnancy center. In the face of this case and the pitfalls it exposed, the local school system claimed it might update its sex education curriculum. Ultimately, the updated curriculum would still be based on abstinence and whether any further updates ever occurred is unknown. Today, the state still has a parental involvement law.

This particular case bears out the various and unique factors that can push young people to self-manage abortions. In particular, the role of inaccurate information about their state policy around parental involvement highlights the power and negative implications of abortion misinformation.

As with all life experiences, multiple factors are involved in a person’s decision to self-manage an abortion. While data from this research do not provide a complete picture of what factors led people to self-manage abortions, some cases provide insight into the complexity of these decisions. Further understanding the human nuances that factor into these decisions — including state policies and practices, personal agency, and the impact of abortion misinformation — reinforce why criminalization is an incompatible response to complicated life experiences.

From 2000 to 2020, at least 61 people were *criminally investigated or arrested* for allegedly ending their own pregnancy or helping someone else to do so.

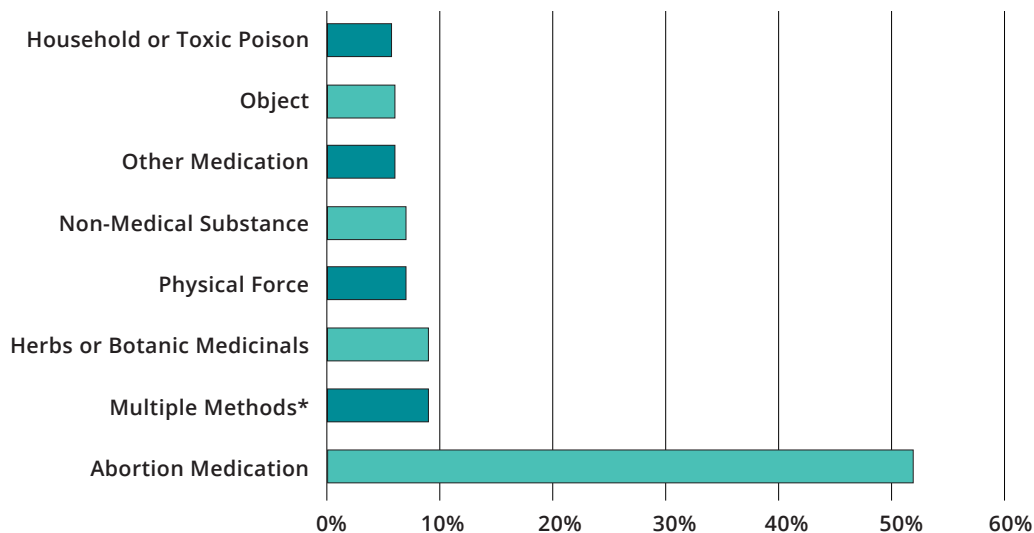
Adult Cases Demographics

While 74% of adult cases (n=40) involved the criminalization of the person for allegedly self-managing their own abortion, 26% (n=14) involved people helping others self-manage. The average age among the adult cases is 28.3 years. Among the 54 adult cases, 44% involved people who were non-Hispanic white, 19% Hispanic, 17% non-Hispanic Black, 4% non-Hispanic Asian, and 2% non-Hispanic other. In 15% of adult cases, the race was unknown. Taken together, 41% of the adult cases involved minoritized racial and ethnic groups, making people of color disproportionately represented in the sample when compared to the larger population as reported by the 2020 U.S. Census. There was not enough information available in the public records to gain a comprehensive insight into affected persons' immigration status across the sample.

Self-Managed Abortion Method & Timing

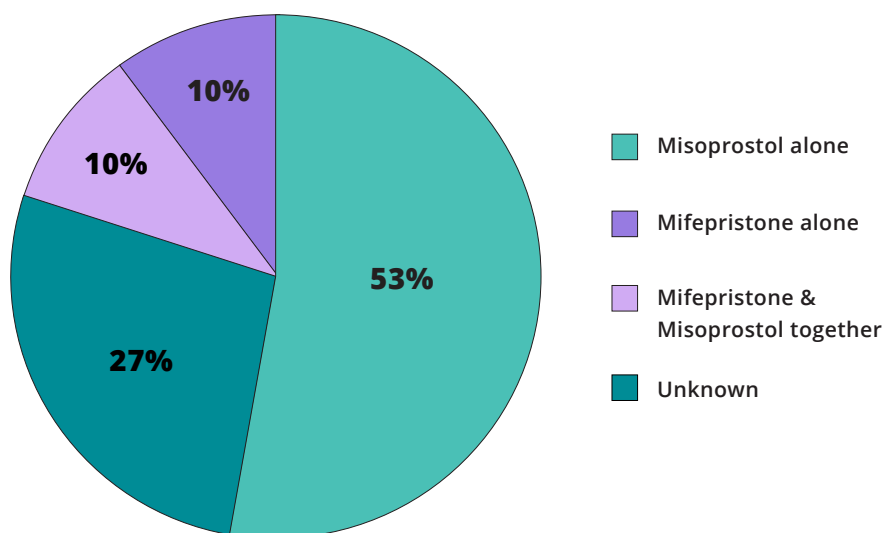
Adult cases included the use of a variety of methods to allegedly self-manage, but the majority (52%) included the exclusive use of medication abortion. The other types and frequency of methods mentioned included: 9% herbs or botanic medicinals, 7% nonmedical substance (such as illicit drugs), 7% physical force, 6% other medication, 6% object, and 4% household or toxic poison. Additionally, in 9% of these cases, multiple methods were reported; the following combination of methods were named in cases involving multiple methods: nonmedical substances and physical force or object; object and physical force; herbs or botanic medicinals and medication abortion; or herbs or botanicals and object.

METHODS USED TO ALLEGEDLY SELF-MANAGE AMONG 54 ADULT CASES



*Multiple Methods only includes Non-Medical Substance & Physical Force or Object, Object & Physical Force, Herbs or Botanic Medicinals & Medication Abortion, or Herbs or Botanic Medicinals & Object

MEDICATION ABORTION REGIMEN AMONG 30 CASES



Among the 30 adult cases where medication abortion was used exclusively or in combination with another method, people allegedly used a variety of pill combinations: 53% used misoprostol alone, 10% indicated using mifepristone alone, 10% used mifepristone and misoprostol together, and the pill regimen was unknown in 27% of the cases.

In 26 of the cases involving medication abortion, information about the source of the pills was also revealed: 14 of these cases (54%) indicated the pills were received by a relative, friend, or other associate of the pregnant person or helper, and 11 of these cases (42%) named that the pills were obtained online. In the final case, the source of the pills didn't fall into either of these categories as the only information provided about its source was that it was "from Mexico."

In 87% of the adult cases, gestational age was mentioned. Of these mentions, 4% of the cases involved alleged self-managed abortions that

occurred during the first trimester and 87% during the second or third trimesters. In 9% of adult cases where gestational age was mentioned, the information was too unclear to determine the trimester (either because the range of weeks provided fell across trimesters or only generalized phrases like "several" were used). In summary, people who were, or who assisted someone who was, further along in their pregnancy have been the main targets of self-managed abortion criminalization.

Criminal Intervention & Pretrial Detainment

Once law enforcement became involved in an adult case, 87% (n=47) led to an arrest; of these, 42 cases proceeded through the criminal court process. Among the five cases that did not proceed, either no charge was ultimately filed or there was not enough information in public records about what happened after the arrest stage.

When analyzing case progression by race, there was no substantial difference observed between non-Hispanic white adults and adults of color.

Among the 42 adult cases that proceeded through the criminal court process, 93% (n=39) of the individuals arrested were incarcerated pretrial. In 49% (n=19) of these cases, people were released after they paid a bail amount mandated by the court and in 23% (n=9), people were released without having to pay bail (i.e. on their own recognizance). Additionally, in 18% (n=7) of these cases, people were released due to other circumstances (such as being released under the supervision of a pretrial services program, being transferred from jail into a court-mandated drug treatment program, or it being too unclear if they were released on bail or their own recognizance), and in 5% (n=2) of these cases, people were held in jail until their case concluded because they couldn't pay the bail amount required by the court. While the association between this variable and race was statistically significant ($p < 0.01$), there was no substantial difference found between races.

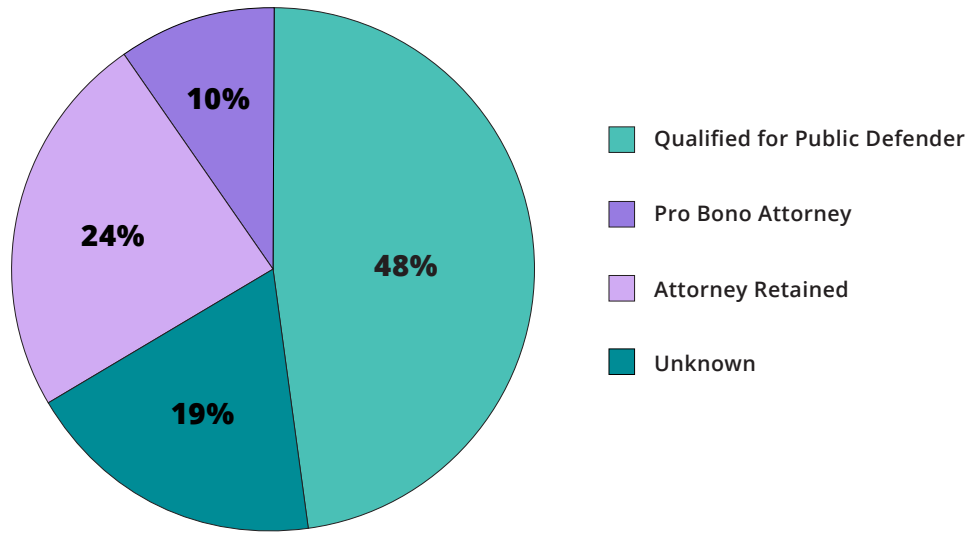
For the 21 cases where someone either paid bail to be released pretrial or was held for the duration of their case unable to post bail, the reported bail amounts ranged from \$5,000 up to \$200,000. No matter the intent of bail, like all other components of the criminal process, the conditions or amount of it can be riddled with prejudice and stigma. In the cases in this research, bail amounts can often be correlated to a crime's perceived severity, and many people charged for allegedly self-managing an abortion face being charged with extreme and severe misapplied laws. As a result, someone charged with a homicide crime could likely be detained on a higher bail amount even if the circumstances of the incident didn't fit the charge. For example, among the cases where bail was paid and someone's initial given bail amount was in the highest documented range (\$100,000

to \$200,000), this amount correlated with charges under homicide crimes, a criminal abortion law, a child neglect statute, and child abuse charges.

In one of these cases, a judge further wielded his power in assigning a bail amount based on feelings and prejudice. A woman faced multiple charges for allegedly helping her daughter obtain a medication abortion. She was initially detained pretrial on \$14,000 bail, but at her first court appearance, the assigned judge claimed he was so "disturbed" by the case details and, before the case had even been presented, immediately claimed that a "child's life was terminated" and that the woman's actions were "tantamount to murder." In response, he raised the woman's bail to \$185,000. As a result of this increase, the woman was unable to post the new amount and remained in jail for the next two weeks. The woman's public defender challenged this increase and explicitly stated that the judge's response was emotionally and morally charged rather than legally based. After this challenge, the woman's bail was reduced to its original amount and she was released pretrial. Discretionary bail can be used to control people before they can even present a defense.

This case also illustrates another way that defense attorneys can advocate for their clients: by requesting a reduction in bail. In at least two other cases in this research, a person's bail was reduced after successful advocacy by their attorney. In one case, a woman's bail was reduced from \$100,000 to \$35,000 and in another case from \$22,500 to \$10,000. While the final bail amounts in these cases remain high, their reduction was life-changing for the individual who faced charges. As a result of these reductions, both women were able to be released on bail after already spending weeks in jail following their arrests.

LEGAL REPRESENTATION AMONG ADULTS WHOSE CASES PROCEEDED



Legal Representation

Most adults whose cases proceeded through court were living in poverty. This was determined based on the type of legal representation a person received and whether they qualified for a public defender or received pro bono (i.e. free) representation. Among the 42 adult cases that proceeded through court, 48% were represented by a public defender, 10% by an attorney who provided pro bono services (oftentimes in collaboration with a legal advocacy organization working on reproductive rights and justice cases*), and 24% had a private attorney retained to represent them. In 19% of these cases, it was unknown if the person’s attorney was retained or appointed.

Case Progression

Various charges have been used to criminalize people for allegations related to self-managed abortion, many of which have been misapplied and are crimes of severity. This research adds evidence

to this phenomenon and is detailed even further on page 36 of this report. Most strikingly, however, is that among the 42 adults whose cases proceeded through court, 83% were charged under statutes that were not self-managed abortion bans. Additionally, 86% of these 42 cases — whether they proceeded under self-managed abortion bans or not — carried at least one felony charge. When analyzing charge severity by race among adult cases, there was no statistically significant association or differences.

Regardless of how charges may have adjusted during the course of a case, among the 42 adult cases that progressed, 45% (n=19) ended with a guilty plea, 29% (n=12) were dropped or dismissed by either the prosecutor or court, 10% (n=4) went to trial (all of which ended with a guilty verdict on at least one charge), and 10% (n=4) ended with an “other” nonstandard outcome, such as the charges never moving past the grand jury, the case still pending, or the charges only being dropped after the defendant completed mandated probation. The lower court outcome was unknown in 7% (n=3) of these cases. When the lower court resolution was

* Occasionally, If/When/How was one of the organizations that worked on cases in this sample.

CASE PROGRESSION FEATURES FOR ADULT CASES THAT MOVED FORWARD THROUGH THE COURTS

Key Case Progression Features

n = 42 Cases

Incarceration Prior to Disposition (n=39)	n	%
Yes - Released on Bail	19	48.72
Yes - Released on Bail on Own Recognizance	9	23.08
No - Held Until Sentence or Dismissal	2	5.13
Unknown	2	5.13
Other	7	17.95

Income and Representation	n	%
Public Defender or Pro Bono Private Attorney	24	57.14
Attorney Retained	10	23.81
Unknown	8	19.05

Charging Statute	n	%
SMA Ban	7	16.67
Criminal Abortion Law	8	19.05
Fetal Harm Law	4	9.52
Other Statute	23	54.76

Initial Charge(s) Highest Crime Level	n	%
Felony	36	85.71
Misdemeanor	5	11.90
Unknown	0	0.00
Other	1	2.33

Lower Court Resolution	n	%
Guilty by Trial	4	9.52
Guilty by Plea	19	45.24
Dropped or Dismissed	12	28.57
Other Nonstandard Outcome	4	9.52
Unknown	3	7.14

analyzed by race, the association was statistically significant ($p < 0.05$), but the sample sizes were too small to observe any substantial differences.

For the 19 cases that ended with a guilty plea, the majority ($n=11$) involved a modification of charges in the plea deal process. From a charge severity level, while all 11 of these cases that had a charge modification in the plea process began with at least one felony charge, four had the charges reduced to a misdemeanor through the plea bargain. When analyzed by race, this association was statistically significant ($p < 0.05$). Seven of the eight cases involving non-Hispanic white adults had their charges adjusted through the plea process, while only four out of the seven adults of color did. This sample size is very small to draw any meaningful conclusions about this difference, but it is still important to consider.

Overall, the lower court outcome findings are revealing. While it is unsurprising that the majority of cases ended with a guilty plea deal, given how most convictions are concluded across the criminal system,^a a little more than a quarter ($n=12$) of the cases were dropped or dismissed by either the prosecutor or court. When digging deeper into these 12 cases, nine (75%) had the charges dropped by the prosecutor and three (25%) were dismissed by the court. This means that in most of these cases, a prosecutor tacitly admitted that the charges should not have applied to the allegations. These determinations could have been prompted by a number of reasons and tactics, but it should serve as motivation to advocates and attorneys to force a review of charges so clients aren't wrongly convicted.

Additionally, while taking a case to trial is an undertaking that puts the defendant under a microscope, it can also allow someone to preserve future recourse. While all cases that went to trial

ended with a guilty verdict in this research, each of them appealed their convictions at a higher court level. Three of these appellate challenges ended in the individual's favor. One case resulted in a complete reversal of the trial court conviction and sentence. Another resulted in an order to vacate both charges that the individual was convicted of and a requirement to resentence the individual on a lower severity charge. The third case resulted in a reversal of the conviction and had the case sent back to the lower court for resentencing.

Appellate decisions can be, first and foremost, life-changing for a defendant, but they can also create new law or reinforce existing legal protections through published decisions. This is especially important when the case involves charges that should never have been applied in the first place. Unfortunately, this is where plea deals further limit people's agency to challenge a conviction: based on the requirements of most plea deals, people often relinquish their rights to challenge a conviction on appeal when they enter a plea. Under limited circumstances, such as when a person has received ineffective counsel, people may be able to challenge their conviction from a guilty plea. One of these avenues — called "post-conviction relief" — was only seen in one of the 19 adult cases that ended in a guilty plea. In this single case, however, the result was monumental for the woman; she was released from prison and reunited with her children from whom she was separated when sentenced to a maximum of eight years incarceration.

Sentencing Following Conviction

Of the 23 cases that ended with a conviction, which included all of those that ended with a guilty plea or were found guilty at trial, the sentences were evenly split between incarceration and probation:

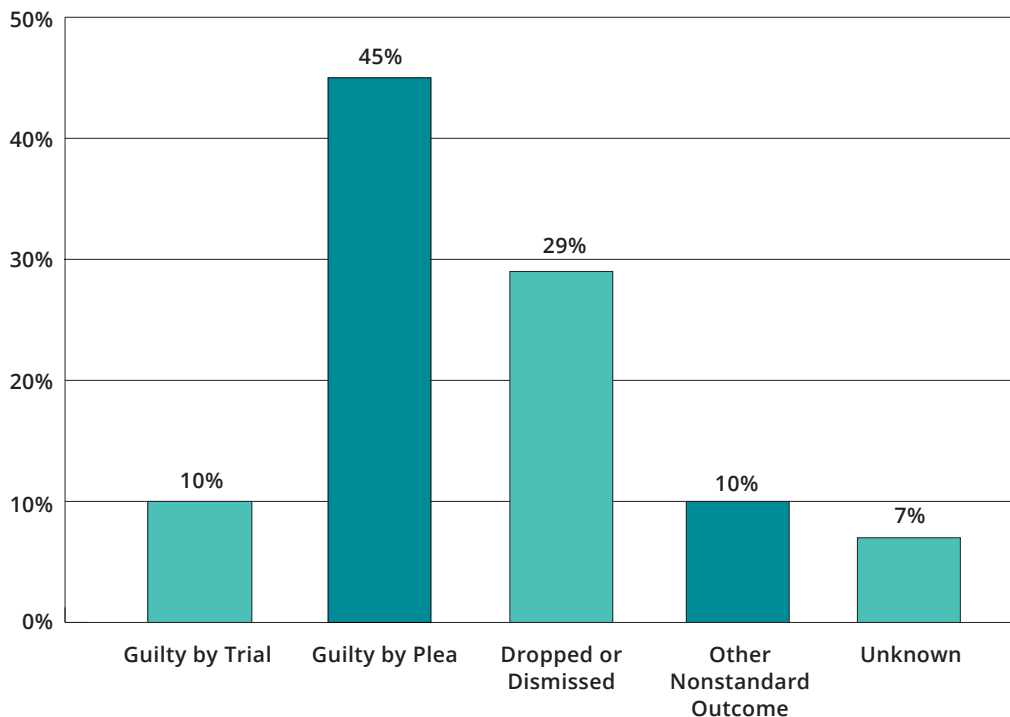
11 cases were sentenced to incarceration and 11 to probation. The final case didn't neatly fall into either of these categories and involved a sentence of community control that included house arrest followed by probation. Regardless of whether someone was incarcerated or monitored through probation, many sentences also included other requirements, including but not limited to monetary fines, community service, submission of DNA, regular drug and alcohol testing, parenting and skills classes, or counseling. In addition to having multiple other requirements, many sentences handed down by the court may have been different than what an individual served depending on the circumstances of their case.

What is clear from the information available about sentences is that they varied in length and requirements. One of the most notorious cases in this research received the longest sentence identified: about 20 years in prison (after all sentencing adjustments on the two counts that

the woman was found guilty on were applied). In this case, the woman appealed her conviction and the appellate court ruled that she be resentenced. As a result, she was released after nearly two years in prison. Maximum incarceration time handed down in other cases ranged from three months to eight years.

Additionally, even in one instance where the individual's case ultimately ended in a dismissal, the woman was required to serve a sentence before this was approved. In this case, which was categorized under "other nonstandard outcome" for the lower court resolution data, the woman was required to complete "pre-trial probation" for 10 months and undergo mental health treatment before her case was dismissed. This case, along with the varied sentences and requirements described above, illustrates the punitive nature of the criminal system and the way in which case resolution recorded in public documents may mask the harms of an atypical proceeding or sentence.

LOWER COURT RESOLUTION FOR ADULT CASES THAT PROGRESSED



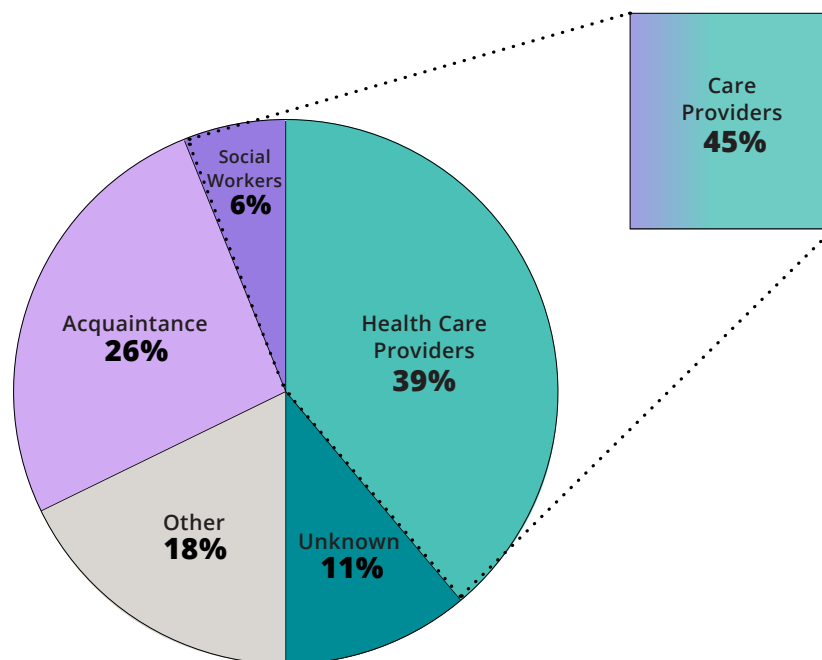
Based on research to date, *no state or federal law currently requires* a suspected or actual occurrence of a self-managed abortion to be reported to law enforcement.

HOW CASES CAME TO THE ATTENTION OF LAW ENFORCEMENT

How cases came to the attention of law enforcement in the first place is the key to understanding how criminalization begins. Among the adult cases, law enforcement was most frequently called by care professionals who are designated mandatory reporters: 39% of the cases were reported to law enforcement by health care providers and 6% by social workers.

About a quarter of adult cases (26%) were reported to law enforcement by acquaintances entrusted with information, such as friends, parents, or intimate partners. Another 18% came to the attention of police by other means, including police recovery of fetal remains, anonymous tips to police, or a 911 call on behalf of the pregnant person. The law enforcement trigger was unknown in the remaining

HOW ADULT CASES CAME TO THE ATTENTION OF LAW ENFORCEMENT



11% of adult cases. This analysis overwhelmingly reveals that individuals criminalized for self-managed abortion were frequently reported to police by people they entrusted with information.

Care providers, including medical staff or social workers, are typically mandated by state law to report certain health or domestic matters, such as suspected child abuse, to various authorities. What providers are mandated to report is based on policy, but what and who they ultimately decide to report is often unavoidably laced with bias and subjectivity. Based on research to date,⁹ no state or federal law currently requires a suspected or actual occurrence of a self-managed abortion to be reported to law enforcement. In fact, absent a specific requirement in state law, a health care provider who reports their patient to law enforcement for self-managing an abortion is likely in violation of the Health Insurance Portability and Accountability Act, also known as HIPAA. Despite this, 45% of cases in the adult sample began after care providers contacted law enforcement.

What motivates a care provider to report their patient for a suspected or actual self-managed abortion may never be known. While there exists limited research on why providers may report patients to law enforcement and other government authorities, one recent study found that, in some circumstances, this could be motivated by “provider perception of a need to report abortion complications and fetal demise, particularly at later gestations, and other reporting requirements (e.g. substance use, domestic violence, child maltreatment, suicide/self-harm).”¹⁰ Further, racism and bias are widely recognized characteristics of health care provision, including during pregnancy; they not only can affect who may be reported to police¹¹ but also the quality of health care one receives.¹²

Abortion stigma may also play a role in why a person, a care provider or acquaintance, would report an alleged self-managed abortion to law enforcement. In their 2013 white paper, scholars with the Sea Change Program, *Advancing New Standard in Reproductive Health (ANSIRH)*, and *Ibis Reproductive Health* offered an accessible definition of abortion stigma as “a shared understanding that abortion is morally wrong and/or socially unacceptable. The stigma of abortion manifests within multiple levels, including media, law and policy, institutions, communities, relationships, and individuals.”¹³ This stigma can seep into the ways people who get abortions, self-managed or in-clinic, are treated. And in the context of criminalization, abortion stigma may play a role throughout all aspects of one’s case, from how it comes to the attention of law enforcement, is reported in the media, proceeds through court, or affects someone’s life once legal action has concluded.

In this research, the scenarios that led care providers to report their patients to law enforcement varied. In some, the case details paint a straightforward picture where people openly shared information about their self-managed abortion attempts with care providers who subsequently called police. For example, after one woman in South Carolina went to the hospital for abdominal pain and told health care workers she had taken abortion medication to end her pregnancy at home, they contacted police. The woman’s case was investigated, and she was arrested under her state’s self-managed abortion ban. Another woman in Texas took herself to the local emergency room due to blood loss after taking pills to self-manage her own abortion. She told hospital health care workers everything, and they contacted police who opened a criminal investigation.

In other cases, care providers distrusted patients and reacted to their accounts by reporting them

to police. For example, after a woman in Illinois took abortion pills to end her pregnancy at home and began experiencing bleeding and loss of consciousness, her boyfriend called 911. At the hospital, the woman denied having been pregnant but health care providers claimed she exhibited signs to the contrary. In response, the hospital workers called police to investigate the situation.

In a case in Iowa, a woman fell down her stairs while pregnant and called EMS. The EMS workers determined she was unharmed after evaluating her, but she requested to be taken by ambulance to a hospital to receive follow-up care. During her hospital evaluation, she confided in the attending nurse that she had considered abortion or adoption at one point in the pregnancy. The nurse then involved another doctor, and the woman was further questioned about her intentions to end the pregnancy. The health care workers subsequently called police and reported that the woman intentionally threw herself down the stairs to end her pregnancy. Despite denying this and the allegation overall, the woman was investigated and arrested on an attempted feticide charge.

Additionally, a health care provider's personal opinions about abortion may play a role in their actions to involve law enforcement, showcasing how abortion stigma can infiltrate provision of care. While there was only one case in the sample where a provider's ideology — that he held anti-abortion views — was revealed, it was, once again, compounded by the distrust the provider had about the information the woman shared when seeking care:

In 2013, a woman living in Indiana presented to a hospital emergency room with severe vaginal hemorrhaging. After initially denying having been pregnant, the woman eventually told doctors that she had miscarried and that she believed

she was only a couple of months along. At least two doctors disagreed with her estimation of gestational age, instead believing she was in her third trimester and she may have delivered a live infant. One of the doctors who examined the woman was a member of the American Association of Pro-Life Obstetricians and Gynecologists. The doctor then called the police and left the hospital to join them in search of the fetus. The doctor and police located the remains, and a criminal investigation continued with the activation of the police department's homicide unit.

The case against the woman included evidence such as cell phone texts with her best friend about ordering abortion medication from an online pharmacy in Hong Kong and testimony from the state's forensic pathologist claiming that the fetus was born alive, after he performed the medically debunked "lung float test." The state argued that the woman took abortion pills to end her pregnancy and delivered a live infant whom she failed to care for after birth, ultimately charging her with two contradictory charges — neglect of a dependent and feticide.

Additionally, police are not just called to hospitals, but are sometimes part of their infrastructure. For example, hospitals in some parts of the country have installed their own private police forces, with investigations into some of them revealing racist practices and disproportionate arrests of Black people.¹⁴ Some hospitals are also welcoming to immigration authorities, allowing Immigration and Customs Enforcement to conduct raids in hospital and clinical settings.¹⁵ This dangerous phenomenon of private police at hospitals was also found in this research. In one case, after a woman who delivered a stillborn fetus was taken to the hospital for severe blood loss, she was investigated by the hospital's own police force. Health care workers notified the hospital's private police force of their suspicion

that she had an attached umbilical cord but no fetal remains with her. The hospital's private police contacted the local police department, and both the woman and her boyfriend were arrested for crimes related to her alleged self-managed abortion.

No matter the motivation, involving police in health care matters and settings can instill fear in those seeking health care and also push individuals away from care altogether.¹⁶ And, in the absence of a legal requirement to report under the law, such reports breach medical ethics and the privacy critical to patient-provider relationships.

The second largest category of people who reported cases to law enforcement were acquaintances of the individual criminally investigated, such as friends, parents, intimate partners, or relatives. Some of these cases also involved the burial or disposal of fetal remains from the pregnancy. In some of these, this was a key factor in motivating a law enforcement report. For example, in one circumstance where a woman took pills to end her pregnancy and buried the remains in her backyard with help, police moved forward with their investigation after an acquaintance of the woman reported the situation to a health care clinic that called police. The police dug up the remains under the auspices of determining if the fetus had been born alive; their investigation resulted in the arrest and conviction of the woman who ended her pregnancy and a friend who helped her bury the remains. In another case, a woman allegedly ended her own pregnancy and buried the remains in her backyard. During an argument at her home with various family members present, someone used this information — which had not been shared broadly to the family — against her. One of the people present reported the situation to police, and the woman was arrested and charged under her state's pre-*Roe* criminal abortion law.

In this and other cases, abortion stigma can play a role in acquaintance reports to police. In at least one other case, a friend's feelings about the alleged self-managed abortion attempt were inextricably linked to the report:

In 2013, 25 weeks into her pregnancy, a woman gave birth to a premature baby who died at a local hospital in Virginia. Within the next few weeks, police opened a criminal investigation into the matter after a friend claimed that the woman had taken measures to intentionally end her pregnancy with the help of another friend. Friends who were interviewed by police claimed that they had conversations with the woman and her helper about desires and plans to end the pregnancy, including allegations that they purchased ingestible items at a vitamin store and planned to break into a local abortion clinic to get additional materials "known to induce labor." The friend who brought the matter to detectives expressed guilt to the media for reporting the situation but said she felt "uncomfortable" about all of it and that she wasn't "trying to ruin anyone's life. ... I'm just upset that baby didn't have a chance at life." Police filed a search warrant for the woman's medical records and other items belonging to the woman and her helper, including cell phones and computers. Both women were arrested on two felony charges - producing abortion or miscarriage and conspiracy to produce abortion or miscarriage - and released pretrial on an unknown bond amount.

Ultimately, the prosecutor dismissed the charges against both women; a spokesperson for the prosecutor told reporters that "the evidence [was] insufficient to proceed." After the dismissal, the defense attorney of the woman whose pregnancy ended told reporters that the lack of medical evidence for the charges was apparent: "To say that she aborted her own fetus, you need medical

evidence, medical testimony, and I just never saw anything like that in this case.”

Apparent from this case is that regardless of the reasons for a fetal death or pregnancy loss, people may feel motivated by various personal feelings, including stigma, to report allegations of self-managed abortion to police. And people have faced charges based on these unconfirmed allegations, even when no medical or tangible evidence exists.

Finally, these cases demonstrate the risk that people face when they share information about a self-managed abortion. Even if they share with someone they trust, that person may share further with someone who feels compelled to call the police. For example, in one case, a woman confided in a close friend that she had ended her pregnancy at home by taking pills ordered online. This friend then shared the information with his sister, who subsequently contacted police.

These trends demonstrate that at the heart of most criminalization for self-managed abortion is a breach of trust, whether by a care professional with access to sensitive medical information or a loved one in whom the pregnant person confided. This leaves people in a difficult position, and contending with a deeply stigmatized issue already, to question who they can seek support from, share information with, or confide in during times of need.

**Among the 42 adults
whose cases proceeded
through court, 83% were
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that were not self-
managed abortion bans.***

MISDIRECTION & MISAPPLICATION OF THE LAW

When *Roe's Unfinished Promise* was published in 2017, only seven states had laws explicitly criminalizing self-managed abortion. In the intervening years, five of these states repealed their laws.* Today, only Nevada retains an operational criminal ban on self-managed abortion.

Common sense would then suggest that criminal investigations and arrests of people for self-managing abortions from 2000 to 2020 should have only occurred in the states with criminal prohibitions. But criminal laws have been misapplied to self-managed abortion cases. *Roe's Unfinished Promise* identified criminal abortion or fetal harm laws as particular classes of statutes ripe for misapplication. For this reason, public data requests for this research also included states that had criminal abortion or fetal harm laws on their books between 2000 and 2020. What emerged from the resulting data not only confirms that police and prosecutors have circumvented the law to punish someone for an abortion, but also an even murkier reality: the majority of charges did not occur under self-managed abortion, criminal abortion, or even fetal harm laws.

From 2000 to 2020, 61 people were criminally investigated or arrested in 26 states for self-managing an abortion or helping someone else do so; of these 61 cases, only 14 arose in a state where self-managing an abortion is or was a crime. Among the 54 adult cases, for which more detailed charging information is available, 42 moved forward past the investigation and arrest stage and had charges filed. Of these 42 cases, only 17% (n=7) had any charges under a state's self-managed abortion law, 19% (n=8) under a state's criminal abortion law, and 10% (n=4) under a state's fetal harm law. Most of these cases — 55% (n=23) — proceeded under a variety of criminal laws. For cases proceeding under a state's self-managed abortion, criminal abortion, or fetal harm law, some included additional misapplied charges.

Of the 42 adult cases that proceeded through court, 71% (n=30) involved the criminalization of the individual who allegedly self-managed their own abortion, while 29% (n=12) involved the criminalization of someone who helped them. When looking at the cases of helpers alone, the charges varied as expected because a helper's involvement in a case would be targeted differently than a

* Idaho's law was deemed unconstitutional in 2012 and is unenforceable even though it remains in the code.

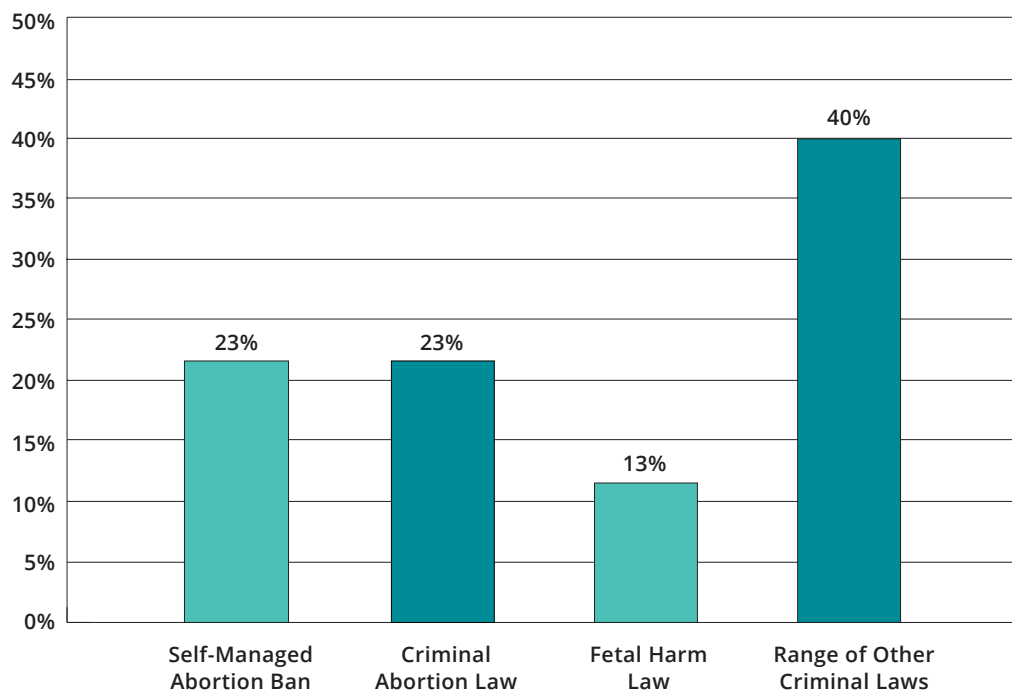
abortion bans, but the majority still proceeded under laws never intended or allowed to be used for self-managed abortion: 23% (n=7) under a criminal abortion law, 13% (n=4) under a fetal harm law, and the 40% (n=12) under a range of crimes, including those related to fetal remains, child abuse, felony assault or assault of an unborn child, practicing medicine without a license, or homicide and murder. The array of charge types used leaves people who self-manage abortions in a murky state of legal risk, especially when there is no applicable statute prohibiting self-managed abortion in the vast majority of states.

Public records further reveal the extent to which prosecutors have searched for ways to criminally charge individuals alleged to have ended their own pregnancy. In one case, the local prosecutor readily admitted that taking abortion pills to end a pregnancy is not a crime,

but nevertheless charged a woman with abuse of a corpse because the remains had been disposed of prior to the arrival of emergency responders. In some cases, erroneous charges were applied, but a conviction was never reached because a prosecutor may have admitted the self-managed abortion is not unlawful or couldn't convince a judge to move forward with a misapplied law. And while dismissals are a recognized win, the process to get to that point still subjects people to harmful criminal system consequences:

In 2002, a woman in Ohio tried to end her pregnancy through self injury, but the attempt didn't ultimately cause an abortion and the woman's fetus was unharmed. The state still pursued charges, initially filing a felony assault charge. As a result, she was held in jail after being discharged from the hospital. The state dismissed the felony assault charge after correctly realizing

CHARGE DISTRIBUTION FOR ALLEGED SELF-MANAGED ABORTION (30 ADULT CASES)



the statute could only apply to people who cause injury to fetuses by assaulting pregnant individuals, not pregnant people who injure themselves (just like fetal harm laws). But instead of dropping the case altogether, prosecutors pursued another felony charge — practicing medicine and surgery without a certificate — and claimed this was the only state law that could ostensibly apply to the case. In the end, however, the judge dismissed this second charge against the woman, correctly finding that no criminal laws in the state could apply to the case’s circumstances. The judge specifically held that the law was not applicable because the woman’s fetus was unharmed by her abortion attempt. While the charges were rightly dismissed, it was only after the woman was taken to jail while pregnant, faced two separate felony charges, and endured months of court proceedings that the lawful outcome occurred.

Not all cases that proceeded under erroneous charges were dropped or dismissed by a judge or prosecutor. But for those that were, the decision and documentation associated with a dismissal may send a broader message about how criminalizing self-managed abortion is not warranted under the law:

In 2015, a woman in Georgia ended her pregnancy with medication abortion and was reported to police by hospital personnel. She was arrested for “malice murder” and possession of a dangerous drug (the drug possession law was used by the prosecutor to criminalize the woman for possessing misoprostol without a prescription) and held in jail without bond. But her case received national media attention and support from advocacy groups, and five days after her arrest, the district attorney dismissed the murder charge and released the woman from jail. In his warrant for dismissal, the prosecutor wrote, “Although third parties could be criminally prosecuted for their actions relating to an illegal abortion, as the law currently stands

in Georgia, criminal prosecution of a pregnant woman for her own actions against her unborn child does not seem permitted.” This dismissal and the accompanying press statement, which laid out the legal reasoning to decline prosecution and included a recognition of the role and responsibility of a prosecutor to not pursue cases unlawfully, was a win both for the woman as well as for potential future defendants. The woman, however, still spent time in jail without bond immediately after her delivery, had her name and mugshot publicized nationally, and continued to face the misdemeanor drug charge. Only until a year later did the same district attorney dismiss the drug charge “in the interests of judicial economy” and on the basis that facts of the case in relation to this charge were unsettled and therefore would require “extensive” trial and appellate litigation.

And unfortunately, charging people or considering charging people with murder crimes for self-managing abortions did not begin or end with this case. Under the anti-abortion ideology where life begins at conception, abortion takes a life. The inevitable conclusion to this rhetoric is that people who have abortions are then criminally culpable. This line of logic has even made its way into legislative proposals and fueled efforts to criminalize abortion using homicide and murder statutes.

The anti-abortion movement writ large disclaims support for criminal penalties for people who have abortions. But this hasn’t stopped an extreme, anti-abortion faction from introducing bills across the country. Politicians, historically¹⁷ and as recently as the 2022 midterm elections,¹⁸ have also made public proclamations that people who have abortions should face punishment and even murder charges. Since *Dobbs*, 13 states introduced bills that would amend existing law or create new laws to criminalize the pregnant

person, including in many cases by way of a homicide crime. Importantly, however, none of these bills ended up passing and becoming law, reinforcing the lack of institutional support for this approach and the underlying factions within the anti-abortion movement and its policy goals.

For example, just prior to *Dobbs* in 2022, a bill proposed in Louisiana would have allowed prosecutors to charge individuals who had abortions with homicide by removing existing protections in the law forbidding criminal charges based on pregnancy outcomes. This policy effort was the brainchild of the anti-abortion faction that has gained supporters and momentum over the last five years.¹⁹ This group's primary platform focuses on the idea that abortion is murder and anyone involved, including the person who had the abortion, should be held criminally liable.²⁰ This particular bill did not become law, but did expose divisions among anti-abortion advocates and politicians about whether they support the criminalization of people who have abortions.²¹ These divisions, and the increased attention to the possibility of criminalization for abortion seekers, are a window of opportunity to ensure that people are not criminalized for their reproductive outcomes.

Even when they fail to change the law, these policy efforts and rhetoric have lifelong implications for individuals who get abortions. Among all 61 cases in this research, irrespective of case outcome and final charges brought, public records mentioned that murder or homicide was at least considered* by law enforcement or prosecutors in 44% (n=27) of cases. When such consideration ended up resulting in a charge for a homicide crime, the following types of charges were brought: feticide, malice murder, second-degree murder, first-degree murder,

manslaughter, and involuntary manslaughter. And in at least three cases where prosecutors ultimately declined to pursue homicide charges, police still counted these cases in their annual homicide statistics reports. Additionally, the racial disparity among cases where murder or homicide was considered was striking and significant: 37% were among people of color compared to 22% among white people (p<0.01). That is, people of color were disproportionately more likely to be treated as murderers — eligible for the harshest penalties in the criminal legal system — than white people.

Decades of stigma and legal restrictions on abortion have fueled an aura of illegality that now surrounds self-managed abortion and seeking abortion in general, turning it into something seen as suspicious or deserving of punitive state action. While the anti-abortion movement has, at times, publicly claimed that it does not aim to criminalize people who have abortions, its rhetoric and decades-long effort to, for example, create rights for fetuses beginning at conception²² and ban abortions at ever-earlier stages of pregnancy²³ belie this claim. This research adds to a body of scholarship that continues to show the pervasive misuse of laws to punish actions or inactions during pregnancy.²⁴ This unpredictable application of law poses challenges for researchers seeking to understand the frequency of arrests related to self-managed abortion and pregnancy, as the data sources section of this report details further. But, even worse, this practice poses monumental risks and confusion for abortion seekers and those who support them.

* Consideration was established based on whether police or prosecutors arrested people on or brought charges that were within a state's homicide section of the criminal code or whether police or prosecutors told reporters that the case was being investigated under a murder or homicide crime or was being considered under one.

While people's digital data may not be the way that police track or identify people who self-manage abortions, it can be used as *key case evidence and play a role* in the criminal process.

TECHNOLOGY & CRIMINALIZATION

There exists a long, sordid history of the government and law enforcement surveilling communities and individuals, most particularly Black, Brown, and Indigenous people; immigrants; and sex workers. With people increasingly relying on technology in day-to-day life and the proliferation of artificial intelligence (AI), digital traces left on websites and personal devices such as cell phones and computers expand private parties and state actors' ability to gather, track, and share information about users. As a result, advocates have grown deeply concerned about digital surveillance by law enforcement.

These concerns extend across sectors and industries, including the reproductive health, rights, and justice fields. Everything from telehealth to the use of menstrual cycle apps connect reproductive health care and abortion access to technology. For years now, some advocates and companies in this field have recognized the need to keep technology users and their data safe. For instance, in the wake of high-profile digital attacks on abortion advocates, the Digital Defense Fund was established in 2017²⁵ to foster technological security among those in the abortion rights and justice movements. If/When/How's Repro Legal Helpline,²⁶ established in 2018,

provides legal information as well as information on digital safety for people seeking abortion care. And one reproductive health app, Euki, was developed in 2019²⁷ with personal safety in mind and doesn't store data or location information about its users. These efforts acknowledged that technology was evolving quickly and digital innovation in the field must consider protection and privacy.

In the weeks immediately after *Roe* was overturned, concern over digital surveillance and abortion access received widespread media and public attention. Articles raised alarm about how data from menstrual tracker apps,²⁸ geofencing technology and cell phone location data,²⁹ and reverse keyword searches³⁰ could be used by the state to monitor or criminalize people seeking abortion care or self-managing their own abortions. When a heavily stigmatized health procedure like abortion is no longer protected by a federal right, this fear is understandable. And the history of criminal investigations, arrests, and prosecutions related to self-managed abortion can provide context to inform these concerns.

None of the 61 cases from 2000 to 2020 included attempts by the government to track people prior

to their having sought an abortion using digital technology, and no case records revealed evidence of techniques like geofencing, app monitoring, phone tapping, or other data prospecting leading law enforcement to individuals who were criminally investigated. Instead, digital evidence was seized or came into consideration only after people were already reported to law enforcement. This technology and people's digital footprints were then wielded as tools to further build the state's case by establishing criminal intent or showing criminality.

Among the public records analyzed for the adult cases, documentation shows that technology was used by law enforcement as evidence of a person's alleged involvement in a self-managed abortion in 10 cases (19% of the adult cases). In the majority of these cases, devices such as personal laptops, tablets, or cell phones were seized by the authorities and used as evidence. While it was not always clear from the public records how police seized devices, some defendants simply agreed to turn over the items after police verbally requested them. In other cases, police filed warrants to gain control of the technology. But, in at least one instance, the seizure of the person's technology was challenged in court. In this case, the individual's defense attorneys sought to have the defendant's cell phone and its accompanying data be excluded from evidence on claims that it was obtained without a warrant or verbal consent.

In instances where devices were seized, law enforcement obtained a range of information to build a criminal case, including text exchanges and online search histories. In one case in which a woman's phone data was downloaded by law enforcement, prosecutors used the fact that she searched online for ways to induce a miscarriage and buy abortion medication to establish criminal intent. In another, a woman's months-long text exchange with her best friend was key evidence

used in the arrest affidavit. This text exchange included a range of deeply personal information, such as details about the woman's relationship, the pregnancy, her menstrual cycle, her estimated gestational age, ordering and taking medication abortion from an online pharmacy, and details about the pain and bleeding she experienced after the pregnancy ended. This evidence then permeated throughout the case and was used at trial, helping to persuade the jury to render a guilty verdict.

Police also requested cell phone records in at least two cases. In one case, the prosecution not only included cell phone records in the list of evidence that they planned to introduce, but also included the custodian of these records at telecommunication companies like AT&T and Cricket as those who could be called as witnesses.

Beyond the information stored on someone's personal devices, online social media activity also emerged in one case. In this instance, a woman's public post on a social media platform, which referenced details related to her attempt to self-manage an abortion and the burial of fetal remains, were seen by an acquaintance. After the acquaintance received additional information about the self-managed abortion from a member of the woman's family, the acquaintance contacted police. Law enforcement then used the woman's social media post throughout the case proceedings and in documents outlining the case's facts.

An additional case that was not part of our sample because it fell outside the data set's timeframe also triggered fears about the potential use of social media in abortion cases. This case began prior to the *Dobbs* decision, in April 2022, but came to public light in August 2022. In this case, after allegedly self-managing her own abortion and disposing of the fetal remains with the help of her mother and a friend, a teenager's private direct messages

on Facebook were subpoenaed and obtained by police from Meta (Facebook's parent company). The private direct messages' release to police heightened worries about the future of companies releasing information to law enforcement in abortion cases. However, the subpoena sent to Meta was based on a theory that the state was investigating a possible death of an infant rather than an abortion.

As advocates, we know that these cases are not always predictable and may not appear on their face as criminalization of abortion. Instead, they may involve both the misapplication of laws and a manipulation of facts to facilitate legal charges. Meta's admission that it released the messages without knowing the case was about an abortion highlights the importance of understanding how abortion prosecutions may be obscured and what technology requests may look like in the future. But, critically, law enforcement only began investigations into this and the case within our sample involving a public social media post because someone first reported the individuals to police.

Overall, these findings about how technology has played a role in self-managed abortion criminalization don't dismiss the need for caution around reducing one's digital footprint or efforts to reduce law enforcement's ability to use technology against people. But they do help ground us in the known threats people have faced and are likely to face in the future. Protecting one's personal data remains a key way that people can limit their digital trail and its potential use by law enforcement. While people's digital data may not be the way that police track or identify people who self-manage abortions, it can be used as key case evidence and play a role in an investigation and the criminal process.

The introduction of someone's abortion or pregnancy loss medical history into a case *as evidence or context* only bolsters the air of illegality and stigma associated with abortion care.

SCRUTINY ASSOCIATED WITH CRIMINALIZING SELF-MANAGED ABORTION

Generally, legal and media narratives about people criminalized for an alleged self-managed abortion can include a close examination of aspects of someone’s personality and behavior: their demeanor during interrogations and hearings, feelings they expressed about the pregnancy to health care providers and others, actions they took or didn’t take during their pregnancy, and medical histories of abortion and pregnancy loss. Where such subjective observations about personal attributes were often made public in cases in this research, they were used to insinuate or prove an individual’s culpability and reinforce gender-based stereotypes embedded in these cases, adding another layer of cruelty to the criminalization of reproductive decision-making and experiences.

State Use of Abortion & Pregnancy Loss History

In six (15%) of the cases involving the prosecution of the pregnant individual, their history of abortion or pregnancy loss appeared in media or court documents. Among these cases, the person’s prior abortions were used either to suggest a motive to end the pregnancy, knowledge of how to end the

pregnancy with abortion medication, and/or as context to the case. In one case that resulted in charges against both members of a couple, media reported that police were investigating whether there had been “other possible incidents with fetuses and abortions involving the couple.” No records indicate whether this information was uncovered or what role it was expected to play in the case.

In at least two of the cases where a person’s reproductive history was used by the state, attorneys challenged this as evidence. One that resulted in a state appellate court decision was relied upon to argue in the second. In the first case, the state charged an Arkansas woman with two felony charges — concealing birth and abuse of a corpse — after she arrived at a hospital with fetal remains after experiencing a stillbirth. At the trial court level, the prosecution argued that the woman intentionally took abortion medication to deliver the fetus prematurely. The woman’s defense team argued to exclude this evidence as well as any reference to abortion. The attorneys noted that this information was irrelevant to charges related to the handling of remains, that the state’s autopsy claimed the pregnancy ended in a stillbirth, and that introducing such information about abortion would

prejudice the jury against the accused. In the state's motion opposing the defense's request to exclude this evidence, they used this as a way of attacking the woman's emotions surrounding the pregnancy:

"In order to feign being as horrified and devastated as any other expectant mother suffering an unexpected miscarriage would be, the defendant asks that the court exclude any evidence that she deliberately choose [sic] to take drugs known to produce such a result."

Despite the judge's finding that the state autopsy established that the woman did not deliver a live infant, he determined the evidence could be admitted, ruling that evidence of intent to abort the pregnancy could be proof of an attempt to conceal the birth. The judge claimed that the value of this evidence outweighed the potential for prejudice from a jury. The trial proceeded and after hearing everything presented, the jury deliberated for four minutes. The woman received a directed verdict on the abuse of a corpse charge, meaning it was dismissed. But she was found guilty of concealing a birth and sentenced to six years incarceration. After this guilty verdict, the defense team argued that the evidence brought by prosecutors about the woman's prior abortions and use of abortion medication was only used "to support the State's theory that she intended to have an abortion rather than an early delivery." That approach "inflamed the jurors' passions and encouraged them to deliver a guilty verdict." The Arkansas Court of Appeals ruled to reverse the conviction and remand to the trial court, deciding that "the trial court abused its discretion in allowing discussion of abortion, defendant's abortion history, and evidence that she had ingested medication prior to giving birth where it was undisputed that the child was not born alive. ..." In its decision, the Appellate Court concluded that the evidence about the woman's abortion history and medication abortion use was

"irrelevant" to the charge brought and indeed had the ability to cause prejudice among the jury.

The Arkansas Appellate Court not only reversed a conviction, but also set a useful and important precedent. This decision has since been used to challenge the introduction of an individual's medical history of abortion and pregnancy loss in other cases, including one that happened in another state years later. In that case, prosecutors alleged a woman ended her pregnancy at home with abortion pills. However, that state forbids prosecution of a pregnant person with respect to their own pregnancy. When challenged, prosecutors shifted their theory to allege that the woman delivered a live infant who died due to her failure to render aid. Under a prosecutorial theory based on conduct after the delivery, the use of a medication to prompt the delivery in question and evidence of any other abortions should be irrelevant. But the prosecution argued that evidence suggestive of a self-managed abortion attempt as well as information about a prior abortion showed motive and intent. The woman's defense team countered, saying that the prejudicial effect this information would have on the jury outweighed any value it might have as evidence. The defense further argued that the introduction of such information would violate her constitutional rights to a fair trial. Their argument relied heavily on the appellate decision from Arkansas.

Another case, which eventually led to a successful constitutional challenge to Idaho's law banning self-managed abortion, exemplifies a prosecutor's use of a woman's abortion and pregnancy loss history to openly demonize her as irresponsible and harmful to any fetus she carried. The prosecutor reinforced stigma and misinformation about abortion and pregnancy loss, and his statements were repeated by the media. Scrutiny into intimate aspects of people's health is unique to these cases and also reveals what

is at stake, and what is particularly unjust, when abortion and pregnancy loss are criminalized:

In 2010, a woman in Idaho decided to end her pregnancy because she was afraid that having another baby with her abusive partner, who was incarcerated at the time, would trap her in the relationship. The woman was also already a mother to three children, the youngest of which was only about 1-year-old when she found out she was pregnant. Living on \$250 of monthly child support, the woman worried that another child would put more pressure on the children she already had. The nearest abortion clinic, however, was about 150 miles away from where she lived, and she would be required to stay overnight due to the abortion restrictions in place in the state at the time. Such a journey was beyond what the woman could afford, especially given that she didn't have a car of her own. The woman believed her best option was to order pills to self-manage the abortion at home. But because she didn't have her own computer, she called a family member in another state; this relative ordered the pills online and sent them to her in the mail.

The woman took the pills and stored the fetal remains in a box at her home. Soon after, she confided in a friend about the experience; this friend shared the news with his sister, who subsequently called the police. Local police came to the woman's home and began asking her questions about the incident. The woman eventually led the police to the remains and told them details about the experience.

Police began an investigation, turning her home into a crime scene, interviewing friends and family, and subpoenaing medical records. They brought her to a hospital to be examined by a doctor (who shared details of the evaluation with police), coordinated with police in the

state where her relative who ordered the pills lived, and had the remains examined.

Throughout their investigation, however, police found no evidence to corroborate the woman's initial admission of the self-managed abortion, something that is required to proceed with a case. Nonetheless, the woman was arrested on a felony charge of unlawful abortion (I.C. § 18-606). In their incident report, police also included as evidence of culpability that the woman didn't seek medical care or take prenatal vitamins during her pregnancy and had only told her sister and partner she was pregnant, all implying disregard for and ambivalence toward the pregnancy.

The woman was arrested and incarcerated on an unknown bail amount; she was eventually released on her own recognizance. The woman's attorney immediately moved to dismiss the charges against his client, citing various legal issues with the case including that the state's case rested on the woman's uncorroborated confession. The prosecutor opposed the dismissal and used the woman's medical history of abortions and miscarriages as an indicator of her character and evidence of her ambivalence toward her pregnancy. Media reported that the prosecutor claimed, "It just felt like it fit the statute. ...[And] this wasn't the first time this has happened. She's had abortions before and miscarriages. I mean, she was obviously getting pregnant time and time again and not protecting the unborn fetus."

The judge dismissed the case without prejudice, leaving a possibility that state prosecutors could recharge the woman if they unearthed new evidence. Feeling that the risk was too high and unjust, she immediately filed a civil suit challenging the constitutionality of that statute she was charged with as well as the state's 20-week abortion ban. This challenge, if successful, would not only prevent

the law from being used against her, but against other women as well. This courageous effort made its way to the U.S. Court of Appeals for the Ninth Circuit after more than four years of legal proceedings. The opinion affirmed the earlier judgment and struck down some of the state's restrictive abortion laws, including the criminal ban on self-managed abortion under which the woman had been charged, the 20-week abortion ban, and a requirement that all abortions in the second trimester be performed at a hospital. As a result of her challenge, Idaho prosecutors could no longer use statute I.C. § 18-606 to punish people for having an abortion, self-managed or otherwise — a monumental change in abortion law in Idaho and across the Ninth Circuit.

While the woman's legal challenge relieved her of any future charge related to the abortion, the case brought unwanted media attention, including the publication of her picture, name, and address. It also made public information about her pregnancy and history of abortions and miscarriages as well as statements about her character. The woman expressed feeling attacked, ostracized, and isolated in her small and predominantly religious and conservative community during the ongoing media attention to her case.

Scrutiny of a Person's Demeanor & Perceived Ambivalence Toward a Pregnancy

This case from Idaho shows how perceptions of a person's demeanor and ambivalence toward the pregnancy have been weaponized by the state. This research and analysis define demeanor as an individual's affect or outward emotional expression, and perceived pregnancy ambivalence means having mixed or strong feelings about not wanting

a pregnancy. The tactical use of any of these as evidence that the person was unconcerned about or intended to end the pregnancy, or to paint a disparaging picture of a defendant's character, reveals the gender-based stereotypes that animate these prosecutions. These notions distinguish between a person who cares about or protects their pregnancies versus someone who does not, including demonization of someone as a "bad mother" for having or seeking an abortion.

In 15 (38%) of the cases that involved the prosecution of the pregnant individual, their public records included references to the accused's demeanor, perceived ambivalence, or both. Another case, in which the individual's demeanor and perceived ambivalence toward her pregnancy were on full display and criticized throughout the case, provides important insight into how such scrutiny can play a role in both how a case is reported by media and throughout the court proceedings:

In 2013, a woman living in Indiana was arrested after experiencing a stillbirth and seeking care at a hospital that called law enforcement. She was charged with two seemingly contradictory felonies — neglect of a dependent and feticide. The first was based on the premise that she delivered a live infant, to whom she did not render aid, and thus caused the baby's death. The second charge was based on the premise that she self-managed her own abortion with pills, thus causing the stillbirth. The case gained widespread attention and advocacy support, but the woman's demeanor and ambivalence toward her pregnancy also infiltrated media reporting and became part of the State's case.

The case went to trial with the prosecutor telling the jury in opening statements that the woman "took care of herself while her baby laid dying," setting the stage for a narrative where the woman's

ambivalence about her pregnancy was front and center. This was reinforced by media reporting about the anti-abortion doctor who cared for the woman at the hospital where she sought care. This doctor initiated the call to police and joined them in their search for the fetal remains. Reporters published language verbatim from the police affidavit stating that the doctor left to search trash while “[f]earing for the child.” Text messages seized by the state between the woman and her friend were also used to bolster this narrative. Prosecutors showed texts to the jury that said “I just want to get this over with” and “BTW, these pills taste like sh**. If these pills don’t work I’m gonna be mad.”

Prosecutors and media also painted the woman as being without emotion or regard for others by recalling events at the hospital and throughout the trial. One of the state’s witnesses, an emergency room doctor from the hospital, was explicitly questioned about the woman’s demeanor. He told the jury, “She had a very flat affect, was very limited in discussion with me and the nursing staff just yes or no questions, seemed disengaged and was either playing or on her cell phone the entire time.” Media consistently referenced the woman’s actions and appearance throughout the court proceedings and projected them as acts of disregard or emotional disinterest. For example, early reporting about a preliminary hearing included that the woman came to court “with a scarf around her face, refusing to answer any questions as she walked into the courthouse.” Another article published during the trial included detailed information about the woman’s lack of engagement with the jury and reporters: “[she] did not appear to make eye contact with jurors inside the courtroom, and outside the courtroom, she hid her entire face in a scarf and coat and walked behind one of her attorneys on her way to and from her trial.”

In the midst of all of these depictions and arguments as well as the trial’s clashing pieces of evidence and testimony from nearly 20 witnesses, prosecutors made it clear in their closing statements that this case was largely about the woman’s efforts to self-manage her abortion: she “decided to do what was easiest and most comfortable for her, even if it was not legal. ... There is no do-it-yourself abortion, not what is legal.” And after six days of trial and less than five hours of deliberation, the jury delivered a guilty verdict on both, conflicting felony charges. During the sentencing hearing, the judge continued to perpetuate many of the same themes that came out at trial, telling the woman that “[t]he crux of this case, in my opinion, really lies in the choices you made after you delivered the baby.” The judge accused the woman of treating the fetal remains like “a piece of trash,” claiming that she had the means to “safely and legally terminate her pregnancy” instead of ending it herself. She also voiced concern that the woman didn’t seek medical help for the fetus after delivery and did not initially admit to hospital staff that she had been pregnant. The reiteration of assumptions about her character based on her deviation from gender-based stereotypes undoubtedly played a role in the case’s outcome and sentencing.

The introduction of someone’s abortion or pregnancy loss medical history into a case as evidence or context only bolsters the air of illegality and stigma associated with abortion care. And incorporating one’s expressed emotions — or lack thereof — during a complicated time into a court case or related reporting manipulates the discretion built into legal systems, making it less likely that prosecutors, judges, and jurors will see abortion seekers as worthy of compassion.

The harms documented in this report demonstrate the myriad of ways that someone's entire life course *may be altered* by criminal system involvement when self-managed abortion is punished.

LASTING HARM & CONSEQUENCES OF CRIMINAL INTERVENTION

Entanglement with the criminal legal system can lead to both drastic consequences and lasting harm. Whether a case concludes before an arrest is made or after a prison sentence is served, a person may experience interaction with law enforcement, incarceration, threats to their health, future surveillance and involvement from state agencies, stigma and isolation in their communities, financial obligations, and unwanted media attention. While harmful consequences from criminalization may never make it into the public record for a case, some documented harms detailed below highlight the myriad ways that someone's life may be negatively affected from criminal system involvement when self-managed abortion is punished.

Harm From Criminal Case Proceedings

Criminal case proceedings, regardless of outcome, can drag on for months or years and may cause harm from initial investigation to its conclusion. It is impossible to understand the true depth of this harm in any person's life, but among the cases in this research, at least a few ways were reported.

In 2002, a woman was investigated and arrested on suspicion of murder for allegedly helping her daughter end her pregnancy. While the prosecutor ultimately never filed charges against her, she was jailed for 72 hours on a \$500,000 bond, separated from her family with the fear that she may be charged with murder. Even after her release, she remained fearful from the experience, telling reporters "it will never be the same. I will live my life in fear until this ends."

Additionally, investigations that may never result in an arrest can also still be damaging. For example, in one investigation that ended before an arrest, police dug up a woman's backyard and searched for suspected fetal remains with cadaver dogs. While police didn't find evidence to warrant an arrest or charge, the police chief told reporters that should future evidence emerge, they would request that the prosecutor file charges. The possibility of future charges wielded by police left the woman and her daughter with the lingering threat of arrest. This feature can also be found in cases that make their way through court and even end in a dismissal.

When a case is dismissed "without prejudice," it leaves the door open for a prosecutor to file a

subsequent charge in the same case, either under the same statute or under a different one. While this is a common procedure in criminal cases, the accused remain in limbo even when they've received a desired initial outcome. In at least three cases that ended in a dismissal, prosecutors retained this option if new or additional information came to light. In a fourth case, the prosecutor dismissed charges against a woman, but stated his intention to file future charges in his initial motion to dismiss. Almost a year later, the prosecutor moved forward on his claim and presented a new charge to the grand jury, which ultimately declined to reindict the woman. While the refusal to reindict finally ended proceedings, the woman lived with the threat of future criminalization for at least a year after the original dismissal.

Pretrial detention, which can last for days or even years, is another common harm experienced by people subject to criminal proceedings. Any type of incarceration separates people from their families and support networks, forces them into state confinement, and often requires payment for release. The experience of being jailed pretrial cannot be erased, and among the 42 adults in this research whose cases proceeded through the criminal court process, 93% (n=39) were incarcerated pretrial.

Additionally, securing funds that may be required for release can take significant time and resources, and may not be possible for everyone. As discussed in the Foundational Description of Cases section of this report, women in two cases remained incarcerated until they were convicted because they couldn't post the required bail to be released pretrial; in both cases, the women ended up serving more time pretrial than their final sentence mandated. In one case, the woman's bail was set at \$200,000, which she was unable to pay; once convicted, she was released immediately because

she had already served more time in jail than her final sentence of one year. In the second case, the woman was held on \$25,000 pretrial for two misdemeanor charges. Unable to post bail, she sat in jail — separated from her children — for four months, a month longer than her final sentence.

Sentences themselves are another obvious harm from criminal case proceedings. As detailed in the Foundational Description of Cases section of this report, 23 of the 42 adult cases that proceeded through court ended with a conviction, either by guilty plea or after being found guilty at trial. In these cases, people's sentences may have involved incarceration, probation, fines and fees, submission of DNA samples to a government database, along with a range of other requirements. Every one of these sentence components can be detrimental to the individual criminalized as well as their family and community.³¹

And, even in cases where incarceration is not a mandated part of a sentence, community supervision or probation conditions can be extremely restrictive and rife with complicated requirements. For instance, for one woman whose case ended in a conviction and a multifaceted sentence, she was sentenced to 32 months in prison, which was suspended on the condition that she spend 12 months in jail and 24 more on probation. Her sentence and probation conditions also included fines; substance use disorder treatment; and random blood, urine, or breath screenings three times a month. In another case, the charge against the woman was dismissed by the court but only after she was required to complete 10 months of pretrial probation, which included completion of mental health treatment. Additionally, people subject to complicated court requirements face stiff penalties for violating them, but compliance carries its own costs.

People involved in criminal legal proceedings may also face fines, often irrespective of whether they are convicted. Court-imposed fines and fees beyond bail may include forcing people to bear the costs of a public defender, administrative fees for probation monitoring, and fines related to one's sentence. Such financial obligations further entrap people in the criminal process and, once again, affect entire families and communities.³² Even further, the financial repercussions of a criminal case are also not isolated to those fines and fees administered by the state. In at least three cases, only one of which resulted in a conviction, women also lost their jobs after their investigation or arrest. In one of these cases, the job loss resulted in the woman also losing her health insurance. And in a fourth case, a woman ended up taking a plea deal to a crime with a higher severity because the charge wouldn't result in her automatically losing her job. The woman worked as a health care aid and the misdemeanor charges that were dropped in her plea agreement — endangering the welfare of children and simple assault — would have threatened her employment status based on their nature. In fact, endangerment crimes make people ineligible for feminized low-wage care work jobs, often in health and child care. These financial ripple effects from the involvement of the criminal legal system in one's life are undeniable.

Harm From Ancillary State Agencies

In 2003, a southeast Texas sheriff's department received a report of fetal remains found behind an apartment complex. Law enforcement opened an investigation and identified a woman associated with the fetal remains. She was questioned and told police she took misoprostol obtained from Mexico

to end her pregnancy. Police arrested the woman, but did not immediately charge her with a crime.

Law enforcement ordered an autopsy to attempt to determine if the woman experienced a stillbirth, ended the pregnancy on her own, or delivered a live infant. The preliminary autopsy results confirmed that the fetus was not viable. After consultation with the district attorney's office, police did not file criminal charges against the woman.

Despite the determination that there was no applicable criminal charge, the woman's case did not end with release from arrest. Instead, because the woman was a Mexican national who had only been living in the United States for a few months before the self-managed abortion, the sheriff's department reported her to immigration officials for deportation.

While a criminal investigation that doesn't end in an arrest can still upend someone's life, harms from these cases extend beyond the confines of the criminal system and extend to the immigration or family regulation systems. Overall, criminalization can be a vector for broader state violence and can result in multiple systems of oppression working together to cause lasting harm in an individual's life.

Of the sample's 54 adult cases, public records confirmed that at least 50% (n=27) were parents.* Of the 27 cases where people were confirmed to be parents, 14 (52%) involved family regulation system intervention alongside criminal proceedings.† Among the 14 cases where there was a known intervention by child welfare authorities, at least eight of these (57%) involved temporary or permanent removal of the person's children. As a result, public records provided documentation that 30% of the known parents in the criminalized

* Of the remaining cases, four mentioned that the accused were not parents, and parental status was not mentioned in 23.

† In the remaining 13 cases, there was no indication whether a family regulation system intervention occurred.

sample temporarily or permanently lost custody of their children in conjunction with a criminal intervention relating to allegations of self-managed abortion. While the records of how the allegation of self-managed abortion affected child custody are not available, surveillance and punishment through the family regulation system is yet another legal risk people may face when criminalized for self-managing an abortion.

Additionally, throughout the course of our legal research, the team identified appellate court decisions reviewing lower family court rulings that used a mother's alleged self-managed abortion attempt as part of arguments for the termination of parental rights. While such cases were beyond the scope of this study and pose a logistical challenge because family court records are sealed, at least two appellate cases since the year 2000 were identified. In a 2020 case, the Court of Appeals of Michigan upheld the family trial court's decision to terminate a mother's parental rights and included the mother's attempt to end her pregnancy with "nonprescribed abortion pills she had received from a friend" as partial justification. That a court would consider abortion as evidence that a person poses a permanent danger to their children demonstrates the deep governmental and social stigma against abortion seekers.

Family separation due to immigration or family regulation policy is a devastating state harm, and the racist and discriminatory practices of the family regulation system have long been documented.³³ While civil investigations into someone's parenting may not result in the removal of a child from the home, the process itself can cause stress and fear and irreparable harm for families. For example, in at least one case in our sample in which a parent was criminalized for self-managing their abortion, her child was not removed from her care temporarily or permanently. However, authorities

with the state's Department of Social Services (DSS) opened an investigation after her criminal case began. DSS determined that the woman's child was "healthy and well cared-for," but the fact that her parenting was scrutinized at all reinforces how these systems work together to surveil parents.

Removal of a child from a person's care for alleged self-managed abortion also piles family court proceedings onto criminal ones, further entangling the state in people's lives. In one case, it was apparent how the state used a person's family court case, and thus their children, as a bargaining chip in determining a sentence related to a criminal self-managed abortion charge:

In 2007, an unknown individual called 911 reporting concern about a woman living in New York state. Police responded to the call by going to the woman's home, which she shared with her three children and husband. When they arrived, the woman told police that she had just taken 30 Tylenol and five 800-milligram pills of Motrin to try to end her 13-week pregnancy. The woman was transported to a local hospital where she received continued treatment; the self-abortion attempt was unsuccessful, and the woman's pregnancy continued after she received medical care.

The case did not end there: the Department of Social Services opened a case into the safety of the woman's three children who lived with her. Eventually, police criminally charged the woman with self-abortion in the second degree and gave her a ticket to appear in town court. At the time of this case, self-abortion in the second degree was a misdemeanor crime in New York. In 2019, this law was repealed from the state's criminal code.

Media reporting about the case further revealed that the woman had been facing intimate partner violence for about two years prior to

the self-managed abortion attempt. Police reports had been filed and the last violent attack happened a week prior to the woman's abortion attempt: her husband was charged with misdemeanor third-degree assault after throwing a television at her twice. Pregnant at the time, the woman injured her leg in an attempt to defend herself during the assault.

There is not enough information in the available public records to understand the full timeline of the woman's court appearances relating to the self-abortion charge, but a critical appearance occurred in family court a few months after the case started. Between the abortion attempt and this appearance, the woman's three children had been removed from her care and her husband had passed away (police speculated he died by suicide). At the family court appearance, the woman pled guilty to neglecting her children and agreed to counseling for mental health, drug use, and domestic violence. This appearance became pivotal in how the state decided to proceed on her self-abortion charge: the prosecutor made a deal with the woman that if she pled guilty in this family court matter, the state would put her criminal charge on hold and likely dismiss it within six months. The final outcome of the woman's case — whether her children were ever returned to her care or whether her criminal charge was ultimately dismissed — was not discernible through public records.

Despite the numerous other factors in this mother's case, including that she was a victim of domestic violence, the state punished her for trying to end her pregnancy and separated her from her children. The effects of such state actions are unquantifiable and only reinforce how state punishment for a single action — legal or not — can reverberate throughout someone's life.

Health Consequences: Forced Commitment, Bedside Interrogations, Sterilization

For some of the cases, the criminal investigation began while people were actively experiencing a medical emergency. The criminal system response was, by its nature, incongruous with the individual's health care needs. The criminal legal system, then, is itself a source of potential physical harm.

Some criminal investigations began when a person was still pregnant after their alleged or actual self-managed abortion attempt did not end their pregnancy. In two such cases, the individuals were arrested and held in jail for the duration of their pregnancies. One of these women went into labor while in jail. As media reported, she “was transported to a hospital in handcuffs and leg shackles” and after she gave birth, “she was allowed to hold and breastfeed her new daughter while locked to the bed.” Overall, the criminalization process added trauma to these birthing people's lives, which has lifelong repercussions.

In other cases, criminal investigations started when people were in the process of seeking health care after self-managing an abortion. In some of these instances, the individuals were concerned enough by side effects from their self-managed abortion attempts that they sought emergency medical care. In at least two of these cases, hospital workers reported their patients to police and the women experienced bedside interrogations, including immediately after surgery while still recovering in the hospital — experiences that are reminiscent of the first illegal era of abortion prior to *Roe v. Wade*.³⁴ In the first of these cases, the woman reported to the hospital after her pregnancy ended. While she underwent surgery to remove a retained placenta that caused her to lose nearly 20 percent

of her blood, one of her doctors left the hospital to join police in their search for the fetal remains. Once the woman woke up from surgery and was in her hospital room, police were standing over her for what they described as “watch duty” and began interviewing her extensively. None of her family or friends who tried to visit were allowed to see her, and her records later reported that she had been held on the hospital floor for “police investigation.” In the second case, the woman reported to the hospital after she experienced bleeding and lost consciousness after self-managing her abortion at home. After hospital workers called law enforcement, police interrogated her at her bedside. Over the next 24 hours, she was further interrogated at the police station and forced to sleep on a steel bench overnight in a locked room. Criminal investigation takes priority over an individual’s health and wellbeing.

Finally, because these cases are rooted in state control of reproductive decision making, it is impossible to separate them from wider government efforts to control fertility. In fact, in one case, the state explicitly used a woman’s fertility in deciding her case:

In 2001, a woman was charged under Nevada’s self-managed abortion ban after experiencing a stillbirth and testing positive for methamphetamine. The state indicted the woman under the state’s self-managed abortion ban and a drug charge after alleging she intentionally took the methamphetamine to end her pregnancy. As the woman’s case continued, she became pregnant again and gave birth to a child who tested positive for methamphetamine at birth. This child was removed from her custody immediately after birth, and she was charged with a new drug-related crime. The two cases were merged and the woman ultimately took a plea deal that only included the new drug-related charge; the original

two charges relating to the alleged self-managed abortion were dropped as part of the deal. The prosecutor told reporters that he was encouraged to offer this deal after hearing that the woman had been “voluntarily” sterilized, which in his opinion was “a show of good faith” on the woman’s part. The woman was then sentenced to incarceration, and she lost custody of her other children.

While this case resulted in several lasting consequences in the woman’s life, sterilization is a particularly extreme violation of an individual’s health and self-determination. While the sterilization was reportedly voluntary, the ability of a person to freely decide when faced with the coercive force of the criminal legal system is questionable. Our country’s well-documented and disturbing history of eugenics is not only part of the past,³⁵ and the state’s coercive use of people’s reproduction is an additional criminal legal system harm.

Stigma & Social Consequences Affecting Moving Forward with Life

Regardless of legality, abortion stigma has fueled efforts to restrict and criminalize abortion access, reifying the idea that someone who has an abortion is an appropriate target of the criminal legal system. This has been particularly clear given that the majority of cases in this research occurred in states where self-managed abortion was not a crime at the time the investigations began. Abortion stigma alone can infiltrate multiple facets of society and people’s lives,³⁶ and when combined with the stigma of criminalization, people can experience further damage and face barriers as they work to move forward with their life. In at least six cases, public records captured the stigma people

experienced after their case, including being shamed and ostracized in their communities.

The inherent harms of the criminal legal process can be exacerbated by abortion stigma. In one case, a woman experienced so much backlash after her case that she changed her name and felt forced to leave her job after customers refused to work with her. In another case, a woman received hateful emails and stopped watching the news because she was called “a baby killer.” This same woman received threats at her home, and property vandalization led her to move.

For some, these social harms were exacerbated by the media reporting that surrounded their case.

“My name is ruined. Just Google it. Now I won’t even be able to get a job.”

“The stuff they’re saying is completely crazy. They make me sound like some sort of monster...”

The above quotes to reporters were from women charged in two separate cases. In the first case, the woman’s name and the allegations against her were reported nationally. Only after the prosecutor dropped the case was the woman able to recount her own story in the media. Prior to that, she felt that her side of the story was never told and her name was already all over the internet and attached to the allegations against her. Already struggling to provide for her two children, she feared for her future reputation and job prospects.

In the second case, in which the woman was charged with “abuse of a corpse” for allegedly self-managing her abortion and storing the fetal remains in her home, media included sensationalistic details. She later publicly disputed these and said the initial reports made her sound like “a monster.” The media attention that comes with these cases can be harmful

in and of itself, and what the media chooses to include in reporting, including graphic descriptions or inflammatory details and statements supplied by law enforcement, can further compound abortion stigma. As a result of these media narratives, people are forced to defend themselves, disclose personal details, and become subjects of public scrutiny. And, any effort to correct the narrative is done within an abortion stigma context, with no guarantee that someone’s reputation can be repaired.

Overall, being targeted by the criminal legal system causes an array of harmful repercussions. While dehumanization is part and parcel of criminalization in our society, being criminalized for an abortion compounds harms. Documenting these consequences shines a greater light on them, while also revealing the strength required of people to regroup and recover from public shaming.

Criminalization of self-managed abortion replicates patterns of criminalization generally. *The people least served by our health and social systems are those most likely to be ensnared in our punitive ones.*

IMPLICATIONS, CONCLUSION, & RECOMMENDATIONS

Implications

After nearly 50 years of constitutional protection for abortion rights under *Roe v. Wade*, the notion of abortion being criminalized is novel for many people in the United States. And while this has given rise to wild speculation as to what the future might hold in a post-*Dobbs* era, cases from the recent past suggest a predictable future: criminalization of self-managed abortion replicates patterns of criminalization generally, and the people least served by our health and social systems are those most likely to be ensnared in our punitive ones.

The criminal legal system is the primary structure through which the state judges and polices the boundaries of what behaviors are considered acceptable. The criminalization of behaviors, however, is all too often a proxy for policing particular identities or communities. Thus, a system that is purported to be about responding to injurious conduct becomes a means of enacting and reinforcing stigma. It should be little surprise, then, that people marginalized on the basis of factors such as race or poverty are overrepresented in the sample of people criminalized based on self-managed abortion. People with wealth and privilege

may, for instance, be able to leave a restrictive state to receive care or use more sophisticated means of evading detection in ordering or using abortion medications. They may be more readily able to access medical and legal information, as well as support systems that enable them to safely navigate their abortion experience. While the threat of criminalization potentially looms over anyone who self-manages an abortion, this threat is not borne equally across races or social strata.

In the intervening years since the closing of data collection for this research, at least 11 more cases that would have fit the criteria for inclusion have emerged, most of which are currently pending. Given the inherent limitations of retroactive case identification, discussed throughout this report, and the challenges with collecting information about criminal investigations and prosecutions, it is not possible to draw conclusions as to whether this marks an increase or escalation in law enforcement action. What can be discerned about the cases that have ensued, however, is that they fit the patterns identified in the cases from 2000-2020: in the social location of the accused, in the types of law enforcement tactics used, and in the nature of the charges.

Notably, the *Dobbs* decision did not change the nature of these prosecutions. This is because the strongest legal protections from prosecutions for self-managed abortion were not based on *Roe*, and *Roe* did not address the types of charges used by prosecutors to circumvent prohibitions on charging people with a crime for pregnancy outcomes. So, unless and until states pass new statutes penalizing people for seeking or self-managing abortions, we can anticipate that prosecutions will continue to be similar to those documented in this research. From this perspective, we offer the following observations.

The law is limited in its protection, but still matters.

One of the most striking findings of this research is the lack of correlation between where investigations and arrests have taken place, and where statutes authorizing the criminalization of self-managed abortion exist or have existed. This suggests that the criminalization of self-managed abortion is at least as much about prosecutors looking for ways to punish people for actions of which they disapprove — that is, bending the law to fit the circumstances — as it is about law enforcement carrying out the law. And even in cases where the law does not apply, people’s ability to challenge wrongful law enforcement procedures and charges may be limited, both as a matter of legal procedure and the accused’s access to legal representation. This, as discussed previously, may lead to devastating consequences to the accused’s personal life and could result in a case taking years to be resolved through litigation or appeals, even when a criminal investigation does not lead to a conviction. But the fact that prosecutors may bend, or even overstep, the law does not mean that what the law says is irrelevant. To the contrary, the legal prohibitions on criminalizing people for abortions or other pregnancy outcomes are the single most effective tool for freeing a

person caught in a prosecution. It is important to highlight these wrongful charges as illegitimate uses of state power: prosecutors and other law enforcement should be held to the limits of their power, and accountable for transgressing them.

People’s understanding — and misunderstanding — of the law makes a difference.

This research shows that health care providers are a major vector for criminalization through reporting their patients to law enforcement. While our ability to glean providers’ motivations for reporting based on the available records is extremely limited, If/When/How’s partnership and advocacy with physicians, nurses, social workers, and other health care or counseling professions has revealed significant confusion about whether they are mandated to report actual or suspected self-managed abortions to law enforcement. This confusion has only been exacerbated as abortion seekers and health care personnel try to parse what the overturn of *Roe* and the subsequent, rapidly-changing abortion laws making abortion “illegal” mean in practical terms. Abortion seekers’ uncertainty about available options and the legal risks they might entail can cause a myriad of issues, including delays in care that can further limit options and force people to undertake unnecessary medical or legal risks. But uncertainty on the part of health care personnel and other power-holders within medical systems is even more fraught with peril because it can effectively nullify protections within the law. The bans on abortion both existing prior to the *Dobbs* decision and enacted thereafter are nearly all restrictions on who may perform an abortion *on another person*, not prohibitions on seeking, having, or self-managing an abortion. This distinction may not be immediately clear because the primary outcome is the same: abortion is inaccessible. And yet the question of whether

the law treats an abortion seeker as the subject of criminal proceedings is extremely relevant to their ability to seek health care without fear of arrest. Currently, no state has a law requiring that a person who has had or self-managed an abortion be reported to law enforcement. To the contrary, state and federal medical privacy laws require that sensitive health information be kept confidential. But when health care providers erroneously believe that they must report self-managed abortions or other pregnancy outcomes to law enforcement, they trigger criminal investigations that may culminate in charges regardless of what the law says. Simply put: a health care personnel's belief that abortion is a crime can become a self-fulfilling prophecy.

To protect privacy, think trust, not tech.

At the heart of most of the cases described in this research is a breach of trust. Whether the trust was broken by a health care provider, an acquaintance of the abortion seeker, or an abuser, most of these cases came to the attention of law enforcement when someone entrusted with sensitive information turned that information over to police. Sometimes, the breach of trust and subsequent investigation is *facilitated* by the use of digital technology, such as social media posts reported to police or seizure of a person's device that reveals their internet search history or incriminating text messages. However, the data itself is not the precipitating factor for the investigation: it is evidence once an investigation has already begun. This is important to note given the significant amount of attention focused on technology — like menstrual tracker apps and their cloud backups, end-to-end encryption of messages to prevent interception by law enforcement, and geofencing — in the weeks and months following the *Dobbs* decision. Certainly it is ever more important for reasons far beyond the criminalization of pregnancy outcomes that people's private health

data be secure and that the corporations people trust with their information be transparent about how that information is kept, used, and shared. It is also crucial that the power of the state to surveil people through their devices and online activity be both widely understood by the public and limited. And, at the same time, this research shows that much less technically-sophisticated tactics are more frequently used, and to equally devastating ends. Digital evidence used to criminalize people for self-managed abortion in the cases so far was not obtained as a result of dragnet investigative efforts or law enforcement spying on people believed to be considering an abortion. Instead, they were collected by commonplace tactics like searches conducted with questionably obtained consent, or opening of devices seized pursuant to a warrant and simply viewing messages or other information stored on the device. Accurate threat modeling — including carefully considering what information should be shared or stored, how, and with whom — can help abortion seekers mitigate their risk of criminalization.

Conclusion

The post-*Roe* landscape coming into view is one in which the stakes are high and the consequences potentially dire for abortion seekers for whom the law has placed abortion care out of reach and within the criminal code. Whether they seek to leave the state for abortion care or stay and self-manage, it is critical that abortion seekers and those who would support them have a clear-eyed understanding of the potential risks they face. This research provides an evidence-based perspective on the criminalization of abortion that can hopefully not only provide guidance for abortion seekers and those who support them, but for advocates seeking to shift the law, expand access to all methods and mechanisms of abortion care, and advance reproductive justice.

Recommendations: A Way Forward

Disrupt patterns of criminalization.

This research reveals that criminalization of abortion seekers often occurs in the absence of any legal authority. But the practices and circumstances that lead to this unlawful and unjust criminalization are predictable and can be disrupted by participants in the medical and legal systems. For instance, health care providers encountering people who have self-managed abortions can keep patient information confidential, and challenge institutional policies or practices that violate patient privacy by requiring reports to law enforcement. Defense attorneys can challenge unlawful charges and prosecutorial tactics that rely on stigma, stereotypes, and false claims about abortion care. Attorneys can help people understand their rights, including how to navigate interactions with the health care system and law enforcement.

Repeal all abortion laws.

The importance of repealing criminal bans on self-managed abortion in order to protect abortion seekers is self-evident and has in fact been successful even in otherwise hostile states. But this is only a first step. Even in states where abortion continues to be legal, it is subject to regulations and restrictions more onerous than those that apply to other forms of health care. These are seldom enacted with the intent of increasing access to care. Instead, they have only fueled the idea that there are “legal” and “illegal” abortions,

and therefore “right” or “wrong” ways for people to obtain or have abortions. The increase in scrutiny of abortion fuels stigma, which itself drives criminalization. Decriminalization efforts must be broadened to address all aspects of people’s reproductive lives and also include those who support and accompany others in their reproductive experiences.

Reform laws susceptible to misuse.

Where it is not immediately possible to repeal abortion laws, an interim approach is to amend them and other laws that have historically been misused to criminalize abortion to ensure that they provide protection against criminalization of pregnancy outcomes. For example, fetal harm provisions should be amended to ensure that they contain explicit protection for the person carrying the pregnancy.

Reinforce protections against criminalization.

In recent years, some states have taken steps to protect people’s access to reproductive health care and prevent criminalization of pregnancy outcomes by enacting statutory protections or amending their constitutions. These efforts have largely been successful, even when they involve putting the issue forward as a ballot initiative. In such states where the political climate makes such progress impracticable in the short term, advocates can nonetheless reinforce existing protections against criminalization by holding law enforcement and prosecutors to the limits of their authority.

**Decriminalization efforts
must be broadened to
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Endnotes

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