

Recommendations

Reversing fetal personhood and pregnancy criminalization requires significant legal and policy changes and a full set of recommendations is beyond the scope of this interim report. For additional recommendations, please see Pregnancy Justice's 2023 report, *The Rise of Pregnancy Criminalization*.⁷¹ While further recommendations will accompany future reports, a few timely priorities are offered below:

» **Use the Power of Federal Civil Rights Agencies to Challenge Pregnancy Criminalization**

The federal government should utilize existing authority to better protect pregnant people against targeted campaigns to charge them with pregnancy-related crimes. The Department of Justice should investigate local law enforcement offices that prosecute pregnancy-related crimes for engaging in unlawful discrimination on the basis of sex. The Office of Civil Rights at the Department of Health and Human Services should investigate complaints of drug testing of pregnant patients by hospitals to prevent unlawful sex discrimination.

» **Protect Against the Unfounded Use of the Comstock Act to Effect a National Abortion Ban**

The federal government should pass legislation to ensure that the Comstock Act cannot be misused to criminalize abortion.⁷² Anti-abortion activists intend to misuse the Comstock Act to make it a crime to send or receive medications or devices that are used in abortion care by mail or common carriers like UPS and FedEx, effectively banning abortion nationwide.

» **Ensure that Maternal Health Initiatives Address the Needs of Pregnant People Who Have Substance Use Disorder and Other Mental Health Disorders**

Drug overdoses are the leading cause of maternal mortality in multiple states in the United States and rates of substance use disorder among pregnant and postpartum women are growing.⁷³ Investment in non-punitive, voluntary, and confidential

programs and in-patient treatment centers for pregnant people, where they can continue to stay with their newborns and receive familial support, is critical to saving lives. States can avail themselves of this funding through Title V Block Grants and Substance Abuse Prevention and Treatment Block Grants, through opioid settlement funds, and by redirecting funds away from "crisis pregnancy centers" to providers of essential, non-punitive, confidential, and evidence-based care that will improve health outcomes for babies and mothers. In addition, the Department of Health and Human Services should ensure that Title V Maternal and Child Services Block Grant funding is not used to support institutions that routinely drug test pregnant patients without their knowledge or consent and that share that information with law enforcement.

» **Expand and Enforce Privacy Protections**

The federal government should reinforce HIPAA privacy protections through legislation codifying the HIPAA Rule to Support Reproductive Healthcare Privacy.⁷⁴ The legislation should go further than the rule by considering the impact of state fetal personhood laws and judicial decisions to ensure expansive protection for pregnant people who are most likely to experience privacy violations during pregnancy.⁷⁵

» **Pass State Laws Increasing Protections for Pregnant People**

States should pass laws that ensure that providers must obtain informed consent from pregnant people before they administer a drug test to the pregnant person or their newborn. In states with protective abortion laws, state legislatures should augment those laws to ensure pregnant people cannot be charged with pregnancy-related crimes in connection with the circumstances of their pregnancies, pregnancy losses, or births and/or explicitly renounce fetal personhood.⁷⁶ States should pass legislation that expressly decouples the anonymized reporting of "substance-affected newborns" required by the Child Abuse Prevention and Treatment Act from reporting to state family policing agencies.⁷⁷