



Dignity in Mothering

March 1, 2021

Local prosecutors across the country have a responsibility to prioritize internal policies that are rooted in Reproductive Justice and resources that institute an anti-racist model of health care

Pregnancy, birth, and parenting are some of the most dangerous life decisions Black people must make in this country.

In the past year alone, viral moments of police brutality and the onslaught of dismay and death brought on by the COVID-19 pandemic has kept one truth at the forefront of our minds: state-sanctioned violence continues to ravage Black communities especially Black women, trans, and gender non-conforming people.

We watched Breonna Taylor's and George Floyd's families mourn the loss of their loved ones on national television, we watched buildings burn in Minneapolis and thousands of people gather in the streets demanding justice. We've seen Black people denied access to vital medical care, turned away when displaying COVID symptoms, cheated from receiving vaccines, the list goes on.¹ And this doesn't include the Black folks in prisons who've been denied the basic humane conditions needed to protect themselves from contracting COVID and slow the spread of the virus.² For Black people, we can't discuss Reproductive Justice without framing it in the context of these latest and most poignant iterations of state-sanctioned violence. **These injustices begin in the womb.**

Black people deserve dignity and respect when choosing whether to have a child or not but they're not getting it. Nearly 48 years later, lawmakers around the nation are still working to overturn *Roe v. Wade* and pass legislation with unconstitutional abortion bans and restrictions across the country, especially in the South and Midwest.³

¹ Black Americans see a health-care system infected by racism, new poll shows." National Geographic. <https://www.nationalgeographic.com/history/article/black-americans-see-health-care-system-infected-racism-new-poll-shows>

² "Is COVID-19 Falling Harder on Black Prisoners? Officials Won't Tell Us." The Marshall Project [://www.themarshallproject.org/2020/05/28/is-covid-19-falling-harder-on-black-prisoners-officials-won-t-tell-us](https://www.themarshallproject.org/2020/05/28/is-covid-19-falling-harder-on-black-prisoners-officials-won-t-tell-us)

³ Roe v. Wade Was Passed 48 Years Ago and We Still Have a Long Way to Go." Teen Vogue. <https://www.teenvogue.com/story/roe-v-wade-anniversary>



Consequently, pregnant people are forced to live in fear that an abortion, miscarriage, stillbirth, or simply doing or not doing something during pregnancy could result in civil and/or criminal consequences that lead to arrest, prosecution, prison sentences, allegations of child abuse, neglect, loss of parental rights, death and more.

At least 1,200 people, but likely many more, around the United States have been prosecuted and punished for actions or inactions that would not be considered crimes if they were not pregnant.⁴

That's why solutions grounded in Reproductive Justice are essential. We must demand an end to the systems that seek to oppress and restrict access to unbiased and equitable health care.

Criminalizing Reproduction & Autonomy Deters Healthcare in Black, brown and Indigenous Communities

In the United States, Black women are facing a crisis of maternal health. Regardless of factors like higher education or financial means, Black mothers are three to four times more likely to die from pregnancy or childbirth-related causes than white mothers -- the widest of all racial disparities in women's health.⁵

These deaths are preventable, and their causes are rooted in structural racism, not race. Black, brown, and Indigenous people face a unique set of difficulties, from systemic bias or the individual bias of medical providers to being treated with condescension or driven to make healthcare decisions from a place of fear rather than education.⁶ Black trans men also face serious barriers to accessing adequate reproductive healthcare needed for their pregnancies—often being discriminated against or flat out refused care by doctors.⁷

As a result, Black, brown, and Indigenous pregnant people are exponentially more likely to experience devastating pregnancy outcomes. There are hundreds of pregnant people who've been criminalized and arrested for actions that include things like taking legal drugs prescribed by their doctor⁸, having a miscarriage, addiction, getting into a car accident, and even falling down the stairs.

⁴ [Flavin and Paltrow study; NAPW internal data.] For example, in almost every state, use of a criminalized drug is not a crime. But in Alabama and other states, women accused of drug use during pregnancy, regardless of whether that use could even harm the fetus or child, have been prosecuted for crimes ranging from child endangerment to homicide. [Cites to pro publica AL article, a few other case examples]

⁵ "Why America's Black Mothers and Babies Are in a Life-or-Death Crisis." NY Times.
<https://www.nytimes.com/2018/04/11/magazine/black-mothers-babies-death-maternal-mortality.html?action=click&module=RelatedLinks&pgtype=Article>

⁶ "Protecting Your Birth: A Guide For Black Mothers."
<https://www.nytimes.com/article/black-mothers-birth.html>

⁷ National Women's Health Network. "Expanding the Boundaries of Sexual & Reproductive Health Care"

<https://nwhn.org/trans-mens-health-is-a-womens-health-issue-expanding-the-boundaries-of-sexual-reproductive-health-care/>
⁸[Flavin and Paltrow study; NAPW internal data.] For example, in almost every state, use of a criminalized drug is not a crime. But in Alabama and other states, women accused of drug use during pregnancy, regardless of whether that use could even harm the fetus or child, have been prosecuted for crimes ranging from child endangerment to homicide. [Cites to pro publica AL article, a few other case examples]



Any effort to further scrutinize or punish pregnancy ensures that Black, brown, and Indigenous people are more likely to be targeted for criminal investigation and punishment. Moreover, criminalization not only strips pregnant people of human dignity and reproductive autonomy, but it also forces pregnant people to live in fear that an abortion, miscarriage, stillbirth, or other pregnancy outcomes could result in a prison sentence. This drives them away from seeking vital health care, putting their lives and the lives of the children they may carry to term at risk.

Prosecutors have a responsibility to put an end to the criminalization of pregnancy and pregnancy-related outcomes

Prosecutors have the power to enact policies and infrastructure that could discourage law enforcement from arresting pregnant people based on the circumstances of their births and alleviate the fear that an abortion, miscarriage, stillbirth, or other possible variation of a pregnancy outcome could result in a prison sentence. To that end, we are calling on prosecutors to fulfill their obligation to justice through a commitment to ending all prosecutions of people as it relates to their pregnancies.

No one should fear arrest and incarceration for making personal decisions that may have an impact on their health. Pregnancy and all of its potential outcomes -- birth, abortion, miscarriage, stillbirth are personal matters, they are medical matters, but they are certainly not criminal matters. *We ask prosecutors to commit to the following:*

- Firm commitment to not prosecute abortion as well as other pregnancy outcomes and a public stance reaffirming this position.
- A declination policy that ensures child-bearers will not be prosecuted for their pregnancy outcomes and that feticide laws will not be used as a proxy for punishing pregnancy loss, including but not limited to:
 - Refusing to prosecute pregnant people related to miscarriages, stillbirths, or any form of pregnancy loss.
 - Refusing to prosecute pregnant people related to actions during pregnancy, including medically-assisted or self-managed abortion, drug use/possession/distribution during pregnancy where the fetus, embryo, or fertilized egg is the alleged recipient, attempted suicide, fighting, or car accidents.
 - Refusing to prosecute pregnant people for alleged inactions during pregnancy, for not obtaining or consenting to medical treatment, not reporting a pregnancy loss or outcome or actions or omissions of people who are often victims, characterized as a failure to protect their fetus, embryo, fertilized egg or child.



- A plan to train all staff in the district attorney office on a recurring basis and through publicly available training materials on the systemic racism and state-sanctioned violence regularly inflicted on Black child-bearers.
- Funding community-based and community birth organizations working to improve maternal health outcomes for Black, brown, and Indigenous women.

As a network of community partners, local and national Reproductive Justice advocates, non-profit organizations, legal organizations, criminal justice reformers, activists, and professionals in the fields of law and public health, we are committed to ensuring that everyone has full access to their fundamental, constitutional rights to privacy, medical decision-making, and the human right comprehensive and affordable health care.

We are committed to a Reproductive Justice framework which is defined by SisterSong Women of Color Reproductive Justice Collective as the human right to have a child or not, and parent their children with dignity and respect. We are committed to galvanizing prosecutors around the nation to act in accordance with their sworn duty to achieve justice and fairness, particularly as it applies to pregnancy and pregnancy outcomes, no matter the outcome. Led by Color Of Change, this network is dedicated to ending the criminalization of pregnancy. Consistent with commitment to the rights and health of pregnant people, we implore all prosecutors to prioritize internal policies that institute anti-racist models of care and to reject draconian practices that perpetuate harmful notions of motherhood by instead respecting human dignity.

Respectfully,