

EXECUTIVE SUMMARY

if
when
how

Lawyering for
Reproductive
Justice

SELF-CARE, CRIMINALIZED

THE CRIMINALIZATION OF SELF-MANAGED ABORTION FROM 2000 TO 2020

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. The emerging post-*Roe* landscape is one in which the stakes are high and the consequences potentially dire as abortion is increasingly inaccessible and provision of care criminalized. Whether abortion seekers leave the state for abortion care, or stay and self-manage, it is critical that abortion seekers and their potential supporters have a clear-eyed understanding of the risks they may face.

This research provides an evidence-based perspective on the criminalization of abortion, and it aims to provide guidance for abortion seekers; those who support them; and advocates seeking to shift the law, expand access to all methods of abortion care, and advance reproductive justice.

This report, the culmination of a multiyear research effort, elucidates the practical reality of the criminalization of abortion for abortion seekers

by documenting and analyzing cases across the country in which people have been criminally investigated or arrested for allegedly self-managing their own abortion or helping someone else do so. During this study's time period (from 2000 to 2020), medication abortion was available to safely and effectively end a pregnancy and abortion rights ostensibly enjoyed constitutional protection under *Roe v. Wade*. And yet, at least 61 people across 26 states faced criminalization for alleged self-managed abortion, despite the fact that only seven states had explicit self-managed abortion bans (today, Nevada is the only state that retains its ban).

This research set out with a theory: 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. This mixed-methods analysis utilizes quantitative data about characteristics of cases and how they made their way into and through the legal system. It also includes qualitative case narratives and themes to lend humanizing insights into abortion criminalization.

Some findings that emerged from the resulting analysis include:

- Some cases provided a window into the circumstances and factors that led someone to self-manage their abortion. While the circumstances reflected in the cases remain broadly consistent with existing research into why people self-manage abortions, the details of the cases expose the nuances and impact that make criminalization an incompatible response to complicated life experiences.
- Individuals criminalized for self-managed abortion were frequently reported to police by people they entrusted with information, be it health care providers or acquaintances.
- People's personal technology and digital footprints came under scrutiny, but only after people were already reported to law enforcement. Law enforcement used this digital evidence to further establish criminal intent or show criminality.
- When people were charged with crimes, they were not commonly charged under laws banning self-managed abortion. Rather, police and prosecutors often misrepresented and misapplied the law to find ways to punish someone for an abortion.
- People's personalities and behavior were often put on trial for judgment: their demeanor during interrogations and hearings, feelings they expressed about the pregnancy, actions they took or did not take during their pregnancy, and past histories of abortion and pregnancy loss. These subjective personal factors were often publicly used to insinuate an individual's culpability, adding another layer of cruelty to the criminalization of reproductive decision-making and experiences.
- 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 health; stigma and isolation in their communities; financial obligations; unwanted media attention; and future surveillance and involvement from other state agencies, such as immigration or family regulation systems.

While harmful consequences may never make it into a case's public record, the harms documented in this report demonstrate the myriad ways that someone's entire life course may be negatively affected or altered by criminal system involvement when self-managed abortion is punished.

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 methodological challenges and the inherent limitations of retroactive case identification, it is not possible to draw conclusions as to whether this marks an increase or escalation in criminalization.

What can be discerned about these cases, 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. This also means that any prosecutions for self-managed abortion will continue to be not only unjust and discriminatory, but unlawful abuses of state power.

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. In the interim, we hope this research provides useful information to abortion seekers and the many individuals, activist networks, and health care providers who support them, so they can understand and avoid the threats that exist due to the law and legal systems.