

May 2026

The Case Against Prosecuting Women



Key Points

- » Prosecuting women for abortion could deter women from seeking medical care, including abortion pill reversal and emergency treatment.
- » Fear of criminal investigation may undermine trust in life-affirming women's health centers, maternity homes, and adoption agencies.
- » Public support and institutional alignment necessary for durable enforcement do not presently exist.
- » Many women report coercion, pressure, or lack of meaningful support surrounding abortion decisions.
- » Policies focused on prevention, support, and cultural change are more likely to strengthen long-term protections for preborn life.

Introduction

In the years since the Supreme Court's decision in *Dobbs v. Jackson Women's Health Organization* returned abortion policy to the states, the national conversation about how best to protect preborn life has evolved. Lawmakers and advocacy groups working to protect children and support women have noted a growing movement among some advocates to pursue the criminal prosecution of women for abortion under homicide statutes.

This question carries serious moral and legal implications. The goal of protecting preborn life must be pursued in ways that are effective, enforceable, and capable of sustaining public trust. Laws intended to protect life should strengthen support systems for women and operate within a legal and cultural framework capable of enduring social change.

At this moment, prosecuting women for abortion does not meet those criteria.

Protecting life requires both conviction and practical wisdom. Policies that cannot be sustained, or that drive women further into isolation, will not achieve their intended purpose.

The following sections examine the practical, legal, and cultural considerations that inform this conclusion.

Deterrence From Medical Care and Abortion Pill Reversal

A growing share of abortions in the U.S. are drug-induced rather than surgical. In 2023, drug-induced abortion accounted for approximately 63% of all abortions.¹

Some women regret taking the first of the two abortion pills and seek abortion pill reversal (APR), involving progesterone after mifepristone to continue the pregnancy. If abortion were prosecuted as homicide, a woman seeking APR would effectively admit to a criminal act and could face prosecution even if the pregnancy continued. The likely result is that some women would not seek reversal at all.

Women experiencing complications from abortion-inducing drugs may also delay emergency medical treatment if they fear legal consequences. Policies that discourage women from seeking life-preserving or emergency medical care warrant serious caution.

This concern also extends to miscarriage, which occurs in roughly 10–20% of known pregnancies.² If abortion were prosecuted as homicide, women who experience pregnancy loss could reasonably fear investigation or suspicion. Would miscarriages trigger toxicology screenings for abortion-inducing drugs? Would women hesitate to seek medical or mental health care following a miscarriage out of fear of being accused of a crime?

These questions highlight difficult enforcement realities. Miscarriage is already an emotionally traumatic experience for many families. A system that introduces fear of criminal investigation during pregnancy loss could compound that trauma and place new burdens on both patients and medical providers.

Impact on Life-Affirming Women's Health Centers, Maternity Homes, and Adoption Agencies

Life-affirming women's health centers have expanded significantly since Dobbs and operate on trust, confidentiality, and the assurance that women can seek help without judgement. These centers often serve women at vulnerable moments when they are weighing difficult decisions.

If abortion becomes a prosecutable offense, communications between a woman and a life-affirming women's health center could become subject to subpoena in criminal investigations. Even the perception that private conversations might later be used in court could deter women from seeking help.

This concern also applies to maternity homes and adoption agencies. Women who disclose their pregnancies while seeking support may fear that personal information shared in confidence could later be used in legal proceedings.

At a time when these organizations are serving more women than ever, policies that risk weakening their credibility or undermining trust deserve scrutiny.

Erosion of Public Support and Cultural Alignment

Durable laws require public legitimacy.

Public opinion opposes criminal penalties for women. A Pew Research Center survey found half of Americans say women who obtain illegal abortions should not be penalized, while only 14% support jail time.³

For nearly fifty years under *Roe v. Wade*, abortion was treated as a constitutional right. Only in 2022 did the Supreme Court return the issue to the states. The country is still in the early stages of adjusting to that shift.

Throughout American history, major moral and legal transformations have required sustained cultural change before criminal enforcement proved stable. The movement to abolish slavery unfolded over decades through religious conviction, political organizing, journalism, and advocacy. By the mid-19th century, growing segments of the public had come to see slavery as morally indefensible, which shaped legislatures, courts, and ultimately constitutional amendments.

Even then, enforcement following abolition faced resistance and conflict. Legal change alone did not instantly transform culture.

The lesson is not that moral truth must wait for unanimous agreement. Rather, criminal law tends to function most effectively when a substantial portion of the public and the institutions responsible for enforcement recognize its legitimacy.

Reversing a half-century legal framework cannot reasonably be expected to produce immediate cultural alignment. Before adopting sweeping criminal penalties for women, it is prudent to consider whether the necessary cultural and institutional foundations are yet in place.

Enforcement Realities

Criminal law ultimately depends on investigators, prosecutors, judges, and juries.

If prosecutors decline to bring charges, or if juries are unwilling to convict, enforcement will falter. Following the Supreme Court's decision in *Dobbs v. Jackson Women's Health Organization*, dozens of elected prosecutors nationwide, including some in states with abortion restrictions, publicly announced they would exercise prosecutorial discretion and decline to pursue certain abortion-related charges.⁴

The post-Dobbs landscape has also created a patchwork of abortion laws across states, contributing to increases in abortion travel between jurisdictions. Similar inconsistencies could emerge in the enforcement of laws applying criminal penalties to women, raising questions about unequal application across state lines.

A law that cannot be credibly enforced risks weakening public respect for the law itself. Before adopting a policy shift of this magnitude, lawmakers must consider whether legal institutions are aligned to carry it out consistently.

Coercion, Lack of Support, and Women's Internal Conflict

Many women obtain abortions under significant external pressure or difficult circumstances and may feel they have little real choice, even when the decision conflicts with their own preferences or values.

61% of women with a history of abortion reported influence from partners, family members, traffickers, or others affecting their decision.⁵ In a separate survey, about one in four women described their abortions as “unwanted or coerced,” showing that coercion directly impacted a meaningful portion of respondents.⁶ Domestic violence law recognizes coercion broadly, including emotional threats, financial control, and intimidation. Coercion does not require physical force and can take subtle or indirect forms that still significantly influence decision-making. These findings show that coercion is a meaningful factor in many women's abortion experiences.

Evidence also shows that many women experience internal conflict about abortion. In a national survey of women with a history of abortion, 43% reported that their abortion was accepted but inconsistent with their personal values or preferences, and 60% said they would have preferred to give birth if they had received more emotional or financial support.⁶

If prosecution of women were to occur, it is likely that individuals who exert coercion such as abusive partners, traffickers, or exploitative providers would frequently play a central role in those cases. Policies focused on preventing and penalizing coercion and expanding support for women may address the underlying pressures that lead many women to abortion and represent a more constructive policy focus at this time.

The Effect on Post-Abortive Testimony and Support

Thousands of women have publicly shared their experiences of abortion regret. Their testimony has helped reshape public understanding of abortion and has encouraged other women to seek healing.

If abortion were prosecuted without limitation, women might fear legal exposure when speaking publicly about past experiences, even if the law only applied to future cases.

Many women also report emotional or psychological distress following abortion. Recent research on women with a history of abortion found that 37% reported “somewhat high” or “very high” negative emotions regarding their abortion, and 24% reported high overall levels of post-abortion emotional distress, even many years after the procedure.⁷

The pro-life movement has long emphasized compassion, restoration, and support for women after abortion. Policies that silence these voices or discourage women from seeking help would diminish one of the movement’s most powerful testimonies.

Common Arguments in Favor of Prosecuting Women

The following arguments reflect serious legal and moral principles advanced by those who believe prosecuting women is the correct course at this time. These perspectives deserve careful consideration as part of an honest and thorough debate.

EQUAL PROTECTION UNDER THE LAW

The Fourteenth Amendment provides that no state shall deny any person equal protection of the laws. If preborn children are recognized as persons, supporters argue that homicide statutes should apply equally regardless of age or stage of development. From this perspective, exempting mothers from prosecution would create unequal treatment under the law.

CONSISTENCY IN CRIMINAL LAW

Supporters argue that if abortion intentionally ends the life of a human being, it should be treated consistently with other homicide offenses. They contend that creating separate or lesser penalties for pregnant women signals that abortion is something less than the taking of a human life.

DETERRENCE

Criminal law can influence behavior by establishing social norms and consequences. Proponents argue that felony penalties would deter a vast majority of abortions, including drug-induced abortions, and that the existence of legal consequences would cause most women to reconsider the decision.

RESPONSIBILITY AND JUSTICE

Advocates for prosecution argue that personal responsibility is central to the law and that compassion does not preclude accountability. While some women face coercion, they reject treating all women as victims and emphasize that the legal system evaluates responsibility on a case-by-case basis. From this perspective, accountability is necessary to uphold justice.

A Better Path Forward

A more effective and sustainable approach to protecting preborn life focuses on addressing the underlying circumstances that lead women to consider abortion. Increasing attention is being given to supporting women and families during pregnancy and in the first years of a child's life, when financial, emotional, and relational pressures are often most acute.

Expanding access to material support, strengthening local support networks, and reinforcing the role of life-affirming women's health centers, maternity homes, and adoption services can help meet these needs in tangible ways. Policies that prioritize support alongside protection are more likely to build public trust and reduce the perceived need for abortion.

By focusing on both mother and child and addressing root causes, this approach offers a more compassionate and practical path forward. Over time, it is more likely to strengthen public support and contribute to a culture that values and protects life.

Final Reflection

These arguments reflect serious principles within legal and moral debate. The practical realities described throughout this brief raise important questions about whether prosecuting women would effectively advance the shared goal of protecting both mother and child. This discussion reflects deeply held convictions about justice and equal protection. It deserves careful, serious consideration.

At this moment in American history, prosecuting women for abortion would likely hinder the broader effort to protect preborn life. It risks deterring medical care, weakening front-line ministries, eroding public support for pro-life protections, and creating enforcement challenges that undermine respect for law.

Protecting preborn life requires cultural alignment, public trust, and practical wisdom. We remain committed to defending both mother and child with clarity, compassion, and constructive support.



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