

Opinion: Abortion prison sentence shows the law is focused on fetuses—why that's dangerous for women

June 16 2023, by Emma Milne



Credit: AI-generated image ([disclaimer](#))

The [imprisonment of a woman](#) in the UK for taking abortion pills at 32-34 weeks of pregnancy has shocked many. Most people are still unaware that abortion at any stage of pregnancy is illegal in England and Wales, unless authorized by two doctors.

Any woman who obtains [abortion](#) medication from sources other than an official provider faces the prospect of life imprisonment under the [Offences Against the Person Act 1861](#). As does any woman who uses legally obtained medication in any way other than as directed, for example, delaying taking the medication.

Abortion (or "procuring a miscarriage") was made a criminal offense to [protect women from the dangers](#) that backstreet abortion posed in the 1800s. At this time, all abortions were surgical abortions. There were no antibiotics, and few remedies if the procedure caused uncontrollable bleeding.

Today, abortion is incredibly safe when it can be legally accessed—far safer than it is for a woman to [continue a pregnancy](#) to full-term. Which leads to the question: what is the purpose of the offense today?

Reading the sentencing hearing from this and [other cases](#), it appears the law is being used to protect fetuses.

In his sentencing remarks, the judge focused on the late stage of the woman's [pregnancy](#). Arguing that this was an aggravating factor of the case, he describes the woman's "daughter" as "stillborn".

It is important to note here that the offense of procuring a miscarriage (as detailed in the Offences Against the Person Act) makes no reference to the gestational stage of the pregnancy. The offense is also not dependent on the death of the fetus.

No woman who has illegally ended her pregnancy (for example, by obtaining abortion medication illegally) at an early gestational stage has been prosecuted. This suggests the application of the law is focused on protecting fetuses that could survive if born alive—not on preventing abortion.

Extreme vulnerability for women

This case may have further horrified many people due to the stage the woman's pregnancy had reached at the time she took the abortion medication.

The limited details of the woman's experience that are outlined in the [sentencing remark](#) indicate that she, like every other [woman whose case I have examined](#), acted from a place of extreme vulnerability and profound crisis. The reality is that no woman wants a late-term abortion. The motivation to seek one comes from a place of desperation.

During the sentencing, the judge noted the woman's "deep emotional attachment" to her [unborn child](#), a [common experience](#) for women in similar situations. These are not simply "unwanted" pregnancies resulting in delayed abortions.

Women who self-abort pregnancies late in gestation do not necessarily want the [unborn baby](#) to die. This is the situation of a woman who believes it would be impossible, possibly due to [fear of violence or abuse](#), for her to bring a child into the world.

The role of the criminal law

Some may argue that a late-term fetus is no different to a newborn baby, and that both need criminal legal protection. But such application of the criminal law carries significant risks for women, as well as for babies and fetuses.

In the US, many states now explicitly [protect the unborn child](#), resulting in women being arrested, detained and imprisoned following miscarriages and stillbirths, after exerting their right to refuse [medical](#)

[care](#) during pregnancy, and for behavior that would be legal [if they were not pregnant](#).

As with almost all forms of crime control, it is the most vulnerable people—women of color and those of lower socioeconomic status—who have been [disproportionately criminalized](#). In addition, a direct line can be drawn between fetal protection laws and the [overturning of Roe v Wade](#), the supreme court case that protected the right to an abortion in the US. Protecting a fetus in law is a direct threat to reproductive rights.

The criminalization of pregnant women has also had disastrous consequences for fetuses and babies. While the aim of fetal protection laws is to prevent harm to unborn babies, the threat of legal sanctions against pregnant women has led many to [actively avoid medical care](#) during their pregnancy due to a fear that they will be reported to the police. Lack of antenatal care is a leading factor in [pregnancy complications](#).

There is also evidence that women in the US have sought abortions to [escape prosecution](#) under fetal protection laws. For example, one woman who was charged with the reckless endangerment of her fetus after inhaling paint fumes, had the [charges against her dropped](#) after she terminated the pregnancy.

Attempts to "protect" fetuses are, in some instances, resulting in worse health outcomes, or even death, for both fetuses and pregnant women.

Whether the criminal law should protect fetal life is a complex question, but it is a question for parliament alone. The courts and the Crown Prosecution Service, who decide to prosecute women, have interpreted procuring a miscarriage as a crime against a fetus. They have decided that women should be punished if their actions in later pregnancy cause the death of an unborn child.

Their interpretation of the law moves the statute beyond the intentions of parliament when enacted. It is time parliament involves itself in this area of criminal law, conducting a thorough and compassionate review.

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