

La judicialización del parto y el embarazo

DEFINICIÓN E IMPLICACIONES



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LA JUDICIALIZACIÓN DEL PARTO Y EL EMBARAZO EN

ESPAÑA

El parto es Nuestro

2020



"Los procedimientos médicos coercitivos o no consentidos realizados en las mujeres"

"Cada vez son más los casos de mujeres que reciben amenazas o coacciones para someterse a intervenciones en contra de su voluntad o sin su consentimiento informado, llegando incluso a imponerse un sometimiento al criterio médico por orden judicial y a terminar forzándolas a dichas intervenciones"

¿ D E Q U É H A B L A M O S C U A N D O H A B L A M O S D E

judicialización del parto?



EL RIESGO DE NO DEFINIR

Pickles, C. (2019). Leaving Women Behind: the Application of Evidence-Based Guidelines, Law, and Obstetric Violence by Omission, in (Eds.) Pickles, C., & Herring, J. (2019). Childbirth, vulnerability and law: Exploring issues of violence and control. In Childbirth, Vulnerability and Law: Exploring Issues of Violence and Control. Taylor and Francis. <https://doi.org/10.4324/9780429443718>

01 LIMITADO

"Overlook many acts of violence that can occur in the obstetric care context"

02 AMBIGUOUS

"Ambiguous concept that tends to be moulded by different people who adopt different perspectives"

03 BARRERA

Narrows "the potential for critical review and response"

Q U É S I G N I F I C A

JUDICIALIZAR?

DPEJ

Judicializar



Gral. Llevar por vía judicial un asunto que podría conducirse por otra vía, generalmente política.

EN EL ÁMBITO DE LAS CIENCIAS SOCIALES Y POLÍTICAS

JUDICIALIZAR

Lindt, A. (2023). The Dark Side of Judicialization: Criminalizing Mining Protests in Peru. Latin American Research Review, 1-15.
<https://doi.org/10.1017/lar.2023.4>



"social movements, grassroots activists, and nongovernmental organizations (NGOs) are mobilizing the law to demand justice in cases of human rights violations committed by state and corporate actors"

A P L I C A D O

Judicializar el parto y el embarazo

Llevar por vía judicial un proceso relativo al embarazo o el parto



ES LA JUDICIALIZACIÓN EXCLUSIVAMENTE

ALGO NEGATIVO?



Decisiones CEDAW



Negligencia Médica



TEDH

LA JUDICIALIZACIÓN DEL PARTO Y EL EMBARAZO

UN CONCEPTO AMPLIO



¿Cómo designar específicamente aquellas acciones con carácter punitivo y coercitivo hacia las personas embarazadas?

D E F I N I E N D O

criminalization of pregnancy

The process of attaching punishments or penalties to women for actions that are interpreted as harmful to their own pregnancies.

This includes laws that punish actions during pregnancy that would not otherwise be made criminal or punishable.

It also refers to other laws not specific to pregnancy but which are either applied in a discriminatory way against pregnant women and/or have a disproportionate impact on pregnant women which can in practice work as de facto criminalization.



International Amnesty. (2017). Criminalizing Pregnancy: Policing Pregnant Women Who Use Drugs in the USA. www.amnesty.org



Paltrow y Flavin (2013)

Paltrow, L. M., & Flavin, J. (2013). Arrests of and forced interventions on pregnant women in the united states, 1973-2005: Implications for women's legal status and public health. *Journal of Health Politics, Policy and Law*, 38(2), 299-343. <https://doi.org/10.1215/03616878-1966324>

413

Casos

**1973-
2005**

84%

Uso de sustancias
ilegales

71%

Condiciones de
precariedad
socio-económica

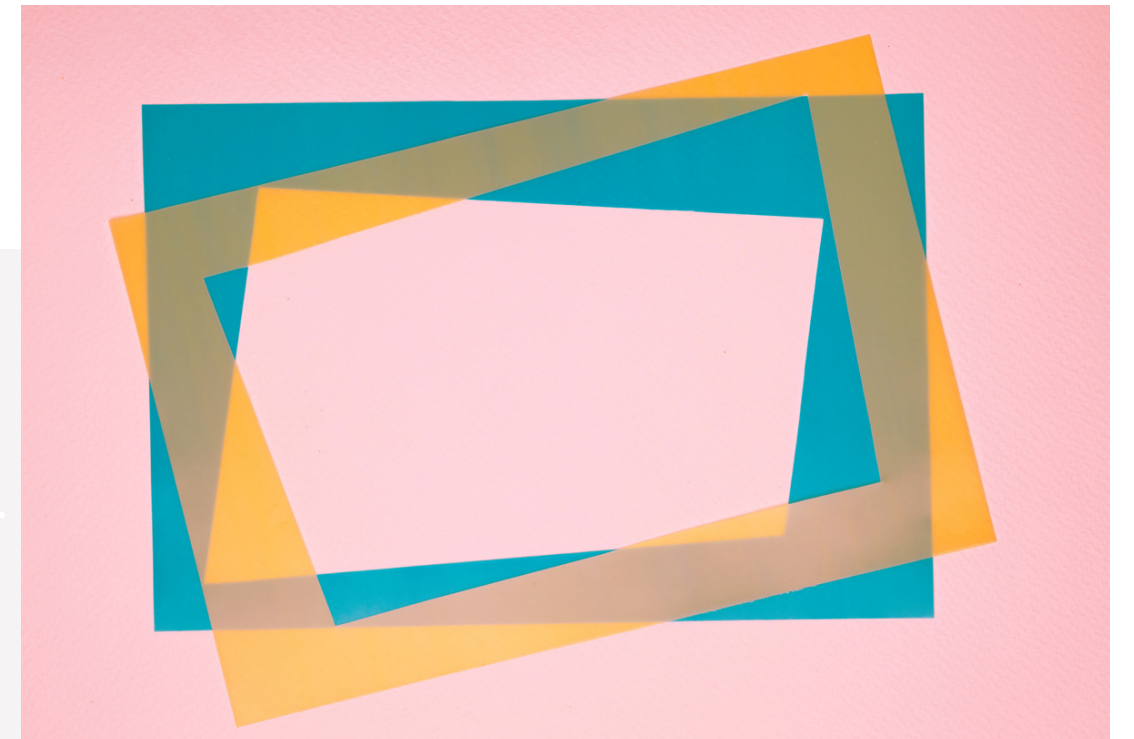
P O R Q U É E S I M P O R T A N T E

la criminalización del parto y el embarazo?

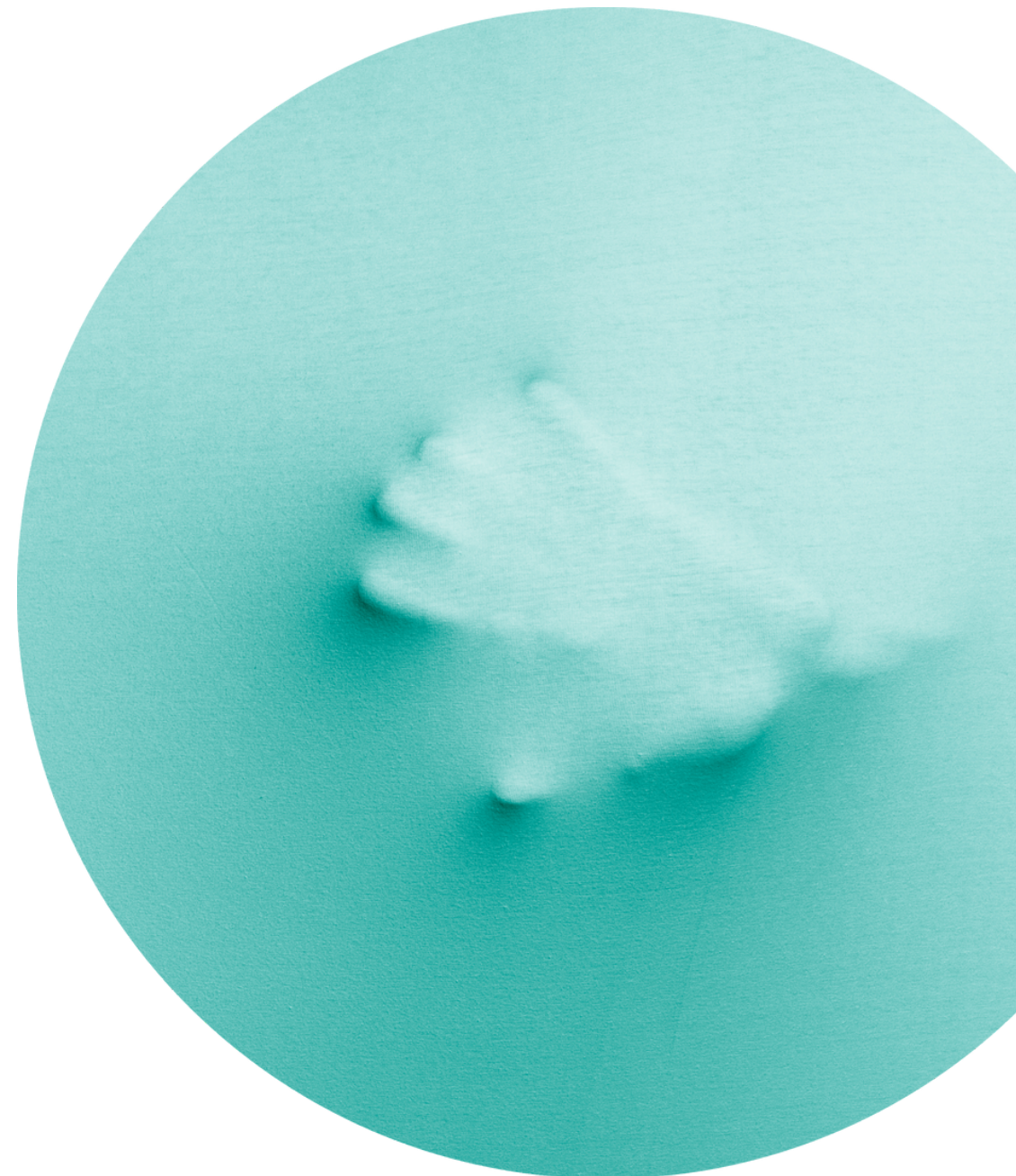


Concepto internacionalmente
reconocido

Marco Conceptual



CRIMINALIZACIÓN DEL PARTO Y EL EMBARAZO



- 01** Consecuencias negativas de esa judicialización
- 02** Resalta el tono punitivo
- 03** No solo hay prohibición de una decisión sino que puede tratarse de una penalización posterior
- 04** Parto y Embarazo

Esta regulación “deniega” directamente la decisión reproductiva. El estado alineado ideológicamente con la medicina interviene para obligar a la mujer a someterse a distintas prácticas en contra de su voluntad

Ikemoto, L. C. (1992). Code of Perfect Pregnancy: At the Intersection of the Ideology of Motherhood, the Practice of Defaulting to Science, and the Interventionist Mindset of Law, The. In OHIO STATE LAW JOURNAL (Vol. 53, Issue 5).



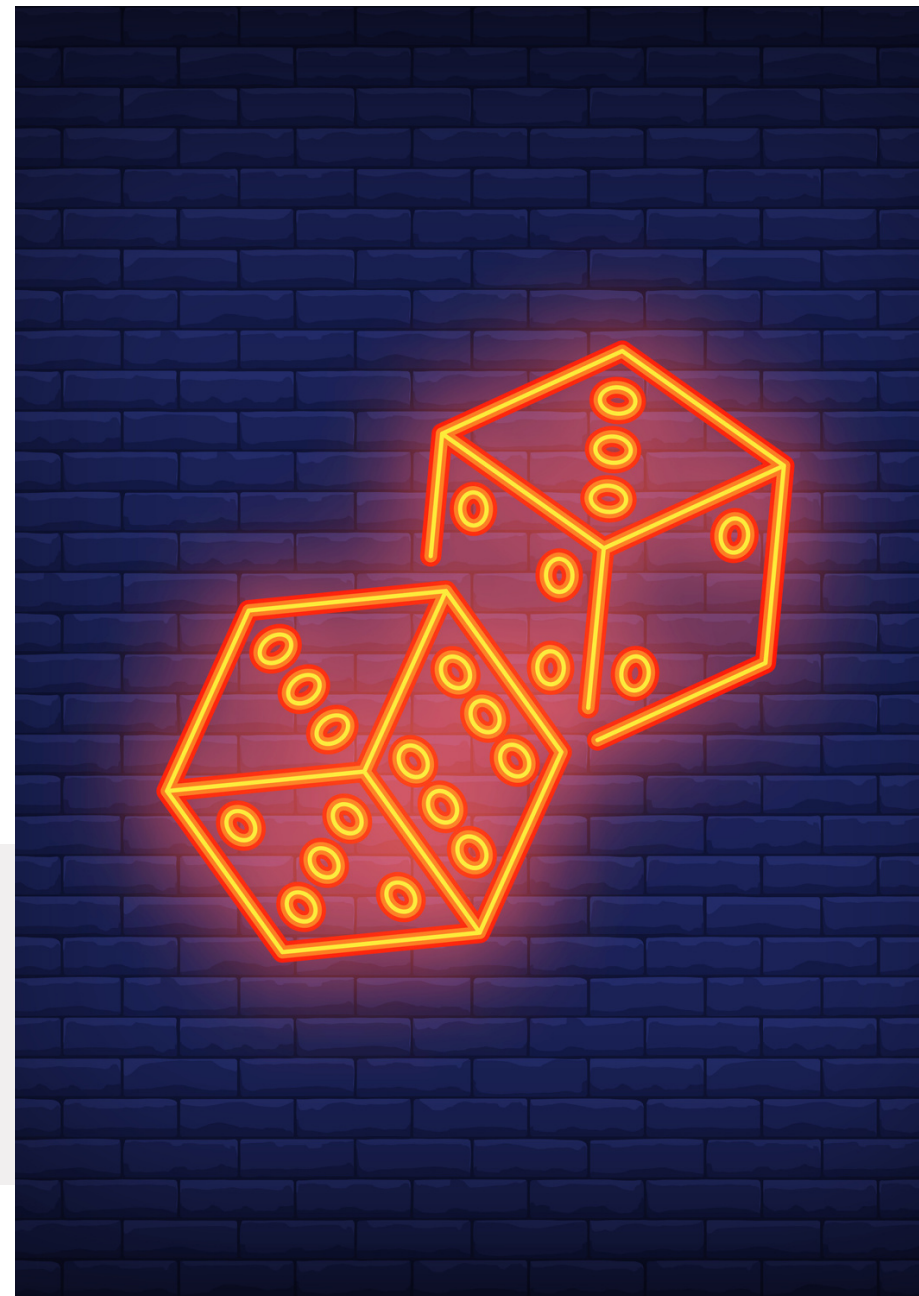
DIRECTA

CASE LAW

1

Jessie Mae Jefferson

1981



*Griffin Spaulding County Hospital
v. Jefferson*

- Cesárea por orden judicial
- 99 to 100% de morir por parto vaginal

C A S E L A W

2

Caso Oviedo

2019



STC 66/2022 y STC 11/2023

- Hospitalización por orden judicial
- Urgencia inmediata de realizar una inducción al parto

Las personas embarazadas pueden tomar decisiones,
pero existe una “penalización” para aquellas
decisiones o comportamientos reproductivos
considerados erróneos

Ikemoto, L. C. (1992). Code of Perfect Pregnancy: At the Intersection of the Ideology of Motherhood, the Practice of Defaulting to Science, and the Interventionist Mindset of Law, The. In OHO STATE LAW JOURNAL (Vol. 53, Issue 5).

INDIRECTA



C A S E L A W

3

Regina McKnight

1999



State v. McKnight

- Homicidio
- Condenada a 12 años de prisión
- Libre de todos los cargos en 2008

C A S E L A W

4

**Parto domiciliario con
presentación podálica**

2018



*Juzgado de Instrucción N°. 4 de Vigo,
Auto de 1 Oct. 2019, Rec. 2848/2018*

- Aborto Imprudente
- Caso sobreseído

Judicialización del embarazo y
el parto

Criminalización del
embarazo y el parto

LA CRIMINALIZACIÓN DEL PARTO COMO

judicialización del parto

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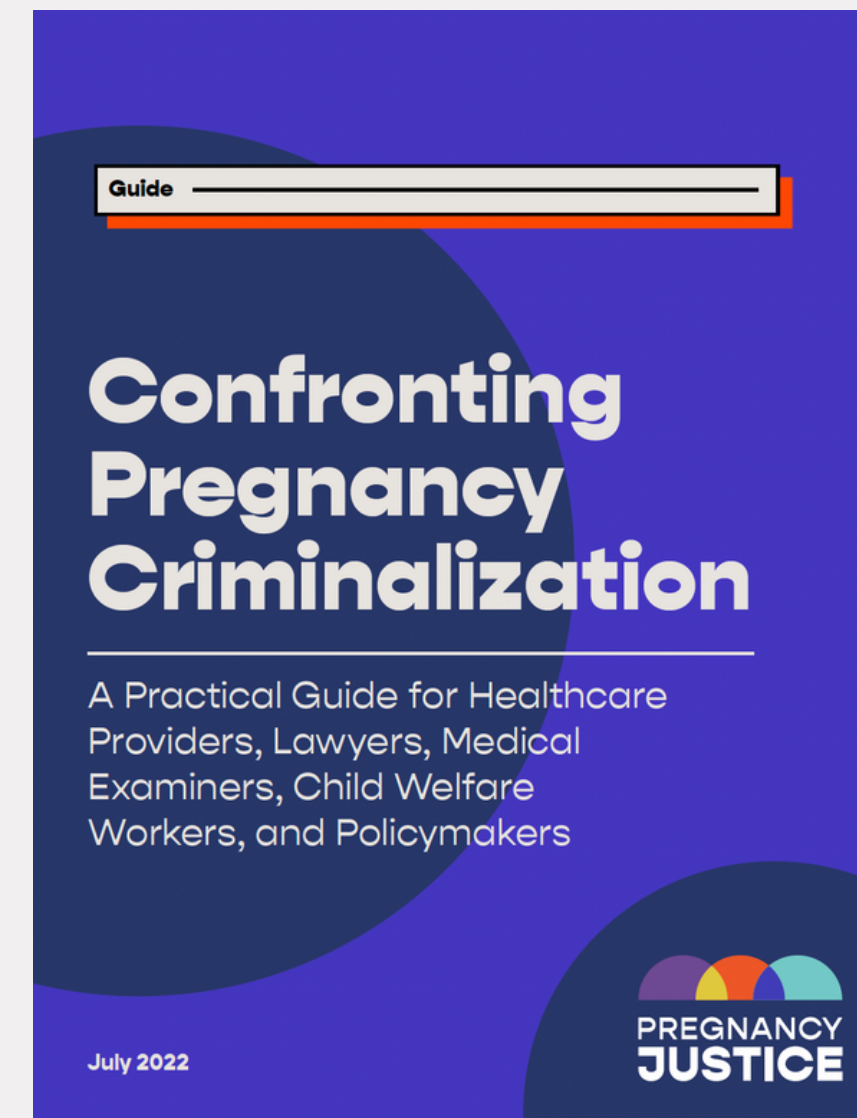
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M U C H A S

GRACIAS



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