

COLD CASE PREGNANCY CRIMINALIZATION: HOW FORENSIC INVESTIGATIVE GENETIC GENEALOGY IS USED TO PROSECUTE MOTHERS FOR DECADES-OLD STILLBIRTHS

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I. INTRODUCTION

The rise of commercial DNA testing has created a new pathway for policing through Forensic Investigative Genetic Genealogy (“FIGG”), with a perhaps unintended consequence of facilitating prosecutions for pregnancy loss. One use of FIGG that has not been widely reported on is the “Baby Doe” investigations, which involve extracting DNA from the remains of an unidentified perinate¹, discovered sometimes decades ago, to identify the perinate’s parents. Once named, many of those parents—the vast majority mothers—are investigated, interrogated, prosecuted, and convicted of homicide, even when these women maintain that, decades ago, they tragically, but *legally*, delivered a stillborn fetus and chose to keep that pregnancy loss private. These pregnancy loss prosecutions depend on unreliable science to convict women, are infected by tunnel vision and gender-based biases

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¹ A perinate is a fetus in the final gestational weeks in utero through an infant’s first week post-live birth. WHO, International Statistical Classification of Diseases and Related Health Problems § 5.7.1 (10th rev., 2d ed. 2004), <https://iris.who.int/server/api/core/bitstreams/9d747ca0-8b85-47c2-8c70-395bd7e55a6b/content> [<https://perma.cc/9ZUU-E2TF>]. The author uses this term throughout the article as in many Baby Doe cases, the central question for criminality is whether the perinate was alive after birth.

from the investigators and community at large, and have frightening implications for abortion and the criminalization of other pregnancy loss in the future. However, unlike many other tools of policing, FIGG is uniquely vulnerable to the pressures of the public, and visible outrage against this practice has potential to stop its use.

II.

HOW FIGG WORKS: THE BLENDING OF DNA TESTING AND ANCESTRY

FIGG is still in its infancy, gaining popularity among law enforcement after the identification and arrest of the Golden State Killer in 2018.² FIGG investigations combine genetic testing and ancestry tracking by allowing police departments and civilian investigators to utilize individual-uploaded DNA code in public genetic databases for comparison with an unknown individual, to either identify criminal perpetrators or to give name to unidentified, found human remains.³ FIGG, which relies on single nucleotide polymorphisms (“SNPs”) DNA testing, differs from Autosomal Short Tandem Repeat (“STR”) DNA searching traditionally used in criminal investigations.⁴ Whereas with STR testing, investigators can enter the DNA profile of the unknown person into police DNA databases populated by criminal offenders’ STR DNA profiles, SNP profile searching is incompatible with these databases.⁵ Instead, investigators conducting FIGG must add the SNP DNA profile of the unknown criminal suspect (or in Baby Doe cases, the perinate) into a SNP compatible database to compare the profile to potential relatives.⁶ From there, a FIGG investigator will investigate potential familial links and try to develop a family tree between the known and unknown individual using traditional police and ancestry investigation techniques in order to reveal the person’s identity.⁷ In Baby Doe cases, the investigator’s goal is to identify the parents of the perinate rather than identify the perinate itself.⁸ There are several publicly-available open-data SNP databases, including GedMatch and FamilyTreeDNA, in which individuals have uploaded their DNA for comparison—to be distinguished from commercial ancestry databases such as Ancestry.com, which contain SNP profiles but are *not* open to law enforcement for investigative searching.⁹

² Christi J. Guerrini, Whitney Bash Brooks, Jill O. Robinson, Stephanie M. Fullerton, Emily Zoorob & Amy L. McGuire, *IGG in the Trenches: Results of an In-Depth Interview Study on the Practice, Politics, and Future of Investigative Genetic Genealogy*, FORENSIC SCI. INT’L, Mar. 2024, at 2–3 [hereinafter Guerrini et al., *IGG in the Trenches*].

³ U.S. DEP’T OF JUST., INTERIM POLICY, FORENSIC GENETIC GENEALOGICAL DNA ANALYSIS AND SEARCHING 3 (2019).

⁴ *Id.*

⁵ *Id.*

⁶ *Id.*; see also Guerrini et al., *IGG in the Trenches*, *supra* note 2, at 2.

⁷ Guerrini et al., *IGG in the Trenches*, *supra* note 2, at 2.

⁸ *Id.* at 1–3.

⁹ See Natalie Ram, Erin E. Murphy & Sonia M. Suter, *Regulating Forensic Genealogy*, 373 SCIENCE 1444, 1444 (2021); see also *Ancestry Guide for Law Enforcement*, ANCESTRY (Nov. 12, 2019), <https://www.ancestry.com/c/legal/lawenforcement> [<https://perma.cc/PTE7-EN5D>] (“[Ancestry]

III.

THE DRAMATIC NUMBER OF BABY DOE FIGG INVESTIGATIONS SINCE 2018

Based on research by Pregnancy Justice,¹⁰ since 2018, there have been over sixty Baby Doe FIGG investigations initiated across the country.¹¹ Thirty-four parents, including thirty mothers,¹² have been identified and subsequently prosecuted under charges including but not limited to murder, manslaughter, abuse of a corpse, and tampering with evidence. These parents have received sentences ranging from probation to twenty years, and in one case up to life in prison.¹³ The oldest of these prosecutions stems from testing on fetal remains found in 1981.¹⁴

Of those prosecutions, nearly half the mothers described laboring and delivering an unmoving and unbreathing stillborn fetus.¹⁵ These women generally gave birth alone, outside of a medical setting. Following an unmedicated, agonizing, and often physically damaging birth, in the midst of their postpartum trauma, they disposed of the remains of their lifeless fetus. These mothers often keep this painful experience private for decades until police officers arrive at their door with accusations of murder. In many of these cases, despite being emphatic that they experienced a

do[es] not allow law enforcement to use Ancestry’s services to investigate crimes or to identify human remains.”) (emphasis in original).

¹⁰ This research project was conducted throughout 2024 and 2025 by the article’s author and Pregnancy Justice interns, using publicly available sources such as newspaper articles and police press releases found online. Thank you to Alana Blank and Simran Sohal for their invaluable research contributions on this project.

¹¹ To protect the privacy of the parents involved, identifying information of the investigated individuals, including their charges and sentences, will be made available upon request. Several women whose cases have received national publicity will be used as examples throughout the article.

¹² Of the four fathers prosecuted, only one has been convicted. Another father’s case is ongoing, and the last two’s charges were dropped. The remainder of this article will focus on the prosecutions of mothers, the primary group affected by this trend, and whose experiences in labor, delivery and postpartum are not believed.

¹³ See Caroline Bach, *Baby Theresa’s Mother Sentenced to Probation for Concealing Her Death*, WKOW (Sep. 16, 2022), https://www.wkow.com/news/baby-theresas-mother-sentenced-to-probation-for-concealing-her-death/article_25f7bc14-35f7-11ed-b162-23f86433c6b8.html [<https://perma.cc/SLP9-GU3F>]; *Mother Sentenced to up to 20 Years in Prison for Murder of Newborn Found in Dumpster in Lancaster*, WGAL (May 25, 2023), <https://www.wgal.com/article/former-lancaster-county-woman-sentenced-to-prison-for-murder-of-newborn-found-in-dumpster/43993955> [<https://perma.cc/LWP5-MTV8>]; Ariel Ramchandani, *Does Gail Ritchey Belong in Prison?: For 26 Years, She Carried a Dark Secret About a Young Pregnancy. Now Genetic Genealogy Has Turned Her Life Upside Down*, MOTHER JONES (Mar. 24, 2022), <https://www.motherjones.com/criminal-justice/2022/03/gail-ritchey-neonaticide-trial-geauga-county/> [<https://perma.cc/2XMD-F525>].

¹⁴ See Alfonzo Galvan, *Theresa Bentaas Changes Plea in ‘Baby Andrew’ Case, Found Guilty on Manslaughter Charge*, ARGUS LEADER (Oct. 8, 2021), <https://www.argusleader.com/story/news/crime/2021/10/08/theresa-bentaas-baby-andrew-cold-case-sioux-falls/6042275001/> [<https://perma.cc/B74X-49SR>].

¹⁵ Our research was confined to easily accessible records such as newspaper articles, press releases and publicly accessible court records. As such, we have limited information on the claims of each parent, and we believe that more of these incidents involve pregnancy loss than what is captured in our research.

natural pregnancy loss, the mothers are not believed. Instead, they are deemed baby killers and prosecuted to the highest extent permitted by the law.

IV.

RISKS OF WRONGFUL CONVICTIONS FROM THESE PROSECUTIONS

There are three dynamics common in Baby Doe FIGG investigations that raise the risk of wrongly convicting a person of homicide for their pregnancy loss. First, these cases rely on the same controversial or outright debunked science present in other cases of pregnancy loss criminalization: specifically, the Lung Float Test¹⁶ and other problematic forensic “evidence” of life are used to challenge a mother’s claim that she delivered a stillborn.¹⁷ It is an open and hotly debated question whether it is possible to determine from an autopsy alone if a perinate was live-born or stillborn.¹⁸ A 2024 study of board-certified forensic pathologists found that two thirds of all respondents did not believe that such a determination was possible.¹⁹ Still, pathologists attempt to establish this finding using several methods—the most controversial of which is the Lung Float Test.²⁰

The Lung Float Test originated in the era of the witch trials, and its parallel use to condemn innocent women for crimes is similar: pathologists performing the procedure place a deceased infant’s lungs in liquid and observe if they float or sink.²¹ If the lung sinks, supposedly the perinate did not take a post-birth breath and was stillborn, but if it floats, the inverse is true.²² In 2023, the organization Physicians for Human Rights concluded that the Lung Float Test “has been deemed wholly unreliable by pathologists and forensic experts for decades and is therefore not accepted by the wider forensic pathology community as a credible or accurate test

¹⁶ The Lung Float Test has many names: the Floating Lung Test, Hydrostatic Float Test, Docimasia. These terms are interchangeable.

¹⁷ Many states follow the common law “born alive” rule, which requires a victim to be “born alive” for homicide charges to apply. Black’s Law Dictionary defines the born alive rule as “a showing that an infant was completely expelled from the mother’s womb and possessed a separate and independent existence from the mother.” *Born-Alive Test*, BLACK’S LAW DICTIONARY (12th ed. 2024). Thus, in states that follow this doctrine, a determination of post-birth life is essential to proving a prosecution’s homicide case.

¹⁸ Pekka Saukko & Bernard Knight, KNIGHT’S FORENSIC PATHOL. 445 (Serena Bureau et al. eds., 3d ed. 2004) (“The unequivocal demonstration of breathing in a newborn infant is fraught with difficulty . . . it has probably provoked more discussion, in the printed words and controversy than any other topic in forensic medicine.”).

¹⁹ Alison Krywaczyk, Nicole R. Jackson, Katherine Maloney & James R. Gill, *A Survey of Forensic Pathologists Regarding Medicolegal Investigation of Perinatal and Stillborn Deaths*, 46 AM. J. FORENSIC MED. PATHOL. 122, 125 (2025).

²⁰ In addition to the Lung Float Test, some examinations performed by forensic pathologists to determine life post-birth include gross and microscopic examination of a fetal lung, placenta, umbilical cord, and observations of maceration of the body, food in the stomach, and trauma associated with hemorrhage, among others. *Id.* at 125–26. There is debate among examiners about the degree of probative weight and indicia of reliability each test holds in the live versus stillbirth determination. *Id.*

²¹ See *Use of the Lung “Float Test” (Hydrostatic Lung Test): An Inaccurate, Outdated, and Unethical Forensic Practice*, PHYSICIANS FOR HUM. RTS. (Oct. 2023), https://phr.org/wp-content/uploads/2023/10/PHR_Floating-lung-fact-sheet_Oct-2023.pdf.

²² *Id.*

to distinguish between live versus stillbirth.”²³ Modern forensic scientists recognize that there are just “too many recorded instances when control tests have shown that stillborn lungs may float and the lungs from undoubtedly live-born infants have sunk, to allow it to be used in testimony in a criminal trial.”²⁴ Despite the widespread rejection of the test’s validity, its results are still relied on as evidence of live birth to initiate Baby Doe investigations and support prosecutions of parents for the intentional or negligent homicide of their live-born perinates.²⁵

Secondly and relatedly, further compromising these cold-case investigations is that the age of the cases makes confirming the accuracy of the medical determination of live birth much more challenging. As the autopsies were conducted on the fetal remains years or decades before these prosecutions, there is no opportunity for the government or defense experts to conduct new autopsies or sometimes even to review physical evidence created from the autopsy that may not have been retained.²⁶ Thus, as the understanding of scientific evidence changes, defense lawyers would benefit from hiring experts with specialized knowledge to review the evidence and ensure that the original findings are accurate, but this strategy is limited when experts cannot do thorough physical review of the evidence. This constrains the prosecuted mother’s ability to mount a complete, robust defense and perpetuates the use of unreliable, unchallenged science in courtrooms.

Lastly, and most insidiously, Baby Doe FIGG investigations are marred by the stories ascribed to these cases, and mythologized over time, in the communities that were left with the mystery of who birthed and abandoned the unknown child. Many of these Baby Doe investigations occur in small towns, where the lore of the murdered baby grew into the town tragedy.²⁷ Over decades, police and the community hypothesized about what happened to the murdered child and dreamed of punishing the woman who harmed the most innocent among them.²⁸ Graves were placed for the lost babies across the country.²⁹ When FIGG reveals the town villain,

²³ *Id.*

²⁴ Pekka Saukko & Bernard Knight, KNIGHT’S FORENSIC PATHOL. 445 (4th ed. 2016); *see also* Aziza Ahmed & Daniel N. Arshack, *The Faulty Science of the Floating Lung Test, More Pseudo Forensic Science*, CHAMPION, Aug. 2020, at 48.

²⁵ *See* Isabella Taft, *A DNA Technique Is Finding Women Who Left Their Babies for Dead*, N.Y. TIMES (June 3, 2024), <https://www.nytimes.com/2025/06/03/us/forensic-genetic-geneology-dna-babies.html> [perma.cc/JQ6C-SQEY]; Ramchandani, *supra* note 13; *see also* KWQC Staff, *Ohio Woman Pleads Guilty in '92 Death of 'Baby April' in Moline*, KWQC (Nov. 22, 2021), <https://www.kwqc.com/2021/11/22/ohio-woman-pleads-guilty-92-death-baby-april-moline/> [https://perma.cc/LQK6-TUXE].

²⁶ *See* KWQC Staff, *supra* note 25; *see also* *Without Evidence Preservation, Crimes Remain Unsolved*, INNOCENCE PROJECT (Jan. 24, 2011), <https://innocenceproject.org/news/without-evidence-preservation-crimes-remain-unsolved/> [https://perma.cc/JY7J-GBCR].

²⁷ *See, e.g.,* Rebecca Salinas & Daniela Ibarra, *'We Never Gave up': Arrest Made 19 Years After Baby Girl's Body Found in Medina County*, KSAT (Nov. 27, 2023), <https://www.ksat.com/news/local/2023/11/21/arrest-made-19-years-after-baby-girls-body-found-in-medina-county/> [https://perma.cc/YZ8D-BRA6].

²⁸ *Id.*

²⁹ Ramchandani, *supra* note 13; Stephen Groves, *South Dakota Woman Sentenced in 1981 Death of Infant Son*, AP NEWS (Dec. 3, 2021), <https://apnews.com/article/south-dakota-sentencing-sioux->

and the mother offers the truth of the event—that it was not a cold-blooded murder but a natural, blameless tragedy that she has anguished privately over—tunnel vision and the community’s need for “justice” does not allow the police, prosecutor or general public to assess the new story objectively. These prosecutions and convictions occur not because there is an injustice to correct, but because a town is seeking closure to a story they have written together.

These prosecutions fit into the larger pattern of female wrongful convictions. According to the National Registry of Exonerations, “72% of female exonerees were convicted of crimes that never occurred.”³⁰ Nearly half of female no-crime exonerations involved violent crimes, and in about two thirds of those cases the presumed victims were children.³¹ These convictions play on society’s expectations of the “good mother”: when children or fetuses get hurt, the women who were expected to protect them are blamed and prosecuted even when they did nothing to cause the harm or were powerless to stop a natural tragedy or accident from occurring.³²

V.

BABY DOE FIGG PROSECUTIONS IN THE MEDIA

Despite the growing frequency of these Baby Doe FIGG investigations, the practice has not been widely discussed in the legal community or public. When it has been written about, including in a recent New York Times piece, the magnitude of the injustice and the unreliability of the evidence used to support these prosecutions are woefully minimized.³³ When parents are not prosecuted, articles quote police officers about their frustration with the limitations of the law.³⁴ When

falls-fab03ccea315efb648827626b23d9f0 [https://perma.cc/C8DS-LWQN]; KENS 5 Staff, *Mother Arrested 19 Years Later in South Texas*, KENS 5 (Nov. 21, 2023), <https://www.kens5.com/article/news/local/texas/biological-mother-arrested-capital-murder-19-years-after-death-newborn-daughter/273-d331ba50-ec1f-402a-8d9f-86eab54e8169> [https://perma.cc/A3ZF-373N].

³⁰ *Female Exonerees*, NATIONAL REGISTRY OF EXONERATIONS (last visited Oct. 31, 2025), <https://exonerationregistry.org/female-exonerees> [https://perma.cc/465B-HLAJ].

³¹ *Id.*

³² See Danielle Bernstein, *Why Women’s Wrongful Convictions Are So Difficult to Overcome: Outdated Stereotypes and Crimes that Never Occurred Create Unique Challenges for Women Seeking Exoneration*, APPEAL (Aug. 14, 2023), <https://theappeal.org/womens-wrongful-convictions-no-crime-sexual-stereotypes/> [https://perma.cc/8LV6-XNZZ].

³³ Taft, *supra* note 25.

³⁴ Summer Poole, *‘Angel Baby’: 1995 Mobile County Cold Case Closed After Infant’s Mother Found*, WKRG (Dec. 12, 2024), <https://www.wkrg.com/mobile-county/angel-baby-1995-mobile-county-cold-case-closed-after-infants-mother-found/> [https://perma.cc/L22B-2AKG] (“‘Due to the juvenile law at the time of the crime, which was later changed in 2009, [the mother] cannot be charged with the murder of her baby,’ read the [Mobile County Sheriff’s Office’s news] release. . . . ‘It is extremely frustrating on behalf of the investigators and the personnel who worked tirelessly, tirelessly,’ [an MCSO official] said. ‘I mean, it’s extremely frustrating for the investigators and the personnel who worked on this case, tireless, early [sic] to come to a conclusion and not be able to see it through with the conviction. It’s aggravating.’”).

parents accept plea deals to charges lesser than murder—frequently through Alford pleas in which they maintain their innocence but admit that the state has enough evidence to succeed in convicting them³⁵—the plea is framed as an offering of beneficence by the State rather than a way the government has avoided its burden of proving that the perinate’s death was not a result of pregnancy loss.³⁶

VI.

THE ETHICAL AND REGULATORY IMPLICATIONS OF THESE INVESTIGATIONS FOR FIGG PRACTITIONERS AND THE GENERAL PUBLIC

Even with the relative lack of public attention, Baby Doe cases are considered the most ethically fraught investigations in the FIGG community, with some investigators refusing to work on them.³⁷ While the obvious ethical conflict surrounds the potential of wrongly convicting a woman for a death for which she was not responsible, other issues discussed concern not wanting to identify and villainize mothers who *did* cause their live-born infant’s death while grappling with postpartum psychosis or other challenges, and the fear of public backlash to the investigations.³⁸ This last point is highly relevant for FIGG practitioners: FIGG investigations can only succeed when the public trusts in the technology, and willingly uploads their genetic code into the public databases that FIGG investigators search.³⁹ Should the public stop supporting FIGG investigations because they are disturbed by mothers and grandmothers being prosecuted for their decades-old stillbirth, they may withdraw or refuse to place their DNA in databases, compromising the future of these investigations.⁴⁰

Another major risk to FIGG is the enactment of state-based legislation regulating and limiting its use in policing. The field currently is largely unregulated.⁴¹ The Department of Justice issued guidance on federal FIGG practice in 2019, but this guidance only applies to investigations conducted by federal law enforcement and state law enforcement that receive federal aid to perform DNA

³⁵ Groves, *supra* note 29; *North Carolina v. Alford*, 400 U.S. 25 (1970).

³⁶ Taft, *supra* note 25.

³⁷ Guerrini et al., *IGG in the Trenches*, *supra* note 2, at 12; Christi J. Guerrini, Jill O. Robinson, Mohamed I. Elsaid, Whitney Bash Brooks, Ariel Levchenko, Stephanie M. Fullerton, Sara Huston, Norah L. Crossnohere, John F.P. Bridges, Jacklyn M. Dahlquist, Louiza Kalokairinou, Diana Madden, CeCe Moore & Amy L. McGuire, *FIGG at 5: An Update on U.S. Public Perspectives on Forensic Investigative Genetic Genealogy Five Years After Its Introduction to Criminal Investigations*, FORENSIC SCI. INT’L, Feb. 2025, at 8 [hereinafter Guerrini et al., *FIGG at 5*]; see also Brianne Kirkpatrick Williams, *Mental Health Awareness and My Thoughts on “Baby DOE” Cases*, WATERSHED DNA (May 22, 2020), <https://www.watersheddna.com/blog/mental-health-awareness> [<https://perma.cc/Y66V-ZJ2C>].

³⁸ Guerrini et al., *IGG in the Trenches*, *supra* note 2, at 12.

³⁹ *Id.* at 15.

⁴⁰ *Id.* at 7, 9.

⁴¹ Tebah Browne & Barry Scheck, *Regulating Forensic Investigative Genetic Genealogy: The Case for Judicial Oversight and the Bipartisan Model Legislation Passed in Maryland*, 63 JUDGES J. 4, 4 (2024); see also Ram et al., *supra* note 9.

testing.⁴² This policy was also drafted by law enforcement, reflecting the limitations police are comfortable placing on their own work, and not necessarily reflecting the concerns of the defense bar or general public about this technology and use in practice.⁴³ To date, only Maryland, Montana and Utah have legislated on the use of FIGG.⁴⁴ Presumably, large public outcry against one or more types of FIGG investigations could prompt law makers across the country to draft and support laws limiting the types of crimes and tactics of investigations that FIGG practitioners employ.

VII.

PUBLIC SUPPORT FOR BABY DOE INVESTIGATIONS AND THE IMPLICATIONS FOR FIGG USE IN ABORTION INVESTIGATION

Multiple studies have shown that public support is higher for FIGG investigations in the context of sexual assaults, violent crimes, and unidentified human remains.⁴⁵ Of note, one study showed strong support of Baby Doe investigations.⁴⁶ However, the definition of the Baby Doe cases offered to study participants was: “[i]dentifying deceased, abandoned babies.”⁴⁷ This definition fails to capture the potential inaccuracies of the science at autopsy that may have led a stillborn perinate to be identified as live born, or the many factors that may lead a person immediately postpartum to dispose of their fetal remains without others’ assistance. It also does not include the likely secondary outcome after identification of the “babies,” and arguably the goal of the investigations—to identify the biological parents to investigate them for potential criminal conduct—which FIGG practitioners comment would cause the public concern.⁴⁸

Additionally, the authors of that study state that this definition intentionally limited these investigations to live births so as to not implicate potential future use in enforcing criminal-abortion laws.⁴⁹ However, it is impossible to disaggregate these cases with the potential use of this science to identify people under suspicion of having an abortion. To date, this article’s author does not know of FIGG being used to identify anyone suspected of or affirmatively having an abortion. However,

⁴² Browne & Scheck, *supra* note 41, at 4–5.

⁴³ Ram et al., *supra* note 9, at 1444–45.

⁴⁴ See MD. CODE ANN., CRIM. PROC., § 17 (2022); MONT. CODE ANN. § 44-6-104 (2021); UTAH CODE ANN. §§ 53-10-403.5, -403.7, 53-26-101, 78B-9-301 (2023). Maryland legislation is a model for other states as it “mandates judicial supervision, protects third-party autonomy and data, grants equal access to the defense and prosecution, and ensures transparency and accountability.” Browne & Scheck, *supra* note 41, at 6.

⁴⁵ Alexandra R. Quinton, Sally F. Kelty & Nathan Scudder, *Attitudes Towards Police Use of Consumer/Private DNA Databases in Investigations*, 62 SCI. & JUST. 263, 266 (2022); see also Guerrini et al., *FIGG at 5*, *supra* note 37, at 2, 8.

⁴⁶ Guerrini et al., *FIGG at 5*, *supra* note 37, at 4–5.

⁴⁷ *Id.* at 3.

⁴⁸ Guerrini et al., *IGG in the Trenches*, *supra* note 2, at 7–8.

⁴⁹ Guerrini et al., *FIGG at 5*, *supra* note 37, at 5.

in 2018, a police officer in Georgia (which, pre-*Dobbs*, had a twenty-week abortion ban) threatened to use DNA testing⁵⁰ to identify the mother of a twenty-week fetus that was found deceased in a wastewater treatment facility, saying he was seeking “to put the mother and fetus together, and make sure the mother’s okay.”⁵¹ During testing, the mother came forward to explain that she had a miscarriage in a hospital restroom.⁵² Fortunately, she was believed, and the matter was resolved.⁵³ However, the post-*Dobbs* United States, where pregnancy criminalization has increased rapidly⁵⁴ and over a dozen states in the 2025 legislative session had proposed laws to make abortion a homicide,⁵⁵ it is likely that this tool for identifying women who suffered pregnancy loss will be used under the justification of “solving the crime” of abortion. Until there is state-based legislation banning the use of FIGG in this scenario—which none of the current legislation explicitly addresses—the risk of FIGG being deployed in this manner cannot be dismissed.⁵⁶

VIII.

CONCLUSION

FIGG Baby Doe investigations are a new trend in the old story of blaming women for the tragedy of pregnancy loss. But in truth, these cases are not about investigators and prosecutors using DNA to bring “bad mothers” to justice for killing

⁵⁰ This was presumably STR and not SNP testing, though the reporting is ambiguous on this point.

⁵¹ Russell Brandom, *Police Are Using DNA Testing to Track Down a Fetus’s Mother*, VERGE (May 10, 2018), <https://www.theverge.com/2018/5/10/17340666/dna-testing-georgia-fetus-codis-abortion-genetics-investigation> [<https://perma.cc/C8ZK-RRSZ>]; see also Christina Cauterucci, *Georgia Law Enforcement Is DNA-Testing Fetal Remains Found In Wastewater*, SLATE (May 11, 2018), <https://slate.com/news-and-politics/2018/05/georgia-law-enforcement-is-dna-testing-fetal-remains-found-in-wastewater.html> [<https://perma.cc/S3RE-24GZ>].

⁵² Jozsef Papp, *Fetus Found at Water Plant Might Have Been Flushed*, AUGUSTA CHRON. (Aug. 28, 2018), <https://www.augustachronicle.com/story/news/2018/08/28/da-reviewing-case-of-fetus-found-at-water-treatment-plant-in-may/10907393007/> [<https://perma.cc/X9V2-SJWU>].

⁵³ *Id.*

⁵⁴ Since 1973 over 2,000 people across the United States have been arrested for behavior that would not have been criminalized but-for the defendant’s pregnancy status. The single highest rate of pregnancy-related arrests occurred in the first year following the *Dobbs* decision. That year, there were 210 documented pregnancy-related arrests, and 22 of those arrests involved fetal or infant demise. WENDY A. BACH & MADALYN K. WASILCZUK, *Pregnancy as a Crime: A Preliminary Report on the First Year After Dobbs*, PREGNANCY JUST. 2, 5 (2024), <https://www.pregnancyjusticeus.org/wp-content/uploads/2024/09/Pregnancy-as-a-Crime.pdf>.

⁵⁵ See H.B. 1373, 69th Leg. Assemb., Reg. Sess. (N.D. 2025); H.B. 1334, 124th Gen. Assemb., 1st Reg. Sess. (Ind. 2025); H. 3537, 126th Gen. Assemb., 1st Reg. Sess. (S.C. 2025); S.B. 456, 60th Leg., 1st Sess. (Okla. 2025); H.B. 518, Leg., Reg. Sess. (Ala. 2025); H.B. 441, 158th Gen. Assemb., Reg. Sess. (Ga. 2025); H.F. 453, 91st Gen. Assemb., Reg. Sess. (Iowa 2025); S.B. 1059, 68th Leg., 1st Reg. Sess. (Idaho 2025); H.B. 2171, Leg., Reg. Sess. (Kan. 2025); H.B. 523, Gen. Assemb., Reg. Sess. (Ky. 2025); L.D. 975, 132nd Leg., 1st Reg. Sess. (Me. 2025); H.B. 111, 103rd Gen. Assemb., 1st Reg. Sess. (Mo. 2025); H.B. 804, Gen. Assemb., 2025 Sess. (N.C. 2025); H.B. 2197, 89th Leg., Reg. Sess. (Tex. 2025).

⁵⁶ See MD. CODE ANN., CRIM. PROC. § 17 (2022); MONT. CODE ANN. § 44-6-104 (2021); UTAH CODE ANN. §§ 53-10-403.5, -403.7; 53-26-101; 78B-9-301 (2023).

their babies; they are about the State refusing to believe women when they say they did not cause their fetus's death, and deciding to investigate, prosecute, and imprison women for pregnancy loss. This technology will continue to be used against people who suffer pregnancy loss, extending past cold-case investigations and into real-time pregnancy loss and abortion criminalization investigations. However, FIGG, by the nature of its tools (public databases), can only operate with positive public opinion and support. As the field grows, and more people consider contributing their DNA to FIGG databases, awareness about Baby Doe investigations can lead to outcry and even regulation against its occurrence.