LFAA LAW FIRM ANTIRACISM ALLIANCE

Abortion & Race:

Why Abortion Bans and Restrictions Disproportionately Affect Black Women and People of Color

Report by:
The Reproductive Justice Working Group of the Law Firm Antiracism Alliance

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APPENDIX A – Survey of Laws Restricting Abortion in the 50 States and U.S. Territories, Including Associated Penalties and Punishment for Aiding & Abetting

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INTRODUCTION

In June 2022, the United States Supreme Court issued its opinion in *Dobbs v. Jackson Women's Health Organization*,[1] which eviscerated the nearly fifty-year-old federal right to obtain abortion care until fetal viability. After *Dobbs*, many states already hostile to abortion access are now free to restrict abortion severely, or ban it outright.

Abortion only became legal nationwide in 1973, when the U.S. Supreme Court issued its ruling in *Roe v. Wade*, which recognized a federal constitutional right to obtain abortion care until the point of fetal viability.[2] And despite a series of Supreme Court rulings since *Roe* affirming the right to obtain an abortion, the anti-abortion movement has been extremely successful in curtailing access to abortion on the state level, particularly since the 2010s. Key to their strategy, the anti-abortion movement has leveraged their influence over state legislatures to pass laws that place onerous burdens on abortion providers and otherwise restrict abortion (for example, by limiting abortions by gestational age, curtailing access to medication abortion, and imposing waiting periods and ultrasound requirements, to name just a few). For many reasons, partly including *Roe* and its progeny's federal constitutional protections for abortion, state legislatures became the battleground for legal and political fights around the regulation of abortion care and reproductive healthcare in general.

The anti-abortion movement's efforts, prior to *Dobbs*, resulted in a patchwork of care across the U.S., with certain states having multiple abortion clinics for single communities and robust legal protections for abortion access, and other states with a single clinic serving the entire state and active legal threats to the (then-existent) constitutional right to abortion. For this and other reasons, for many people seeking abortion care over the past two decades, *Roe*'s

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[1] 142 S. Ct. 2228 (2022).

[2] *See* Roe v. Wade, 410 U.S. 113 (1973).

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protections for abortion access were already illusory. *Dobbs*, however, was the nail in the coffin in many states: hostile states now have the ability to fully restrict access to abortion within their borders, rather than merely making abortions exceedingly difficult to provide and to obtain.

Not only is abortion access unequally distributed across the U.S., but the people who seek abortion care are disproportionately those who are under-resourced and who lack meaningful, comprehensive access to birth control methods and to equitable healthcare. Because of these inequities, abortion bans and restrictions disproportionately impact low-income individuals (who are disproportionately Black women and people of color), and exacerbate the existing structural racism enshrined within the U.S. legal system. *Dobbs* has deepened these existing inequities by allowing states to more severely curtail abortion access or ban abortion outright.

Against this backdrop is the concept and practice of reproductive justice, which is rooted in the Black womanist movements that have existed throughout U.S. history. Reproductive justice is a holistic human rights framework that seeks to center the experiences of the most marginalized people – specifically centering Black, brown, indigenous, LGBTQIA+, and disabled people – and is separate from (but related to) the reproductive rights[3] and the reproductive health[4] frameworks. The reproductive justice movement encompasses more than merely protecting the legal right to obtain an abortion. One prominent Georgia-based reproductive justice organization, SisterSong

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[3] As defined by the Asian Communities for Reproductive Justice, the reproductive rights framework "is a legal and advocacy-based model that serves to protect an individual woman's legal right to reproductive health care services with a focus on keeping abortion legal and increasing access to family planning services." ASIAN COMMUNITIES FOR REPRODUCTIVE JUSTICE, A NEW VISION FOR ADVANCING OUR MOVEMENT FOR REPRODUCTIVE HEALTH, REPRODUCTIVE RIGHTS AND REPRODUCTIVE JUSTICE 2 (2005), *available at* https://forwardtogether.org/wp-content/uploads/2017/12/ACRJ-A-New-Vision.pdf.

[4] As defined by the Asian Communities for Reproductive Justice, the reproductive health framework "is a service delivery model for addressing the reproductive health needs of women. The central theme of this framework is that health disparities and inequalities can be ameliorated by the creation and development of progressive health care clinics and agencies that will ensure women have access to a full range of reproductive health services and are empowered to understand their health care needs." ASIAN COMMUNITIES FOR REPRODUCTIVE JUSTICE, A NEW VISION FOR ADVANCING OUR MOVEMENT FOR REPRODUCTIVE HEALTH, REPRODUCTIVE RIGHTS AND REPRODUCTIVE JUSTICE 2 (2005), *available at* https://forwardtogether.org/wp-content/uploads/2017/12/ACRJ-A-New-Vision.pdf.

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Women of Color Reproductive Justice Collective, defines reproductive justice as "the human right to maintain personal bodily autonomy, have children, not have children, and parent the children we have in safe and sustainable communities."[5]

While truly meaningful access to abortion care is a core element of reproductive justice, the reproductive justice framework takes a holistic approach and seeks to move the discourse beyond abortion access. Reproductive justice is an intersectional framework that recognizes that multiple of systems of oppression (including racism, sexism, homophobia, classism, ableism, and others) may affect an individual's ability to exercise autonomy when making reproductive and parenting decisions. As such, racial inequity, racial violence, and racial discrimination are all reproductive justice issues, as they curtail people's ability to have full autonomy over their reproductive lives and parent their children safely and freely.

The purpose of this report is to explore state laws that ban or severely restrict abortion in the context of reproductive justice and structural racism. To that end, this report reviews federal and state-level data (particularly in states where anti-abortion laws have been enacted or proposed) to analyze the ways in which current and proposed state anti-abortion laws uphold existing structural racism and disparately impact Black women, people of color, and other marginalized people.

First, we provide an overview of anti-abortion legislation as of the end of December 2022, as well as then-current case law. We then examine the multiple and intersecting ways in which such anti-abortion laws uphold and actively perpetuate structural racism. Those include the intersectional impacts of disparities in maternal outcomes and access to healthcare; the many practical impacts of the need to travel to access abortion services; failures of sex education; and anti-abortion enforcement mechanisms that reinforce structural racism. In addition, appended to

[5] SisterSong Women of Color Reproductive Justice Collective, *What is Reproductive Justice?,* https://www.sistersong.net/reproductive-justice/ (last visited Dec. 28, 2022).

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this report is a detailed state-by-state survey of laws restricting abortion, along with the civil penalties and criminal punishments for violating them.

This report has several limitations. Perhaps the most significant limitation is the rapidly changing landscape in this area. In that sense, our report is out of date even as it is being made public. For example, while this report was undergoing a final cite check in early January 2023, the South Carolina Supreme Court ruled that South Carolina's 6-week abortion ban violated the state's constitution.[6] This update came too late to be reflected in this report, and we are sure other changes will follow in the months (much less years) to come. Thus, we encourage readers with specific questions regarding the current legal status of abortion in a particular state to follow up on what may have changed in that state since December 2022. In the future, we will attempt to update the 50-state survey associated with this report at regular intervals to account for those changes. We welcome other suggestions to make this resource more useful. The length of this report and its accompanying appendix may also limit its utility for some. If there is a section that is most pertinent to you, we hope you will turn to it quickly and find what you need there.

Another limitation of this report is its focus on laws and their impact. We recognize that the reproductive justice framework and movement is unabashedly and purposefully *not* centered on law or lawyers. This report is written by lawyers, and it focuses on the impact of fundamental changes to the legal framework around abortion that took place in the United States in 2022. The state of law is not the full story—nor has it ever been. Women and people of color wishing to exercise reproductive autonomy are faced with hard choices, made harder still by the *Dobbs* decision and its many ramifications. We do not intend to diminish that reality, and hope that the information provided in this report will be a resource for advocates, activists, scholars, and anyone else operating in the reproductive justice space.

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[6] *See* Planned Parenthood S. Atl. v. State, 2023 S.C. LEXIS 3 (S.C. 2023); Kate Zernike, *South Carolina Constitution Includes Abortion Right, State Supreme Court Rules*, N.Y. TIMES, Jan. 5, 2023, https://www.nytimes.com/2023/01/05/us/south-carolina-abortion-supreme-court.html.

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Finally, the co-chairs of the LFAA Reproductive Justice Working Group wish to emphasize that this report would not have been possible without the work of the attorneys and other professional staff who volunteered their time and expertise over countless hours. We are grateful to all those volunteers. We are also grateful for the frank feedback and practical suggestions from members of the reproductive justice movement that led to this undertaking in the first place. Of course, any mistakes or limitations are entirely our own.

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SECTION 1 – Overview of the Current State of the Law

I. Introduction and *Dobbs*

On June 24, 2022, the U.S. Supreme Court issued its ruling in *Dobbs v. Jackson Women's Health Organization*, holding that the U.S. Constitution does not provide a right for a pregnant person to obtain an abortion.[7] In doing so, the Court overruled its past decisions in *Roe v. Wade*[8] and *Planned Parenthood v. Casey*,[9] reversing its own nearly 50-year-old precedent of granting constitutional protection for abortion rights. As a result, federal, state, and local legislative bodies now have the ability to infringe on abortion rights without limitation. While there has been some limited action on abortion rights at the federal level, the *Dobbs* decision has effectively handed individual states the power to restrict and ban abortion. Below is a broad overview of the current state of the law in the U.S. in the wake of *Dobbs*, outlining federal and state abortion laws, as well as any pending legislation and judicial action affecting such laws.[10]

II. Federal Law

A. Federal Legislation

The only significant federal legislation concerning abortion is the Partial-Birth Abortion Ban Act, which was signed into law in 2003 and prohibits the performance of so-called "partial-birth abortion[s]."[11] "Partial-birth abortion" is a controversial term that does not actually refer to a precise medical procedure, but "is generally interpreted as referring to one method of abortion

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[7] 142 S. Ct. 2228 (2022).

[8] 410 U.S. 113 (1973).

[9] 505 U.S. 833 (1992).

[10] A more detailed survey of state laws can be found in Appendix A. The laws in this space are rapidly changing and the following discussion may not accurately reflect the state of the law following the January 2023 publication of this report.

[11] 18 U.S.C. § 1531.

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which occurs later in pregnancy."[12] The Partial-Birth Abortion Ban Act provides an exception for instances when performing the procedures banned by the law are required to save a pregnant person's life, but does not contain a broader exception for fatal fetal anomalies or for the protection of a pregnant person's health. The U.S. Supreme Court upheld the Partial-Birth Abortion Ban Act in 2007 in *Gonzales v. Carhart*.[13]

Several members of Congress have introduced abortion-related legislation in recent years, but each bill has stalled due to political gridlock. In 2021, prior to the publication of the *Dobbs* decision, the U.S. House of Representatives passed the Women's Health Protection Act of 2021,[14] which sought to codify the right to a pre-viability abortion on a national level. The bill was brought to a Senate vote twice (on cloture motions) in 2022 – once before[15] and once after[16] the issuance of the *Dobbs* decision – but failed largely along party lines both times. Following the *Dobbs* decision, the House of Representatives passed the Ensuring Women's Rights to Reproductive Freedom Act,[17] which prohibits states from interfering with a person's access to out-of-state abortion services. This bill has been advanced to the Senate,[18] but has not been brought to a vote and is not expected to pass such a vote.

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[12] *ACOG Guide to Language and Abortion*, AM. COLL. OF OBSTETRICIANS & GYNECOLOGISTS, https://www.acog.org/contact/media-center/abortion-language-guide (last visited Aug. 30, 2022). "Partial birth abortion" is defined under the Act as when an individual "deliberately and intentionally vaginally delivers a living fetus, until, in the case of a head-first presentation, the entire fetal head is outside the body of the mother, or, in the case of breech presentation, any part of the fetal trunk past the navel is outside the body of the mother, for the purposes of performing an overt act that the person knows will kill the partially delivered living fetus; and performs the overt act, other than completion of delivery, that kills the partially delivered fetus." 18 U.S.C. § 1531(b)(1).

[13] 550 U.S. 124 (2007).

[14] H.R. 3755, 117th Cong. (2021).

[15] 168 CONG. REC. 36, S826 (daily ed. Feb 28, 2022) (vote 46 yeas to 48 nays).

[16] 168 CONG. REC. 79, S2439 (daily ed. May 11, 2022) (vote 49 yeas to 51 nays).

[17] H.R. 8297, 117th Cong. (2022).

[18] The Senate received the bill on July 18, 2022.

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Moreover, from 1996 through the present, the federal government's funding for abortion care has been extremely limited because of the Hyde Amendment. The Hyde Amendment prevents the use of federal funds to cover abortion services for people enrolled in Medicaid, and includes only a limited exception to permit federal funding for abortion in cases of rape, incest, or life endangerment.[19] Additionally, other federal bans similarly prevent federal abortion coverage for people who obtain their health coverage or care through other federal programs, including Native Americans, people imprisoned or detained by the federal government, people with low incomes living in the District of Columbia, military personnel and veterans, Peace Corps volunteers, and federal employees.[20] Some states similarly restrict funding for abortion.

B. Federal Executive Action

In the face of stalled federal legislation, President Biden signed an executive order on July 8, 2022 to protect reproductive healthcare services.[21] Among other things, the order directs the Secretary of Health and Human Services ("HHS") to submit a report to President Biden on protecting access to medication abortion, emergency medical care, and contraception. Notably, the order instructs HHS to expand and clarify the guidelines and responsibilities of physicians

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[19] Alina Salganicoff et. al., *The Hyde Amendment and Coverage for Abortion Services,* KAISER FAM. FOUND. (Mar. 5, 2021), https://www.kff.org/womens-health-policy/issue-brief/the-hyde-amendment-and-coverage-for-abortion-services/. The Hyde Amendment is not a permanent law; it has been attached as a temporary "rider" to the Congressional appropriations bill for the Department of Health and Human Services and has been annually renewed by Congress since 1976. *Id.* The proposed budgets released by the Biden-Harris administration for fiscal years 2022 and 2023 both excluded the Hyde Amendment. *See* Press Release, Planned Parenthood, *Biden-Harris Administration Releases Its Second Presidential Budget Without Hyde Amendment; Includes Critical Domestic and Global Family Planning Investments* (Mar. 28, 2022), *available at* https://www.plannedparenthood.org/about-us/newsroom/press-releases/biden-harris-administration-releases-its-second-presidential-budget-without-hyde-amendment-includes-critical-domestic-and-global-family-planning-investments. The House Democrats also released a draft spending bill for fiscal year 2023 that would end the Hyde Amendment. *See* Alex Ruoff, *Democrats Renew Bid to End Hyde Amendment Ban on Abortion Funds*, BLOOMBERG LAW (June 22, 2022), https://news.bloomberglaw.com/health-law-and-business/democrats-renew-bid-to-end-hyde-amendment-ban-on-abortion-funds. To date, efforts to enact a federal budget that excludes the Hyde Amendment have failed.

[20] *The Hyde Amendment: A Discriminatory Ban on Insurance Coverage of Abortion: Fact Sheet*, GUTTMACHER INST. (May 2021), https://www.guttmacher.org/fact-sheet/hyde-amendment.

[21] Exec. Order No. 14,076, 87 Fed. Reg. 42,053 (July 13, 2022).

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treating women and pregnant people[22] under the Emergency Medical Treatment and Labor Act,[23] with the aim of providing further legal protection to doctors treating patients who require abortion care in the event of a life-threatening condition. Finally, the order directs executive agencies to consider additional actions to protect the privacy, safety, and security of those providing and seeking abortion services and reproductive healthcare.

On August 3, 2022, President Biden signed a second executive order designed to build upon the first order.[24] The August 2022 executive order directs HHS to consider action to advance access to reproductive healthcare services, including through Medicaid, for patients who travel out of state for reproductive healthcare services. In addition, the order seeks to ensure that healthcare providers comply with federal non-discrimination laws by providing a list of actions that HHS can take to promote compliance, including providing technical assistance for healthcare providers who may be confused or unsure of their obligations in the aftermath of the Supreme Court decision in *Dobbs*, convening providers to convey information on their obligations and the potential consequences of non-compliance, and issuing additional guidance or taking other appropriate action in response to any complaints or reports of non-compliance with federal non-discrimination laws. The order also directs HHS to evaluate and improve research, data collection, and data analysis efforts on maternal health and other health outcomes at the National Institutes of Health and the Centers for Disease Control and Prevention.

III. State Legislation

As a result of the *Dobbs* decision and in the absence of any meaningful federal action, states now have essentially unfettered power to regulate abortion. In the wake of *Dobbs*, state

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[22] We acknowledge that not everyone who becomes pregnant or gives birth identifies as a woman. Thus, we use the gender-inclusive term "pregnant people" as much as possible. However, when discussing externally-published research findings, we use language that conforms with the underlying source, including "women," "woman," "maternal," and other gendered terms.

[23] 42 U.S.C. § 1395dd.

[24] Exec. Order No. 14,079, 87 Fed. Reg. 49,505 (Aug. 11, 2022).

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laws are changing at a rapid pace. Multiple states have already banned abortions completely, while some states have retained or tightened gestational limits for abortions. Though some states enacted abortion laws post-*Dobbs*, many had previously passed "trigger laws" designed to take effect upon the contemplated overruling of *Roe* and *Casey*, and another handful of states have antiquated abortion laws on the books that were voided by *Roe* but are now potentially in play. Various parties have raised challenges to these laws in court and, as such, the laws at issue are subject to on-and-off injunctive orders, resulting in rapid changes in their enforcement.[25]

This sub-section will provide an overview of state abortion legislation enacted across the country as of the end of December 2022, based on the following categories: (1) states banning abortion, (2) states regulating abortion based on gestational limits or developmental markers, (3) states not limiting abortion based on gestational limits or developmental markers, and (4) other relevant abortion restrictions. The overview will also discuss emerging and anticipated state legislation. In order to present the state of the law in the U.S. in the most comprehensive and accurate manner, we attempt to present state laws here based on each state's current and most restrictive statutes (and, where relevant, final case law), but have noted where such laws are being challenged in courts and may be subject to injunction or other modifications to enforcement. A broad overview of current pending litigation also appears in the following sub-section. In addition, Appendix A to this report provides a state-by-state survey of laws restricting abortion, including associated penalties, as of December 15, 2022.

A. Abortion Bans

Seventeen states had banned access to abortion within their borders as of the end of

[25] Allison McCann, *'Chaos and Confusion' in States Where Abortion is On Again, Off Again*, N.Y. TIMES, Aug. 11, 2022, https://www.nytimes.com/interactive/2022/08/11/us/abortion-states-legal-illegal.html.

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December 2022: Alabama,[26] Arkansas,[27] Idaho,[28] Indiana,[29] Kentucky,[30] Louisiana,[31] Mississippi,[32] Missouri,[33] North Dakota,[34] Oklahoma,[35] South Dakota,[36] Tennessee,[37] Texas,[38]

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[26] ALA. CODE § 26-23H-4.

[27] ARK. CODE ANN. § 5-61-304.

[28] IDAHO CODE ANN. § 18-622. This statute is being challenged in *Planned Parenthood Great Nw., Haw., Alaska, Ind., & Ky., Inc. v. Cameron*, No. 3:22-cv-00198 (W.D. Ky. filed Apr. 14, 2022), and *United States v. Idaho*, No. 1:22-cv-00329 (D. Idaho filed Aug. 2, 2022), and may, at times, be subject to an injunction upon its enforcement.

[29] IND. CODE § 16-34-2-1 (statute took effect Sept. 15, 2022). This statute is being challenged in *Planned Parenthood Great Nw., Haw., Alaska, Ind., & Ky., Inc. v. Members of the Medical Licensing Board of Ind.*, No. 53C06-2208-PL-001756 (Ind. Cir. Ct. filed Sept. 22, 2022), and may, at times, be subject to an injunction upon its enforcement.

[30] KY. REV. STAT. ANN. § 311.772. This statute is being challenged in *Planned Parenthood Great Nw., Haw., Alaska, Ind., & Ky., Inc. v. Cameron*, No. 3:22-cv-00198 (W.D. Ky. filed Apr. 14, 2022), and may, at times, be subject to an injunction upon its enforcement.

[31] LA. REV. STAT. ANN. § 40:1061. This statute is being challenged in *June Medical Services, LLC v. Landry*, No. 2022-05633 (La. Civ. Dist. Ct. filed June 27, 2022), and may, at times, be subject to an injunction upon its enforcement.

[32] MISS. CODE ANN. § 41-41-45.

[33] MO. REV. STAT. § 188.017.

[34] N.D. CENT. CODE § 12.1-31-12. This statute is currently being challenged in *Access Independent Health Services, Inc. v. Wrigley*, No. 08-2022-CV-01608 (N.D. Dist. Ct. filed July 7, 2022), and may, at times, be subject to an injunction upon its enforcement.

[35] OKLA. STAT. tit. 63, § 1-745.32.

[36] S.D. CODIFIED LAWS § 22-17-5.1.

[37] TENN. CODE ANN. § 39-15-213.

[38] TEX. HEALTH & SAFETY CODE ANN. § 170A.002; TEX. REV. CIV. STAT. ANN. art. 4512.1. The second statute was enacted in 1925 and has been challenged in *Whole Women's Health v. Paxton*, No. 202238397 (Tex. Dist. Ct. filed June 27, 2022).

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Utah,[39] West Virginia,[40] Wisconsin,[41] and Wyoming.[42] Women and pregnant people in these states cannot obtain an abortion at any time during a pregnancy, save for certain narrow exceptions.

All states with abortion bans provide an exception for life endangerment and/or medical emergencies. However, the standard under these laws for determining whether a pregnant person's life is in danger or the existence of a medical emergency is often vague, ambiguous, and/or subjective. This leaves pregnant people at the mercy of providers who do not know how to interpret the statutory exceptions and are at risk of incurring liability in connection with making such a determination, including civil and/or criminal penalties, as well as loss of professional licenses. Thus, while obtaining an abortion may technically be legal in a life-threatening emergency, in practice, the hurdles that states have imposed in these situations make this exception exceedingly narrow. Only two states that ban abortion provide for exceptions in the case of fetal anomalies. Utah provides an exception where a fetus has a lethal defect or severe brain abnormality, and Indiana provides an exception for "lethal fetal anomal[ies]" until the earlier of viability or twenty weeks gestation.[43]

Of the 17 states with complete abortion bans, only five – Oklahoma, Idaho, Indiana, Utah, and Wyoming – provide exceptions in cases of both rape and incest; one – Mississippi – offers

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[39] UTAH CODE ANN. § 76-7-302. This statute is being challenged in *Planned Parenthood Ass'n of Utah v. State*, No. 220903886 (Utah Dist. Ct. filed June 25, 2022), and may, at times, be subject to an injunction upon its enforcement.

[40] W. VA. CODE ANN. § 61-2-8. This statute is being challenged in *Women's Health Center of West Virginia v. Miller*, No. 22-C-556 (W. Va. Cir. Ct. filed June 29, 2022), and may, at times, be subject to an injunction upon its enforcement.

[41] WIS. STAT. § 940.04.

[42] WYO. STAT. ANN. § 35-6-102. This statute is being challenged in *Johnson v. State*, No. 18732 (Wyo. Dist. Ct. July 25, 2022), and may, at times, be subject to an injunction upon its enforcement.

[43] UTAH CODE ANN. § 76-7-302(3)(b)(ii); IND. CODE § 16-34-2-1(a)(1)(A)(ii).

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an exception for rape but not incest.[44] To qualify for a rape or incest exception in Oklahoma, Idaho, Utah, and Mississippi, the incident must be reported to law enforcement.[45] Reporting such incidents, however, is often a challenging task for rape and incest victims, who may be disinclined to report these crimes for a number of personal reasons while still needing abortion care. Moreover, in Indiana, this exception applies only during the first 10 weeks of pregnancy,[46] effectively excluding rape or incest victims who are not aware they are pregnant at 10 weeks gestation, or who are hesitant to tell their physician about the rape or incest incident so soon after the date of the crime.

State abortion bans are enforced through various civil and/or criminal mechanisms, with differing degrees of punishment. For example, in 2021, Texas enacted the privately-enforceable "Texas Heartbeat Act" ("Texas SB 8") in an attempt to circumvent *Roe* and *Casey*.[47] Under this law, private citizens are empowered to file civil lawsuits against any person who "aids and abets" an illegal abortion.[48] In addition to compelling an injunction against providing, aiding, or abetting future abortions, successful plaintiffs in these cases must be awarded statutory damages of not

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[44] OKLA. STAT. tit. 63, § 1-745.52; IDAHO CODE ANN. § 18-622(3)(b)(ii),(iii); IND. CODE § 16-34-2-1(a)(2); UTAH CODE ANN. § 76-7-302(3)(b)(iii); WYO. STAT. ANN. § 35-6-102(b); MISS. CODE ANN. § 41-41-45(3).

[45] OKLA. STAT. tit. 63, § 1-745.52; IDAHO CODE ANN. § 18-622(3)(b)(ii),(iii); UTAH CODE ANN. § 76-7-302(3)(b)(iii)(B)(i); MISS. CODE ANN. § 41-41-45(3).

[46] IND. CODE § 16-34-2-1(a)(2).

[47] 2021 Tex. Gen. Laws 62 (SB 8). State anti-abortion laws are almost universally enforced by a state's executive branch. By deputizing ordinary citizens to serve as bounty hunters, and prohibiting government officials from enforcing the law, the architects of Texas SB 8 were trying to prevent abortion providers and activists from obtaining an injunction capable of wholly-blocking enforcement of the law. Prior to *Dobbs*, abortion providers and activists were often able to obtain injunctions against state government officials' enforcement of anti-abortion laws, which effectively prevented the laws from going into effect. However, because any person (other than government officials) can enforce Texas SB 8, the law's architects have argued that it is not possible under sovereign immunity and standing principles to obtain a broad injunction against Texas government officials capable of preventing the law from being enforced, an argument that was ultimately successful with the U.S. Supreme Court. *See* Whole Woman's Health v. Jackson, 595 U.S. ___ (2021).

[48] This enforcement mechanism only applies to abortions performed after the detection of a fetal heartbeat (approximately 6 weeks gestation), not to abortions performed before this point. TEX. HEALTH & SAFETY CODE ANN. §§ 171.208, 170A.005.

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less than $10,000, in addition to legal fees.[49] As discussed in further detail below (*see* Section 6, *infra*), this creates a bounty system whereby citizens are incentivized to report any "suspicious" behavior surrounding pregnancy, potentially chilling even legal attempts to obtain an abortion and further reinforcing structural racism. Other states have followed Texas's lead in passing abortion restrictions that are enforced by private individuals, including Idaho[50] and Oklahoma.[51] Additional states have introduced but not passed copycat legislation, including Alabama,[52] Arizona,[53] Arkansas,[54] Florida,[55] Louisiana,[56] Maryland,[57] Minnesota,[58] Missouri,[59] Ohio,[60] South Dakota,[61] and Tennessee.[62]

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[49] TEX. HEALTH & SAFETY CODE ANN. § 171.208.

[50] IDAHO CODE ANN. § 18-8807.

[51] OKLA. STAT. tit. 63, §§ 1-745.38, 1.745-39.

[52] H.B. 23, 2022 Leg., Reg. Sess. (Ala. 2022); H.B. 295, 2022 Leg., Reg. Sess. (Ala. 2022).

[53] H.B. 2483, 55th Leg., 2nd Reg. Sess. (Ariz. 2022); S.B. 1339, 55th Leg., 2nd Reg. Sess. (Ariz. 2022).

[54] H.B. 1118, 93rd Gen. Assemb., Fiscal Sess. (Ark. 2022).

[55] H.B. 167, 2022 Leg., Reg. Sess. (Fla. 2022).

[56] H.B. 800, 2022 Leg., Reg. Sess. (La. 2022).

[57] H.B. 732, 2022 Leg., Reg. Sess. (Md. 2022).

[58] H.B. 2898, 92nd Leg., Reg. Sess. (Minn. 2022).

[59] H.B. 1987, 101st Gen. Assemb., 2nd Reg. Sess. (Mo. 2022); S.B. 778, 101st Gen. Assemb., 2nd Reg. Sess. (Mo. 2022).

[60] H.B. 480, 134th Gen. Assemb., Reg. Sess. (Ohio 2021).

[61] *2022 Bill Draft: Prohibiting Abortion After Detection of Fetal Heartbeat*, SOUTH DAKOTA GOVERNOR, https://governor.sd.gov/doc/ProhibitingAbortionAfterDetectionofFetalHeartbeat.pdf (last visited Oct. 13, 2022). The South Dakota bill was a draft introduced by Governor Kristi Noem, but the South Dakota legislature declined to officially introduced the bill. Stephen Groves, *Gov. Noem's Abortion Ban Stifled by Republican Lawmakers*, AP, Feb. 2, 2022, https://apnews.com/article/kristi-noem-legislature-south-dakota-planned-parenthood-74baad0456950b0add5c824df5df8c52.

[62] H.B. 2779, 112th Gen. Assemb., Reg. Sess. (Tenn. 2021). The Texas SB 8-style provisions were not included in the original bill. Rather, they were added via a proposed amendment to the bill, which later failed in committee. Melissa Brown, *Tennessee Bill Would Ban Most Abortions, Allow Private Residents to Sue Providers*, TENNESSEAN, Mar. 8, 2022, https://www.tennessean.com/story/news/politics/2022/03/08/tennessee-abortion-bill-would-ban-most-abortions-allow-civil-penalties/9429403002/;

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B. Abortion Restrictions Based on Gestational Limits and Developmental Markers

Most states provide for access to abortion up to certain gestational limits or fetal developmental milestones. These restrictions range from highly restrictive bans after the detection of a fetal heartbeat (approximately 6 weeks gestation) to less restrictive limits at 24 weeks or viability. It should be noted that a problem inherent to all gestational limit laws is that gestational dating is not entirely precise, and thus a woman's or pregnant person's ability to obtain an abortion in states with these time-based restrictions is dependent upon a doctor's imprecise estimate of a due date. As a result, a doctor dating a pregnancy one day later than another could jeopardize a person's ability to obtain an abortion under these laws.[63] An overview of these laws follows in order of most restrictive to least restrictive. All of these laws include an exception for life endangerment or medical emergencies, and many have exceptions in the case of rape or incest.

HB 2779, TENN. GEN. ASSEMBLY, https://wapp.capitol.tn.gov/apps/BillInfo/Default.aspx?BillNumber=HB2779&ga=112 (last visited Oct. 13, 2022).

[63] Megan K. Donovan, *Gestational Age Bans: Harmful at Any Stage of Pregnancy*, 23 GUTTMACHER POL'Y REV. 1 (2020).

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1. *"Heartbeat" Bans*

Georgia,[64] Iowa,[65] Ohio,[66] and South Carolina[67] prohibit abortion after a "fetal heartbeat"[68] is detected (approximately six weeks gestation). Of these states, only Georgia and South Carolina provide an exception for rape or incest, though this exception is only available until 20 weeks gestation.[69] These laws effectively constitute abortion bans, as they prohibit abortion at a point in time so early in pregnancy that many women or people are not aware that they are pregnant, or are unable to access or procure an abortion within such a limited timeframe. Thus, they will be grouped with outright bans in subsequent sections of this report.

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[64] GA. CODE ANN. § 16-12-141(b). This statute is being challenged in *SisterSong Women of Color Reproductive Justice Collective v. Kemp*, No. 1:19-cv-02973 (N.D. Ga. filed June 28, 2019), and *SisterSong Women of Color Reproductive Justice Collective v. State*, No. 2022cv367796 (Ga. Super. Ct. filed July 26, 2022), and may, at times, be subject to an injunction upon its enforcement.

[65] IOWA CODE § 146C.2. This statute was invalidated by *Planned Parenthood of the Heartland, Inc. v. Reynolds*, No. EQCE83074, 2019 WL 312072 (Iowa Dist. Ct. Jan. 22, 2019), but the Iowa Governor is seeking its reinforcement.

[66] OHIO REV. CODE ANN. § 2919.195.

[67] S.C. CODE ANN. § 44-41-680. This statute was successfully challenged in *Planned Parenthood South Atlantic v. State*, in which the South Carolina Supreme Court held the heartbeat ban violated the right to privacy provided by the South Carolina Constitution. *See* Planned Parenthood S. Atl. v. State, 2023 S.C. LEXIS 3 (S.C. 2023). This development came too late to be included in full in this report's evaluation, which is current as of the end of December 2022, underscoring the rapidly shifting law in this area at present.

[68] Much of the medical community contests the use of the term "fetal heartbeat" in early pregnancy. While a sound that resembles a heartbeat can often be heard on an ultrasound at around six weeks gestation, this term is inaccurate as a fetus typically does not develop heart chambers until 17-20 weeks gestation. Therefore, this sound is not a heartbeat, but rather the ultrasound machine translating electronic impulses that signify fetal cardiac activity. *ACOG Guide to Language and Abortion*, AM. COLL. OF OBSTETRICIANS & GYNECOLOGISTS, https://www.acog.org/contact/media-center/abortion-language-guide (last visited Aug. 30, 2022).

[69] GA. CODE ANN. § 16-12-141(b)(2); S.C. CODE ANN. § 44-41-680(B)(1)-(2).

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2. *15 to 22 Weeks Limits*

Arizona[70] and Florida[71] prohibit abortions after 15 weeks; Montana[72] and North Carolina[73] prohibit abortions after 20 weeks; and Kansas[74] and Nebraska[75] prohibit abortions after 22 weeks. None of these states has an exception for incidences of rape, incest, or fetal abnormalities. Moreover, in Florida and Montana, the exceptions for life endangerment only cover physical impairments and explicitly do not extend to psychological or mental traumas.[76]

3. *24 Weeks and Viability Limits*

Massachusetts,[77] Nevada,[78] New Hampshire,[79] and Pennsylvania[80] allow for abortion up until 24 weeks gestation. California,[81] Connecticut,[82] Delaware,[83] Hawaii,[84] Illinois,[85] Maine,[86]

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[70] ARIZ. REV. STAT. ANN. § 36-2322 (statute took effect Sept. 23, 2022). The Arizona Attorney General has also asked Arizona courts to re-instate a 1901 statute banning abortion, which was previously invalidated in 1973.

[71] FLA. STAT. § 390.0111.

[72] MONT. CODE ANN. § 50-20-603.

[73] N.C. GEN. STAT. ANN. § 14-45.1(a).

[74] KAN. STAT. ANN. § 65-6703(c).

[75] NEB. REV. STAT. ANN. § 28-3,106 (prohibiting abortions where the probable post-fertilization age of the fetus is 20 or more weeks, which roughly correlates to 22 weeks gestation).

[76] FLA. STAT. § 390.0111(1)(a)-(b); MONT. CODE ANN. § 50-20-603(3).

[77] MASS. GEN. LAWS ch. 112, §§ 12L-12N.

[78] NEV. REV. STAT. ANN. § 442.250.

[79] N.H. REV. STAT. ANN. § 329:44.

[80] 18 PA. CONS. STAT. § 3211.

[81] CAL. HEALTH & SAFETY CODE § 123466.

[82] CONN. GEN. STAT. § 19a-602, *amended by* 2022 Conn. Acts 19.

[83] DEL. CODE ANN. tit. 24, § 1790.

[84] HAW. REV. STAT. § 453-16.

[85] 775 ILL. COMP. STAT. ANN. 55/1-25.

[86] ME. REV. STAT. tit. 22, § 1598.

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Maryland,[87] Minnesota,[88] New York,[89] Rhode Island,[90] Virginia,[91] and Washington[92] protect the right to an abortion until viability. Generally, a fetus is considered "viable" at 24 weeks gestation, but this concept is something of a moving target, as it is tied to the medical field's current understanding of fetal development. For example, California expressly defines "viability" as the point in the pregnancy where there is a reasonable likelihood of the fetus's sustained survival outside the uterus without applying extraordinary medical measures. One marker of viability cited in California courts is where a fetus weighs at least 500 grams.[93] None of these states provide an exception for rape or incest following the 24-week/viability cut-off, but all of them provide an exception for life endangerment, and many also provide for an exception in the event of a fatal fetal abnormality.

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[87] MD. CODE ANN., HEALTH-GEN. § 20-209 (LexisNexis).

[88] MINN. STAT. § 145.4242. Portions of this law – but not the viability limit – were declared unconstitutional in *Doe v. State*, No. 62-CV-19-3868, 2022 WL 2662998 (Minn. Dist. Ct. July 11, 2022).

[89] N.Y. PUB. HEALTH LAW § 2599-bb (Consol. 2022) (providing that a healthcare provider may perform an abortion when the patient is "within twenty-four weeks from the commencement of pregnancy, or there is an absence of fetal viability").

[90] R.I. GEN LAWS § 23-4.13-2.

[91] VA. CODE ANN. §§ 18.2-72-74.

[92] WASH. REV. CODE § 9.02.110.

[93] Barragan v. Lopez, 156 Cal. App. 4th 997 (2007).

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4. *No Gestational or Developmental Limits*

The states that do not currently have a gestational or developmental limit on access to abortion are: Alaska,[94] Colorado,[95] New Jersey,[96] New Mexico,[97] Oregon,[98] and Vermont,[99] as well as the District of Columbia.[100] Michigan has recently joined the ranks of these states with the passage of a state constitutional amendment by ballot initiative in November 2022.[101]

C. Other Restrictions on Abortion

Gestational and developmental limits tend to provide the bright-line boundaries of most states' abortion laws, but many states restrict abortion in other, less obvious ways. Indeed, some states that allow abortion have non-gestational restrictions, such as residency requirements, mandated wait times, or laws requiring parental notification or consent. For example, Alaska (which does not have a gestational or developmental limit on access to abortion) requires that the pregnant woman or person be domiciled in Alaska or physically present in the state for 30 days before the procedure.[102] Moreover, a significant number of states require pregnant women and people to wait a specified amount of time between an initial abortion counseling appointment and the abortion procedure.[103] In addition to undermining a pregnant woman or person's ability to

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[94] ALASKA STAT. § 18.16.010.

[95] COLO. REV. STAT. ANN. §§ 25-6-403-404 (West).

[96] 2021 N.J. Laws 375.

[97] N.M. STAT. ANN. § 30-5-1 (repealed 2021).

[98] OR. REV. STAT. ANN. §§ 435.435-435.496.

[99] VT. STAT. ANN. tit. 18, § 9494.

[100] D.C. CODE § 2-1401.06.

[101] MICH. CONST. art. 1, § 28 (effective Dec. 24, 2022).

[102] ALASKA STAT. § 18.16.010(a)(4).

[103] *Counseling and Waiting Periods for Abortion*, GUTTMACHER INST., https://www.guttmacher.org/state-policy/explore/counseling-and-waiting-periods-abortion (as of Aug. 1, 2022) (listing states with waiting periods and the length of such waiting periods, along with other requirements).

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make their own decisions in their own time frames, these laws also create practical barriers to abortion where pregnant people may have to take additional time off of work and incur additional travel costs and childcare expenses in order to satisfy these waiting periods. Several states have so-called "Targeted Regulation of Abortion Providers" ("TRAP") laws, which impose regulations on abortion providers and clinics that are unnecessary and/or excessive.[104] For example, Florida TRAP laws provide strict requirements for facilities where low-risk and non-invasive medication abortions are performed, and require that clinicians performing such medication abortions have hospital admitting privileges.[105] While TRAP laws may appear innocuous, the practical effect of these laws is to reduce the number of facilities and providers able to perform abortions, thus limiting pregnant people's ability to access these services.

D. Emerging and Anticipated State Regulation

Following *Dobbs*, many state legislatures are taking advantage of their newly-expanded latitude to further restrict abortion. Conversely, other states are taking action to protect abortion rights in the wake of *Dobbs*. In recent months a number of states, including New York, California, and Michigan, have introduced and/or passed state constitutional amendments to explicitly protect abortion.[106] State abortion policy is also being shaped in other contexts as well. For example, Kansas voters recently rejected a ballot measure that would have amended the state

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[104] *Targeted Regulation of Abortion Providers (TRAP) Laws*, GUTTMACHER INST. (Jan. 22, 2020), https://www.guttmacher.org/evidence-you-can-use/targeted-regulation-abortion-providers-trap-laws.

[105] FLA. STAT. § 390.012.

[106] *See, e.g.*, S.B. 51002, 2021-2022 Gen. Assemb., Extraordinary Sess. (N.Y. 2022); Melody Gutierrez, *Proposition 1 Abortion Rights Ballot Measure Passes*, L.A. TIMES, Nov. 8, 2022, https://www.latimes.com/california/story/2022-11-08/2022-california-election-proposition-1-abortion-rights-results; Caitlin O'Kane, *What is Prop 3? Voters in Michigan Approve Abortion Rights Amendment*, CBS NEWS (Nov. 9, 2022), https://www.cbsnews.com/news/what-is-prop-3-election-2022-michigan-abortion-rights-constitutional-amendment/.

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constitution to provide that there is no state constitutional right to abortion,[107] and several governors have issued executive orders that seek to protect non-residents seeking abortions within their states.[108]

IV. Litigation

In the half-century since the *Roe* decision, there has been an onslaught of litigation challenging abortion restrictions. These challenges to restrictive abortion laws have continued at a rapid pace post-*Dobbs* and can be categorized into three groups. The first are pre-*Dobbs* claims alleging that state restrictions on abortion access violate federal constitutional rights established by *Roe* and *Casey*. The second are claims alleging that state restrictions violate applicable state law and constitutional rights established by such states. The third group are claims alleging that state restrictions violate both federal constitutional law and applicable state law. As briefly highlighted below, courts have now vacated (or are in the process of vacating) injunctions that litigants obtained before *Dobbs* based on challenges from the first category. Other injunctions based on the second and third groups of cases remain in effect in several states, with many more courts likely to issue decisions after publication of this report.

A. Challenges Based on Federal Law

Before the *Dobbs* decision, medical professionals and reproductive rights organizations filed lawsuits challenging the federal constitutionality of restrictive abortion laws in Alabama,[109]

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[107] Dylan Lysan et al., *Voters in Kansas Decide to Keep Abortion Legal in the State, Rejecting An Amendment*, NPR, Aug. 3, 2022, https://www.npr.org/sections/2022-live-primary-election-race-results/2022/08/02/1115317596/kansas-voters-abortion-legal-reject-constitutional-amendment.

[108] *E.g.*, Col. Exec. Order No. D 2022-032 (July 6, 2022); Me. Exec. Order No. 4 (July 5, 2022); N.M. Exec. Order No. 2022-107 (June 27, 2022).

[109] Robinson v. Marshall, No. 2:19-cv-365, 2022 WL 2314402 (M.D. Ala. June 24, 2022).

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Arizona,[110] Indiana,[111] North Carolina,[112] and Texas.[113] In each state, petitioners claimed that the state's restrictions on access to abortion and onerous statutory requirements violated the Due Process Clause of the Fourteenth Amendment, which provides, in relevant part, that no state shall deprive any person of life, liberty, or property, without due process of law.[114] Many of these challenges were successful pre-*Dobbs*. For instance, in Alabama, a court issued a preliminary injunction against enforcement of a statute that imposes criminal liability on abortion providers for nearly all abortions, completed or attempted, regardless of viability.[115] The court issued the preliminary injunction based on the fact that "[t]he United States Constitution forbids the prohibition of abortion prior to fetal viability."[116] The U.S. District Court for the Southern District of Indiana held that numerous aspects of an Indiana statute restricting the ability to open and operate an abortion clinic violated the U.S. Constitution.[117] These challenges were largely based on the framework of federal constitutional rights as articulated in *Roe* and *Casey*, both of which *Dobbs* effectively overturned.

As a result of *Dobbs*, access to abortion is no longer a federal constitutional right, which moots the claims made in the above-mentioned cases. In this post-*Roe* era, courts in these states are vacating injunctions on the enforcement of restrictive abortion laws, thereby allowing the

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[110] Complaint for Declaratory and Injunctive Relief, Isaacson v. Brnovich, 643 F. Supp. 3d 1024 (D. Ariz. 2021) (No. 2:21-cv-01417-DLR), 2021 WL 3634077, *remanded to* 2022 WL 2665932 (D. Ariz. July 11, 2022).

[111] Whole Woman's Health Alliance v. Rokita, No. 21-2480, 2022 WL 2663208 (7th Cir. July 11, 2022).

[112] Bryant v. Woodwall, No. 1:16-cv-1368, 2022 WL 3465380 (M.D.N.C. Aug. 17, 2022).

[113] In re Paxton, No. 22-0527, 2022 WL 2425619 (Tex. July 1, 2022).

[114] U.S. CONST. amend. XIV, § 2.

[115] Robinson v. Marshall, 415 F. Supp. 3d 1053, 1055 (M.D. Ala. 2019) (referencing 2019 Ala. Acts 189).

[116] *Id.* at 1056.

[117] Whole Woman's Health Alliance v. Rokita, 553 F. Supp. 3d 500, 587-88 (S.D. Ind. 2021).

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restrictions to go into effect. For example, in Alabama, the court revisited the preliminary injunction that was granted in 2019 and held that, "[i]n light of the decision of the Supreme Court in [*Dobbs*], overruling [*Roe*] and [*Casey*,]… the legal underpinning for the October 29, 2019, preliminary injunction no longer exists . . . ."[118] The court then granted the defendants' unopposed emergency motion to dissolve the preliminary injunction.[119] Courts in Indiana, North Carolina, and Texas have reached nearly identical outcomes, vacating previous injunctions that are no longer supported by federal law. In Arizona, the state's Attorney General filed a motion asking the court to lift its injunction because the previous judgment was based solely on decisions now overruled by the U.S. Supreme Court.[120] With respect to Indiana, the Seventh Circuit Court of Appeals vacated the judgment of the District Court, referenced above, because it was "influenced by pre-*Dobbs* decisions holding that abortion is a fundamental right."[121] The speed with which these states have moved to vacate injunctions against enforcement of restrictive abortion laws post-*Dobbs* underscores the importance of a federally-recognized constitutional right to abortion.

Though the argument regarding the federal constitutionality of abortion bans is not currently tenable, litigation is emerging that challenges abortion restrictions on other federal grounds. For example, Idaho's abortion ban is being challenged on the grounds that it violates the federal Emergency Medical Treatment and Labor Act.[122] We anticipate that these and other novel legal theories will become more common in the future. Their odds of success are difficult to predict.

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[118] Robinson v. Marshall, No. 2:19-cv-365, 2022 WL 2314402 (M.D. Ala. June 24, 2022) (citations omitted).

[119] *Id.*

[120] Motion for Relief from Judgement, Planned Parenthood Ctr. of Tucson, Inc., v. Brnovich, No. C127867 (Ariz. Super. Ct. Sept. 22, 2022).

[121] Whole Woman's Health Alliance v. Rokita, No. 21-2480, 2022 WL 2663208, at *1 (7th Cir. July 11, 2022) (vacating and remanding decision in *Whole Woman's Health Alliance v. Rokita*, 553 F. Supp. 3d 500 (S.D. Ind. 2021)).

[122] United States v. Idaho, No. 1:22-cv-00329 (D. Idaho filed Aug. 2, 2022).

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B. Challenges Based on State Law

In states such as Florida,[123] Georgia,[124] Idaho,[125] Kentucky,[126] Mississippi,[127] Montana,[128] North Dakota,[129] Utah,[130] West Virginia,[131] and Wisconsin,[132] petitioners have challenged state abortion laws by alleging that they violate those states' respective constitutions. Many of these cases base their challenges on the privacy laws under state constitutions, arguing that each person's right to privacy includes an implied right to choose whether to have an abortion. Other challenges claim that certain trigger laws set to take effect after *Dobbs* are unconstitutionally vague, such that they cannot be properly enforced. For example, in Idaho, one challenge to a restrictive abortion law states that the law is unconstitutionally vague as it lacks an explanation of

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[123] Tampa Woman's Health Ctr. v. Aronberg, No. 372022CA000912 (Fla. Cir. Ct. filed June 1, 2022).

[124] SisterSong Women of Color Reproductive Justice Collective v. State, No. 2022cv367796 (Ga. Super. Ct. filed July 26, 2022).

[125] Planned Parenthood Great Nw., Haw., Alaska, Ind., & Ky., Inc. v. State, No. 49615-2022, 2022 WL 2433644, at *1 (Idaho June 30, 2022); Planned Parenthood Great Nw., Haw., Alaska, Ind., & Ky., Inc. v. State Bd. of Med., No. 49817-2022, 2022 WL 2383520, at *1 (Idaho June 30, 2022).

[126] Cameron v. Perry, No. 2022-CA-0780-OA, 2022 WL 2443398, at *1 (Ky. Ct. App. July 2, 2022).

[127] Jackson Women's Health Org. v. Dobbs, No. 25CH1:22-cv-00739 (Miss. Ch. filed June 27, 2022).

[128] Brief of Appellants, Planned Parenthood of Mont. v. State, 378 Mont. 151 (2015) (No. DA 14-0110), 2014 WL 2573512.

[129] Access Indep. Health Servs., Inc. v. Wrigley, No. 08-2022-CV-01608 (N.D. Dist. Ct. filed July 7, 2022).

[130] Planned Parenthood Ass'n of Utah v. State, No. 220903886 (Utah Dist. Ct. filed June 25, 2022).

[131] Women's Health Center of W. Va. v. Miller, No. 22 C 556, 2022 WL 2526988 (W. Va. Cir. Ct. June 29, 2022).

[132] Kaul v. Kapenga, No. 2022CV001594 (Wis. Cir. Ct. filed June 28, 2022).

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the term "clinically diagnosable pregnancy" and does not outline sufficient guidelines for physicians to determine whether an abortion can be performed.[133]

Some state courts are recognizing that their state's laws might provide a separate right for access to abortion and are upholding injunctions while litigation continues. For example, in North Dakota, the state's sole abortion clinic filed a lawsuit challenging the trigger ban and enforcement date on the basis that it violates the North Dakota state constitution because it "deprives Plaintiffs' patients of their right to life, safety and happiness."[134] The state court issued a preliminary injunction on the grounds such an injunction should be issued to avoid harm and preserve the status quo of the law during the pendency of the litigation – both of which the court found in this case, specifically determining that the potential harm of the ban to the plaintiffs' patients outweighed any possible harm to the state.[135]

On the other hand, some states are deferring to *federal* law even in response to claims that a restrictive abortion law violates relevant *state* law. Groups in Idaho and Mississippi initiated lawsuits seeking to enjoin trigger bans, claiming that the bans violated state law, particularly with respect to privacy.[136] However, the state courts in both states denied requests to block the bans from taking effect after noting that the *Dobbs* decision made it unlikely that petitioners would be able to overturn the trigger laws. This result is illustrative of how the *Dobbs* decision can even impact challenges made solely on state law grounds.

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[133] Petitioner's Brief at 42-43, Planned Parenthood Great Nw., Haw., Alaska, Ind., & Ky., Inc. v. State Bd. of Med., No. 49817-2022 (Idaho June 27, 2022).

[134] Complaint, Access Indep. Health Servs., Inc. v. Wrigley, No. 08-2022-CV-01608 (N.D. Dist. Ct. filed July 7, 2022).

[135] Order on Plaintiff's Motion for Preliminary Injunction, Access Indep. Health Serv., Inc. v. Wrigley, No. 08-2022-CV-01608 (N.D. Dist. Ct. Aug. 26, 2022).

[136] Planned Parenthood Great Nw., Haw., Alaska, Ind., & Ky., Inc. v. State Bd. of Med., No. 49817-2022, 2022 WL 2383520, at *1 (Idaho June 30, 2022); Jackson Women's Health Org. v. Dobbs, No. 25CH1:22-cv-00739 (Miss. Ch. filed June 27, 2022).

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C. Challenges Based on Both Federal and State Law

South Carolina is the only state where challenges to restrictive abortion laws have been made under both federal and state law. In *Planned Parenthood South Atlantic v. Wilson*, which was filed before *Dobbs*, plaintiffs alleged that SB 1, known as the "Fetal Heartbeat Protection from Abortion Act," was federally unconstitutional because *Roe* and *Casey* restricted the state's right to prohibit abortion prior to viability.[137] The District Court for the District of South Carolina granted an injunction on the basis that SB 1 violated the U.S. Constitution because it would ban abortion prior to viability. However, almost immediately after the *Dobbs* decision was released, an emergency motion to stay the injunction was filed and subsequently granted.[138]

Shortly thereafter, a new lawsuit was filed seeking to block SB 1 on the grounds that it violates citizens' state constitutional rights to privacy and equal protection by (i) banning abortion, (ii) providing inadequate protections for patients' health, and (iii) conditioning sexual assault survivors' access to abortion on the disclosure of their personal information to law enforcement.[139] The court determined that SB 1 conflicts with other South Carolina state law and enjoined enforcement of SB 1 until those conflicts are resolved. On January 5, 2023, the South Carolina Supreme Court held that SB 1 did, indeed, violate the state's constitution.[140] As noted above, South Carolina lawmakers were already seeking to pass an even more restrictive abortion ban, which demonstrates the state legislature's commitment to banning abortion. One might reasonably anticipate that some lawmakers in the state will redouble legislative efforts in light of the recent state supreme court decision.

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[137] Complaint for Declaratory and Injunctive Relief, Planned Parenthood S. Atl. v. Wilson, No. 3:21-cv-00508 (D.S.C. filed Feb. 18, 2021).

[138] Planned Parenthood S. Atl. v. Wilson, No. 3:21-cv-00508, 2022 WL 2314508, at *1 (D.S.C. June 27, 2022).

[139] *See* Planned Parenthood S. Atl. v. State, 2023 S.C. LEXIS 3 (S.C. 2023)

[140] *Id.*

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V. Conclusion

Dobbs has drastically changed abortion access across the United States. Nearly half of states have already either entirely banned access to abortion or banned access after the detection of a fetal heartbeat, with very limited exceptions. Over time, more states are expected to follow suit. While many states still currently allow abortion, the gestational limits and other restrictions placed on abortion access vary considerably. We are still in the early stages of the post-*Roe* era and many changes to abortion laws are anticipated, as certain state legislatures seek to pass even more restrictive legislation, while others are broadening their states' abortion protections.

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SECTION 2 – Disparities in Access to Healthcare and Unequal Maternal Health Outcomes During Pregnancy and Childbirth

I. Disparities in Access to Healthcare

In the U.S., there are significant disparities in the quality of healthcare accessible to people of color who are pregnant, able to become pregnant, or are new parents, as compared to their White counterparts. Systemic racism is both a cause and a consequence of these disparities in access. For instance, income disparities rooted in racist economic policies result in comparatively more people of color accessing publicly-funded Medicaid coverage; higher incarceration rates among communities of color put different pregnant people at different risks; and stereotyping and unconscious bias by medical professionals can result in improper diagnosis or treatment and contribute further to disparities.[141]

"Medical racism" is a specific term in the healthcare context that describes the racism that people experience within the healthcare system. It results in lower quality healthcare for patients of color, as compared to their White counterparts. Medical racism can exacerbate poor maternal health by acting as a stressor and compromising the overall health and well-being of women and birthing people.[142] It can also cause medical harm more directly through systematic disparities in healthcare available to pregnant or postpartum people of color, or individually through care tainted by racism of individual medical professionals. Racial disparities in the quality of healthcare have become increasingly visible, but visibility alone does not remedy this problem.[143]

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[141] Meredith Grady & Tim Edgar, *Appendix D: Racial Disparities in Health Care: Highlights from Focus Group Findings*, *in* UNEQUAL TREATMENT: CONFRONTING RACIAL AND ETHNIC DISPARITIES IN HEALTH CARE 392 (Brian D. Smedley et al. eds., 2003), *available at* https://www.ncbi.nlm.nih.gov/books/NBK220358/pdf/Bookshelf_NBK220358.pdf.

[142] *Id*.

[143] *Research Overview of Maternal Mortality and Morbidity in the United States*, CTR. FOR REPROD. RIGHTS, https://www.reproductiverights.org/sites/crr.civicactions.net/files/documents/USPA_MH_TO_ResearchBrief_Final_5.16.pdf.

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This Section focuses on statistics and other evidentiary data that highlight the differences in access to high-quality healthcare during pregnancy and childbirth between people of color and White people. It analyzes barriers that Black women and people of color face in accessing reproductive healthcare with a focus on:

(i) disparities in access to contraception;

(ii) financial limitations that impede access to appropriate and desired care; and

(iii) how the increasing Catholic Church ownership of hospitals and hospital systems in the U.S. limits (and at times prohibits) certain forms of reproductive care, regardless of an individual patient's religion.

Part II of this Section delves into statistics regarding maternal mortality and morbidity, illustrating that Black women and people of color are more likely to suffer from serious health issues or death as a result of pregnancy than their White counterparts.

Because Black women and people of color, as compared to their White counterparts, experience disparities in access to healthcare and corresponding unequal maternal health outcomes during pregnancy and childbirth, the negative effects of increased abortion bans and restrictions—such as increased maternal mortality and morbidity—will fall disproportionately on Black women and people of color.

A. Barriers Faced by Black Women and People of Color in Accessing Reproductive Healthcare Before and During Pregnancy

While all people should have an equal ability to make informed, autonomous decisions about their reproductive healthcare, regardless of their race or social status, Black women and people of color face significant burdens and barriers to doing so. Indeed, access to reproductive healthcare varies across racial, ethnic, and socioeconomic lines in the U.S., and affects reproductive autonomy—a critical component of reproductive justice and healthcare. Many factors help explain those discrepancies. Several are explored in this Section, including the legacy of racist practices of coercive contraception and sterilization; lack of access to (and misinformation about) contraception; and restrictions on public funding of reproductive healthcare

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services. Those discrepancies are exacerbated by the post-*Dobbs* closure of abortion clinics in many states.

1. *Legacy of Racist Practices of Coercive Contraception & Sterilization*

Black people are more likely to be concerned about negative side effects caused by contraception.[144] This concern must be viewed in light of a long history of harmful and violent practices of forcing contraception upon Black women and people of color in the U.S., which continues today.[145] These shameful practices include forced sterilization as well as administrating contraceptives without consent.[146] U.S. history is rife with examples of violations of the reproductive autonomy of Black women and people of color, and a selection of these atrocities from the past century follow.

In Puerto Rico, for example, violations of reproductive autonomy have spanned decades. Between 1930 and 1970, a third of Puerto Rico's female population of reproductive age was forcibly sterilized, which was the highest rate of sterilization in the world at the time.[147] From the mid-1950s through 1964, poor, uneducated Puerto Rican women were targeted for the human

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[144] Gabrielle Doyle & Madeline Doe, *How Sex Ed Can (and Should) Advance Racial Justice*, SIECUS, https://siecus.org/black-history-month-sex-ed-and-racial-justice/ (last visited Dec. 28, 2022). "[N]on-Hispanic blacks were more likely than whites to believe that hormonal contraceptives caused problems such as reduced sexual desire, mood swings, and serious health problems." *Id.* at 26. Furthermore, 53% of foreign-born Hispanic people and 33.8% of White people believe that birth control does not matter, and that when "it is your time to get pregnant, it will happen." *Id.* at Table 2.

[145] Rachel Benson Gold, *Guarding Against Coercion While Ensuring Access: A Delicate Balance*, 17 GUTTMACHER POL'Y REV. 8, 8 (2014); Joel Rose, *Dozens of Women Allege Unwanted Surgeries and Medical Abuse In ICE Custody*, NPR (Dec. 22, 2020), https://www.npr.org/2020/12/22/949257207/dozens-of-women-allege-unwanted-surgeries-and-medical-abuse-in-ice-custody.

[146] Marcella Howell et. al., *Contraceptive Equity for Black Women*, IN OUR OWN VOICE: NAT'L BLACK WOMEN'S REPROD. JUST. AGENDA (2020), http://blackrj.org/wp-content/uploads/2020/04/6217-IOOV_ContraceptiveEquity.pdf.

[147] Jesi Taylor Cruz, *A Tough Pill to Swallow: The Racist Foundations of the Birth Control Movement*, BLOOD & MILK (Feb. 20, 2019), https://www.bloodandmilk.com/a-tough-pill-to-swallow-the-racist-foundations-of-the-birth-control-movement/.

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trials that were required for FDA approval of the birth control pill.[148] Furthering eugenicist goals of using birth control as a form of population control to decrease poverty in Puerto Rico, over 1,500 Puerto Rican women were misled about the purpose of the study and not informed of the potentially dangerous side effects of the pill.[149] Furthermore, complaints of side effects and even deaths related to the study were ignored by doctors.[150] Despite these results, the study expanded to Mexico and Haiti.[151] Thus, it is unsurprising that certain groups of people, such as foreign-born Hispanic people, hold more skeptical beliefs about the risks of pregnancy and birth control methods than White people.

On the U.S. mainland, from 1909 to 1979, California ran the largest forced sterilization regime in the nation—forcibly sterilizing about 20,000 people in state institutions who were deemed "unfit to reproduce."[152] "Sterilization in California was described as a means to breed out undesirable genetics from the population and fortify the state," and it was disproportionately forced upon Hispanic people.[153] In California, Hispanic women were sterilized at rates 59% higher than

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[148] Drew C. Penfergrass & Michelle Y. Raji, *The Bitter Pill: Harvard and the Dark History of Birth Control*, HARVARD CRIMSON (Sept. 28, 2017), https://www.thecrimson.com/article/2017/9/28/the-bitter-pill.

[149] *The Puerto Rico Pill Trials*, PBS: AMERICAN EXPERIENCE, https://www.pbs.org/wgbh/americanexperience/features/pill-puerto-rico-pill-trials (last visited Dec. 28, 2022).

[150] Penfergrass & Raji, *supra* note 148.

[151] *Id*.

[152] Nicole L. Novak & Natalie Lira, *California Once Targeted Latinas for Forced Sterilization*, SMITHSONIAN MAG. (Mar. 22, 2018), https://www.smithsonianmag.com/history/california-targeted-latinas-forced-sterilization-180968567/; *see also* Ray Levy Uyeda, *How Organizers Are Fighting an American Legacy of Forced Sterilization*, YES MAG. (Feb. 8, 2021), https://www.yesmagazine.org/social-justice/2021/02/08/united-states-forced-sterilization-women.

[153] Paola Alonso, *Autonomy Revoked: The Forced Sterilization of Women of Color in 20th Century America*, TEX. WOMEN'S U. (Mar. 9, 2021), https://twu.edu/media/documents/history-government/Autonomy-Revoked--The-Forced-Sterilization-of-Women-of-Color-in-20th-Century-America.pdf.

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non-Hispanic women.[154] Medical records show that doctors performing sterilizations would describe Hispanic women as "sex delinquents" as a justification for their medical violence. After California banned this practice in nonpenal institutions in 1979, California began forcibly sterilizing incarcerated people.[155] Between 2006 and 2010, California sterilized nearly 150 incarcerated women without required state approval by asking them to be sterilized while they were giving birth, or by doing so under the guise of performing another medical procedure.[156] Black and Hispanic women constituted the majority of the women sterilized according to these deceptive practices in California.[157]

Forced hysterectomies were so common in the South that Fannie Lou Hamer coined the phrase "Mississippi Appendectomy" to describe the procedure.[158] Thousands of low-income Black women who sought standard medical treatment (e.g., medical treatment for an abnormal pap smear) at Southern hospitals were sterilized.[159] In some states, scholars found a direct link between the state's forced sterilization program and recipients of public welfare benefits.[160] North Carolina, for example, sterilized 7,600 people from 1929 to 1973, ranking third amongst states

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[154] Marcella Howell et. al., *Contraceptive Equity for Black Women*, IN OUR OWN VOICE: NAT'L BLACK WOMEN'S REPROD. JUST. AGENDA (2020), http://blackrj.org/wp-content/uploads/2020/04/6217-IOOV_ ContraceptiveEquity.pdf.

[155] Corey G. Johnson, *Female Inmates Sterilized in California Prisons Without Approval*, REVEAL (July 7, 2013), https://revealnews.org/article/female-inmates-sterilized-in-california-prisons-without-approval. This became the subject of a documentary called Belly of the Beast, which follows the journey of some of the formerly incarcerated women to get justice for their forced sterilizations. Shilpa Jindia, *Belly of the Beast: California's Dark History of Forced Sterilizations*, GUARDIAN, June 30, 2020, https://www.theguardian.com/us-news/2020/jun/30/california-prisons-forced-sterilizations-belly-beast.

[156] Corey G. Johnson, *Female Inmates Sterilized in California Prisons Without Approval*, REVEAL (July 7, 2013), https://revealnews.org/article/female-inmates-sterilized-in-california-prisons-without-approval.

[157] *Id.*

[158] Ray Levy Uyeda, *How Organizers Are Fighting an American Legacy of Forced Sterilization*, YES MAG. (Feb. 8, 2021), https://www.yesmagazine.org/social-justice/2021/02/08/united-states-forced-sterilization-women..

[159] *Id.*

[160] *Id.*

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that forcibly sterilized their citizens.[161] Of those sterilized, women significantly outnumbered men, and Black women were disproportionately sterilized, as compared with White women.[162] According to a preliminary analysis, from 1950 to 1966, the North Carolina government sterilized Black women at more than three times the rate of White women and more than 12 times the rate of White men.[163]

Federal examples also abound. For example, the Family Planning Services and Population Research Act of 1970 allowed the Indian Health Service to sterilize Native American women and girls, often by means of coercion or deceit. According to estimates, a full 25% of Native American women and girls between the ages of 15 and 44 were sterilized during the 1970s.[164] These practices are not a relic of some distant past. For instance, as recently as November 2022, a bipartisan Senate report concluded that a gynecologist performed multiple excessive, invasive, and medically unnecessary gynecologic procedures on women in immigration detention.[165]

These forcible invasions of the reproductive autonomy of women and other persons of color reflect a racist and misogynistic belief that certain groups are incapable of being good parents, and that society ought to reduce poverty by preventing low-income people from having children. These racist ideas, policies, and practices that have been entrenched for so long in the

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[161] Alexandra Stern, *Forced Sterilization Policies in the US Targeted Minorities and Those with Disabilities – and Lasted into the 21st Century*, MICH. INST. FOR HEALTHCARE POL'Y & INNOVATION (Aug. 26, 2020), https://ihpi.umich.edu/news/forced-sterilization-policies-us-targeted-minorities-and-those-disabilities-and-lasted-21st.

[162] *Id.*

[163] *Id.*

[164] Uyeda, supra note 158.

[165] STAFF OF SEN. PERM. SUBCOMM. ON INVESTIGATIONS, 117TH CONG., REP. ON MEDICAL MISTREATMENT OF WOMEN IN ICE DETENTION (2022), *available at* https://www.hsgac.senate.gov/imo/media/doc/2022-11-15%20PSI%20Staff%20Report%20-%20Medical%20Mistreatment%20of%20Women%20in%20ICE%20Detention.pdf.

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U.S. are the basis for much of the distrust of reproductive healthcare and contraception held by Black people and people of color today.

2. *Lack of Access to and Misinformation About Birth Control*

In light of the history outlined above—which is a small snapshot of the history of such policies and practices in the United States—it should not be surprising that contraceptive choice in communities of color is influenced by multiple factors, including mistrust of medical professionals and state institutions. Nevertheless, studies show that open availability of effective contraceptives—such as birth control pills and intrauterine devices (IUDs)—reduces abortion rates.[166] For Black and Hispanic[167] pregnant people,[168] lack of access to contraception appears to result in a higher rate of abortion than White pregnant people.[169] One result of impeded access to contraception is disproportionate levels of unintended pregnancy and health issues for Black women and people of color. This of course negatively impacts their families and economic

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[166] Jeffrey F. Peipert et al., *Preventing Unintended Pregnancies by Providing No-Cost Contraception,* 120 OBSTETRICS & GYNECOLOGY 1291, 1295 (2012).

[167] We acknowledge the ongoing debate regarding the terms "Latin/o/a/x/e" and "Hispanic." We support the inclusive intent of the term Latinx. However, we also recognize that polls have shown that many Latin people dislike the term, which may feel foreign and imposed to Spanish speakers because it does not follow the general rules of Spanish pronunciation. *See* The Learning Network, *For Most Latinos, Latinx Does Not Mark the Spot*, N.Y. TIMES, June 15, 2021, https://www.nytimes.com/2021/06/15/learning/for-most-latinos-latinx-does-not-mark-the-spot.html. We appreciate the term "Hispanic" is disfavored by some because the term highlights the Spanish colonial rule of Latin America. We also recognize that the terms Latin/o/a/x/e and Hispanic are not exactly synonymous. In this report, we generally use the terms "Latin" and "Hispanic." When discussing externally-published research findings, we use language that conforms with the underlying source, including "Hispanic" and "Latin/o/a/x/e."

[168] Cynthia D. Gray et. al., *Racial and Ethnic Differences in Contraceptive Use Among Women Who Desire No Future Children*, *2006 – 2010 National Survey of Family Growth*, 92 CONTRACEPTION 1, 62-70 (2015).

[169] According to the CDC, in 2019, Black women had the highest abortion rate (23.8 abortions per 1,000 women), and White women had the lowest rate (6.6 abortions per 1,000 women). *Abortion Surveillance — United States, 2019*, 70 MORBIDITY & MORTALITY WKLY. REP. 1 (2021), *available at* https://www.cdc.gov/mmwr/volumes/70/ss/ss7009a1.htm#T6_down. According to the Kaiser Family Foundation, in Mississippi, people of color make up 81% of the pregnant people receiving abortions, but only 44% of the population. Emily Wagster Pettus & Leah Willingham, *Black and Hispanic People Have the Most to Lose if Roe is Overturned*, PBS (May 4, 2022), https://www.pbs.org/newshour/nation/black-and-hispanic-people-have-the-most-to-lose-if-roe-is-overturned. In Texas, they constitute 74% of those receiving abortions and 59% of the population. *Id.* In Alabama, the numbers are 69% and 35%, and in Louisiana the numbers are 72% and 42%. *Id.*

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security, as it burdens people with childcare obligations and forces them to pay substantial costs to support their child/children, which they may not be able to manage.[170]

Lack of financial resources is a substantial factor that contributes to unequal access to contraceptives. People who have health insurance are more likely to seek family planning services.[171] Conversely, those who are uninsured are less likely to seek, and therefore to use, contraceptives.[172] Centuries of racism and racist economic policies have resulted in barriers to accessing health insurance for people of color generally, and particularly for Black people. Similar pressures have resulted in Black people in certain parts of the U.S. being particularly vulnerable to coverage gaps that were created by states refusing to implement the Affordable Care Act's Medicaid expansion.[173] Against this backdrop, it is unsurprising that White women aged 15-49 years statistically use contraceptives at a higher rate than do their Black counterparts of the same age.[174] Without insurance, Black women and people of color typically face more obstacles in accessing desired contraception, simply because the most effective contraception is expensive.[175] For example, 86% of sexually-active women not seeking pregnancy with incomes

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[170] *Black Women's Maternal Health: A Multifaceted Approach to Addressing Persistent and Dire Health Disparities*, NAT'L P'SHIP FOR WOMEN & FAMILIES, Apr. 2018, https://www.nationalpartnership.org/our-work/resources/health-care/maternity/black-womens-maternal-health-issue-brief.pdf.

[171] Madeline Y. Sutton et al., *Racial and Ethnic Disparities in Reproductive Health Services and Outcomes, 2020,* 137 OBSTETRICS & GYNECOLOGY 225, 228 (2021), *available at* https://www.ncbi.nlm.nih.gov/pmc/articles/PMC7813444/pdf/ong-137-225.pdf.

[172] *Contraceptive Use in the United States by Demographics: Fact Sheet*, GUTTMACHER INST. (May 2021), https://www.guttmacher.org/fact-sheet/contraceptive-use-united-states [hereinafter *Contraceptive Use*].

[173] Samantha Artiga et. al., *Health Coverage by Race and Ethnicity, 2010 - 2019,* KAISER FAM. FOUND. (July 16, 2021), https://www.kff.org/racial-equity-and-health-policy/issue-brief/health-coverage-by-race-and-ethnicity.

[174] Sutton, *supra* note 171, at 228.

[175] Eliana Kosova, *How Much Do Different Kinds of Birth Control Cost Without Insurance?*, NAT'L WOMEN'S HEALTH NETWORK (Nov. 17, 2017), https://nwhn.org/much-different-kinds-birth-control-cost-without-insurance. Intrauterine devices cost over $1,000, implants such as Nexplanon cost over $800, NuvaRing costs over $1,000 per year, and birth control pills cost between $240 and $600 per year. *Id.*

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below the federal poverty level (FPL) used contraceptives, as compared to 91% of women with incomes above the FPL.[176] Black and Hispanic people are more likely to live under the FPL than White people, and thus more likely to face curtailed access to contraceptives and corresponding consequences.[177]

Inadequate sex education and disparities in sexual health literacy create further barriers to contraception access. Data show that Black and Hispanic people are less likely to receive formal sex education than White people,[178] because, among other reasons, predominantly non-White school districts receive $23 million less in funding than predominantly White school districts serving the same number of students.[179] Economic and racial segregation in the U.S. has resulted in certain racial and ethnic groups having access to inferior sources of information, including information that may not always be accurate and/or complete.[180] Disparities in access to medically accurate and complete sex education are discussed further in Section 5. Furthermore, immigrant groups are often disenfranchised from the healthcare system because of language barriers, and rely even more heavily on their peer network than do English-speaking groups.[181] Racial differences in the average age that an individual first has sex, support for non-marital childbearing, and religious beliefs may also contribute to differences in sexual health literacy.[182]

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[176] Contraceptive Use, *supra* note 172.

[177] John Creamer, *Inequalities Persist Despite Decline in Poverty For All Major Race and Hispanic Origin Groups*, U.S. CENSUS BUREAU (Sept. 15, 2020), https://www.census.gov/library/stories/2020/09/poverty-rates-for-blacks-and-hispanics-reached-historic-lows-in-2019.html.

[178] Karen B. Guzzo & Sarah R. Hayford, *Race-Ethnic Differences in Sexual Health Knowledge*, 4 RACE & SOC. PROBLEMS 158 (2012).

[179] Gabrielle Doyle & Madeline Doe, *How Sex Ed Can (and Should) Advance Racial Justice*, SIECUS, https://siecus.org/black-history-month-sex-ed-and-racial-justice/ (last visited Dec. 28, 2022).

[180] *Id.* at 3.

[181] *Id.*

[182] *Id.* at 11.

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In situations where people of color have access to contraception and choose to use it, studies show that low-income individuals (which disproportionately include people of color) experience a higher rate of contraceptive failure and discontinuation, or use a method associated with lower efficacy.[183] This may in part correlate with lower rates of insurance coverage among low-income individuals. To illustrate, 14% of people whose incomes are below the FPL become pregnant in the first year of oral contraceptive use, whereas only 5% of those whose incomes are 250% above the FPL become pregnant in the first year of use.[184]

3. *Restrictions on Public Funding of Reproductive Healthcare Services Increase Barriers to Access*

Higher rates of poverty, of course, also mean that Black women and people of color are less likely to have the means to pay for reproductive healthcare during pregnancy and childbirth. This group therefore is more likely to rely on government funding to cover expenses related to pregnancy, including abortion care. However, no existing federal or state law requires any health plan to cover an elective abortion. Moreover, under current federal and state law, funding for abortion care from federal and state governments is extremely limited. The Hyde Amendment prevents the use of federal funds to cover abortion services for people enrolled in Medicaid, and includes only a limited exception to permit federal funding for abortion in cases of rape, incest, or life endangerment.[185] This is particularly burdensome for Black and Hispanic people, who are

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[183] Christine Dehlendorf et. al., *Disparities in Family Planning*, 2023 AM. J. OF OBSTET. & GYNECOL. 214 (2010).

[184] *Id.*; Cynthia D. Gray et. al., *Racial and Ethnic Differences in Contraceptive Use Among Women Who Desire No Future Children, 2006 – 2010 National Survey of Family Growth*, 92 CONTRACEPTION 1, 62-70 (2015).

[185] Alina Salganicoff et. al., *The Hyde Amendment and Coverage for Abortion Services,* KAISER FAM. FOUND. (Mar. 5, 2021), https://www.kff.org/womens-health-policy/issue-brief/the-hyde-amendment-and-coverage-for-abortion-services/. The Hyde Amendment is not a permanent law; it has been attached as a temporary "rider" to the Congressional appropriations bill for the Department of Health and Human Services and has been annually renewed by Congress since 1976. *Id.*

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disproportionately more likely to be insured through Medicaid.[186] Among women aged 15-49, 29% of Black women and 25% of Hispanic women were enrolled in Medicaid in 2019, compared with 15% of White women and 12% of Asian women.[187] Other federal bans similarly prevent federal abortion coverage for people who obtain their health coverage or care through other federal programs, including Native Americans, people imprisoned or detained by the federal government, people with low incomes living in the District of Columbia, military personnel and veterans, Peace Corps volunteers, and federal employees.[188]

States have also implemented public funding prohibitions to impede access to abortion care and other reproductive care. For example, several states prohibit the distribution of state family planning funds to any organization that provides abortions, and others prohibit the distribution of state family planning funds to any private reproductive health-focused providers.[189] Additionally, medical insurance coverage across states varies, most notably for over-the-counter contraceptives, such as condoms and Plan B emergency contraception, which are the most accessible forms of contraception.[190] As of 2018, the Hyde Amendment and similar state-level restrictions have left millions of people without abortion coverage.[191] The impact of these

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[186] *The Hyde Amendment: A Discriminatory Ban on Insurance Coverage of Abortion: Fact Sheet*, GUTTMACHER INST. (May 2021), https://www.guttmacher.org/fact-sheet/hyde-amendment.

[187] *Id.*

[188] *Id.*

[189] *State Family Planning Funding Restrictions*, GUTTMACHER INST. (last updated Aug. 1, 2022), https://www.guttmacher.org/state-policy/explore/state-family-planning-funding-restrictions.

[190] *Insurance Coverage of Contraceptives*, GUTTMACHER INST. (last updated Nov. 1, 2022), https://www.guttmacher.org/state-policy/explore/insurance-coverage-contraceptives.

[191] *Medicaid Coverage of Abortion,* GUTTMACHER INST. (Feb. 12, 2021), https://www.guttmacher.org/evidence-you-can-use/medicaid-coverage-abortion.

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restrictions has been grave for low-income Black women and people of color, who are more likely to be enrolled in Medicaid.[192]

4. *Impact of Abortion Clinic Closures*

Approximately 85% of abortion clinics also provide gynecological care.[193] As a result, the closure of additional abortion clinics across the country after *Dobbs* will also reduce access to reproductive healthcare other than maternity care, such as general gynecological care. For example, 39% of Planned Parenthood patients are people of color who rely on Planned Parenthood providers for gynecological health services, including cancer screening and routine testing.[194] As outright bans and other restrictions on abortion access increase, many of these providers are forced to shut their doors. Of course, this will further decrease access to essential health services for Black women and people of color.

B. Barriers to Healthcare Based on Facility Type

Even in the absence of state laws that create barriers to healthcare, private religious organizations erect their own barriers that weigh heavily on people of color seeking reproductive healthcare. For example, as detailed below, people of color are more likely to access reproductive healthcare via Catholic church-owned hospitals, which systematically deny patients healthcare (including abortion and long-term contraception) based on the religious tenets of the Catholic Church. Protestant hospitals and secular hospitals in conservative regions also deny patients

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[192] *Id.; see also The Hyde Amendment: A Discriminatory Ban on Insurance Coverage of Abortion: Fact Sheet*, GUTTMACHER INST. (May 2021), https://www.guttmacher.org/fact-sheet/hyde-amendment.

[193] Elizabeth Witwer et al., *Abortion Service Delivery in Clinics by State Policy Climate in 2017*, 2 CONTRACEPTION: X (2020), *available at* https://www.ncbi.nlm.nih.gov/pmc/articles/PMC7561526/pdf/main.pdf.

[194] *This Is Who We Are*, PLANNED PARENTHOOD FEDERATION OF AMERICA INC. (2021), https://www.plannedparenthood.org/uploads/filer_public/2d/e1/2de1e14c-9bce-46b8-94f5-d57de80f1a3d/210210-fact-sheet-who-we-are-p01.pdf.

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abortions.[195] We focus on Catholic hospitals in this section, however, because they are more prevalent throughout the U.S. (running approximately 40% of healthcare systems) and there is consequently more research conducted on them.[196]

Data suggest that people of color in the U.S. are more likely to give birth at a Catholic hospital. For example, Black and Latin women in Cook County, Illinois (the second-most populous county in the U.S.) were more likely than their White counterparts to be enrolled in Medicaid plans that had higher proportions of Catholic-run healthcare options.[197] This means that in the Chicago metropolitan area, "vulnerable populations may be disproportionately impacted by religious restrictions to family planning services."[198] This is not just an Illinois phenomenon. In Maryland, three-quarters of the births in Catholic hospitals are to women of color, while less than half the births at non-Catholic facilities are to women of color.[199] In New Jersey, women of color make up only half of all women of reproductive age, yet they represent 80% of those who give birth at Catholic hospitals.[200] In 19 of 34 states and territories studied, women of color were more likely than White women to give birth at hospitals that follow Catholic ethical and religious

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[195] ELIZABETH REINER PLATT ET. AL., THE SOUTHERN HOSPITALS REPORT: FAITH, CULTURE, AND ABORTION BANS IN THE U.S. SOUTH 5 (2021), https://lawrightsreligion.law.columbia.edu/sites/default/files/content/Reports/The_Southern_Hospitals_Report.pdf.

[196] On the other hand, Protestant hospitals have a wider range of restrictive policies because there are many denominations with varying beliefs. *Id.* at 14.

[197] Maryam Guiahi & Debra Stulberg, *Women's Healthcare in U.S. Catholic-Affiliated Hospitals*, NEJM J. WATCH (May 8, 2020), https://www.jwatch.org/na51376/2020/05/08/womens-healthcare-us-catholic-affiliated-hospitals; *see also* Rebecca Gieseker et. al., *Family Planning Service Provision in Illinois Religious Hospitals: Racial/Ethnic Variation in Access to Non-Religious Hospitals for Publicly Insured Women*, 100 CONTRACEPTION 296 (2019).

[198] Guiahi & Stulberg, *supra* note 197.

[199] KIRA SHEPHERD ET. AL., BEARING FAITH: THE LIMITS OF CATHOLIC HEALTH CARE FOR WOMEN OF COLOR 9 (2017), https://lawrightsreligion.law.columbia.edu/sites/default/files/content/BearingFaith.pdf.

[200] *Id.* As confirmed by the authors, "[u]nfortunately, data on patients who identify as transgender or gender non-conforming is not available." *Id.* at 47 (endnote 6).

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directives.[201] This is likely because of the higher proportion of Catholic-run healthcare options within Medicaid plans.

Because Black women and people of color are more likely to access reproductive healthcare in Catholic hospitals, their reproductive choices are more likely to be constrained by the Ethical and Religious Directives for Catholic Health Care Services (ERDs). ERDs are a set of guidelines for Catholic healthcare providers that impose significant restrictions on a patient's reproductive healthcare options regardless of that patient's religious observance or affiliation (or lack thereof).[202] For example, the ERDs instruct that providers are not to promote or condone contraceptive use or intervention, including sterilization, birth control pills, Plan B, and IUDs. Additionally, providers that choose to abide by the ERDs are prohibited from performing abortions, unless such care is required to treat a "proportionately" serious condition of the woman or pregnant person that cannot wait until the fetus is viable.[203] Even during a miscarriage, physicians will, under the ERDs, delay treatment until the pregnant person shows they are in grave condition, so as not to perform an unsanctioned abortion.[204] These common practices have serious consequences for pregnant people seeking necessary healthcare. For example, in 2016, it was reported that five patients at a single Catholic hospital were subjected to unnecessarily prolonged miscarriages instead of receiving timely and appropriate abortion care in order to comply with the ERDs.[205] These directives similarly prevent abortion care even where a person has an ectopic

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[201] *Id.* at 8-9.

[202] U.S. CONFERENCE OF CATHOLIC BISHOPS, ETHICAL AND RELIGIOUS DIRECTIVES FOR CATHOLIC HEALTH CARE SERVICES (6th ed. 2018).

[203] *Id.* at 18, 19.

[204] Molly Redden, *Abortion Ban Linked to Dangerous Miscarriages at Catholic Hospital, Report Claims*, GUARDIAN, Feb. 18, 2016, https://www.theguardian.com/us-news/2016/feb/18/michigan-catholic-hospital-women-miscarriage-abortion-mercy-health-partners.

[205] *Id.*

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pregnancy (where a fertilized egg grows outside of the uterus), despite the fact that an ectopic pregnancy will never result in the birth of a child and can be fatal if left untreated.[206]

By permitting Catholic-run hospitals to deny access to safe and necessary medical procedures, the U.S. government is permitting them to control the patient-physician relationship in a way that causes harm. Patients, in consultation with their physicians, cannot make informed decisions about the best course of medical care when the ERDs prohibit physicians from even informing patients about common reproductive healthcare options that exist outside of the guidelines of the ERDs.

This primarily detriments Black women and people of color, because disproportionate increases in Catholic-run hospitals have resulted in fewer facility choices for Medicaid-insured patients. Indeed, the number of short-term acute care hospitals operating under Catholic health restrictions grew by more than 28% over the last two decades, while the number of non-Catholic short-term acute care hospitals dropped by nearly 14%.[207] Forty percent of the 10 largest healthcare systems in the country are Catholic-run, and one in six beds in acute care hospitals are in Catholic-run hospitals. In some states, more than 40% of hospital beds are in Catholic-run hospitals.[208] In 2020, 52 Catholic-run hospitals were the sole community hospitals for their region, meaning there was not another hospital within 35 miles.[209] Transfer to another hospital is often not an option, either because there is not another hospital nearby or because patient-born

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[206] *Id.*; *see also Ectopic Pregnancy*, MAYO CLINIC (Mar. 12, 2022), https://www.mayoclinic.org/diseases-conditions/ectopic-pregnancy/symptoms-causes/syc-20372088.

[207] TESS SOLOMON ET. AL., BIGGER AND BIGGER: THE GROWTH OF CATHOLIC HEALTH SYSTEMS 13 (2020), https://www.communitycatalyst.org/resources/publications/document/2020-Cath-Hosp-Report-2020-31.pdf.

[208] KIRA SHEPHERD ET. AL., BEARING FAITH: THE LIMITS OF CATHOLIC HEALTH CARE FOR WOMEN OF COLOR 8 (2017), https://lawrightsreligion.law.columbia.edu/sites/default/files/content/BearingFaith.pdf.

[209] TESS SOLOMON ET. AL., BIGGER AND BIGGER: THE GROWTH OF CATHOLIC HEALTH SYSTEMS 4 (2020), https://www.communitycatalyst.org/resources/publications/document/2020-Cath-Hosp-Report-2020-31.pdf.

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financial costs of such transfer are prohibitive. As a result, the stark increase in the number of Catholic-run hospitals and the U.S. government's willingness to allow these hospitals to compromise patient care in the name of religious principles will continue to disproportionately prevent Black women and people of color from accessing the reproductive healthcare they deserve.

II. Unequal Maternal Health Outcomes During Pregnancy and Childbirth

Black women and people of color have less access to quality healthcare during pregnancy and postpartum, leading to worse maternal outcomes. Pregnancy outcomes in the U.S. are already poor in comparison to those of other industrialized countries, even without taking racial disparities into account.[210] For instance, the U.S. has a maternal mortality rate of 23.8 for every 100,000 pregnancies; France has a rate of 8.7; Canada has a rate of 8.6; and New Zealand has a rate of 1.7.[211] This Section examines statistics regarding maternal mortality[212] and morbidity and explores why Black women and people of color are more likely to experience these harrowing health outcomes.

A. Black Women and People of Color are More Likely to Experience Maternal Mortality and Morbidity

Data show that Black and Indigenous women are more likely to experience maternal mortality than their White counterparts, and that these disparities continue to increase. The

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[210] CAROL SAKALA, MATERNITY CARE IN THE UNITED STATES: WE CAN – AND MUST – DO BETTER (2020), https://www.nationalpartnership.org/our-work/resources/health-care/maternity-care-in-the-united.pdf.

[211] Jamila Taylor, *The Worsening U.S. Maternal Health Crisis in Three Graphs,* CENTURY FOUND. (Mar. 2, 2022), https://tcf.org/content/commentary/worsening-u-s-maternal-health-crisis-three-graphs/?session=1.

[212] The World Health Organization defines maternal mortality as "the death of a woman while pregnant or within 42 days of the termination of pregnancy, irrespective of the duration and the site of the pregnancy, from any cause related to or aggravated by the pregnancy or its management, but not from accidental or incidental causes." DONNA L. HOYERT, MATERNAL MORTALITY RATES IN THE UNITED STATES, 2020 1 (2022), https://www.cdc.gov/nchs/data/hestat/maternal-mortality/2020/E-stat-Maternal-Mortality-Rates-2022.pdf.

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annual number of maternal deaths in 2020 increased significantly for Black and Hispanic people, but not for White people.[213] For White people, the maternal mortality rate in 2020 was 19.1 per 100,000 pregnancies; for Black people, the rate was 55.3 per 100,000 pregnancies.[214] From 2016 to 2018, for Indigenous people (non-Hispanic American Indian or Alaska Native persons), the maternal mortality rate was 26.5 per 100,000 pregnancies.[215] These discrepancies span both income and education levels.[216] A Black woman with a college education is 60% more likely to suffer a maternal death than a White or Hispanic woman with less than a high school education.[217]

Black women and people of color are also more likely to suffer from severe maternal morbidities, which are unexpected outcomes of labor and delivery that result in significant consequences to the person's health.[218] Data show that Black mothers face pregnancy-related morbidity at twice the rate of White mothers, and approximately 1.5 times the rate of Hispanic and Asian mothers.[219] Specifically, Black people suffer from severe maternal morbidity at a rate of 226 per 10,000 births, Hispanic people at a rate of 163 per 10,000 births, and Asian people at a rate of 153 per 10,000 births.[220] White people had the lowest rate – 105 per 10,000 births. Low-

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[213] *Id*. at 3.

[214] *Id.*

[215] *Pregnancy Mortality Surveillance System*, CTRS. FOR DISEASE CONTROL & PREVENTION (last reviewed June 22, 2022), https://www.cdc.gov/reproductivehealth/maternal-mortality/pregnancy-mortality-surveillance-system.htm.

[216] Andreea A. Creanga et. al., *Pregnancy-Related Mortality in the United States, 2011–2013*, 130 OBSTETRICS & GYNECOLOGY 366 (2017).

[217] EUGENE DECLERCQ & LAURIE ZEPHYRIN, MATERNAL MORTALITY IN THE UNITED STATES: A PRIMER (2020), https://doi.org/10.26099/ta1q-mw24.

[218] *Severe Maternal Morbidity in the United States*, CTRS. FOR DISEASE CONTROL & PREVENTION (last reviewed Feb. 2, 2021), https://www.cdc.gov/reproductivehealth/maternalinfanthealth/severematernalmorbidity.html.

[219] EUGENE DECLERCQ & LAURIE ZEPHYRIN, SEVERE MATERNAL MORBIDITY IN THE UNITED STATES: A PRIMER (2021), https://www.commonwealthfund.org/publications/issue-briefs/2021/oct/severe-maternal-morbidity-united-states-primer.

[220] *Id.*

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income birthing people, who are disproportionately Black women and people of color for the reasons of structural racism discussed above, are also more likely to suffer from severe maternal morbidity.[221] New abortion restrictions following *Dobbs* are expected to exacerbate these existing disparities in maternal health outcomes.[222]

B. Reasons Black Women and People of Color are More Likely to Experience Maternal Mortality and Morbidity

There are several reasons why Black women and people of color are more likely to experience maternal mortality and morbidity, especially as more states ban access to abortions. First, low-income women, Black women, people of color, young women, and cohabitating women have the highest rates of unintended pregnancies.[223] People with unintended pregnancies that are continued to term are more likely to experience maternal mortality and morbidity due to delays in seeking prenatal medical care.[224]

Second, Black patients are likely to suffer from higher maternal mortality and morbidity because of the hospitals that they access. Hospitals that primarily serve Black patients have higher rates of maternal complications than hospitals that do not.[225] These hospitals also perform

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[221] *Severe Maternal Morbidity in the United States*, CTRS. FOR DISEASE CONTROL & PREVENTION (last reviewed Feb. 2, 2021), https://www.cdc.gov/reproductivehealth/maternalinfanthealth/severematernalmorbidity.html.

[222] Jamey Keaten, *U.N. experts warn of impact of abortion bans on U.S. minorities*, PBS, August 30, 2022, https://www.pbs.org/newshour/politics/u-n-experts-warn-of-impact-of-abortion-bans-on-u-s-minorities

[223] *Unintended Pregnancy in the United States: Fact Sheet*, GUTTMACHER INST. (Jan. 2019), https://www.guttmacher.org/fact-sheet/unintended-pregnancy-united-states.

[224] Christine Dehlendorf et. al., *Disparities in Family Planning*, 202 AM. J. OBSTETRICS & GYNECOLOGY 214 (2010); *see also* Jamila Taylor et. al., *Eliminating Racial Disparities in Maternal and Infant Mortality*, CTR. FOR AM. PROGRESS (May 2, 2019), https://www.americanprogress.org/article/eliminating-racial-disparities-maternal-infant-mortality ("Studies show that when women experience an unintended pregnancy and are forced to carry an unplanned pregnancy to term, they are likely to delay prenatal care. This can result in poor maternal and infant health outcomes.") (footnote omitted).

[225] Andreea A. Creanga et. al., *Performance of Racial and Ethnic Minority-Serving Hospitals on Delivery-Related Indicators*, 211 AM. J. OBSTETRICS & GYNECOLOGY 647 (2014).

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worse on 12 of 15 birth outcomes, including elective deliveries, non-elective cesarean sections, and maternal mortality.[226]

Third, Black women and people of color experience racism during birth and pregnancy, which may lead to an increased risk of maternal mortality and morbidity.[227] The stress imposed by racism can result in "chronically elevated levels of the stress hormone cortisol," which can "lead to immune suppression, increasing women's risk of perinatal infections and leading to life-threatening pregnancy complications."[228]

Mortality rates are likely to worsen with additional restrictions placed on access to abortion, with a disproportionate impact on Black women and people of color. For example, estimates project a 7% increase in maternal mortality in the first year following a hypothetical nationwide abortion ban, and a 21% increase in later years.[229] Black women and pregnant people would likely suffer the most: a 12% increase in maternal mortality in the first year, and a 33% increase in later years.[230] The study projects that Hispanic women and pregnant people would experience the second largest increase in mortality: a 6% increase in maternal mortality the first year, and an 18% increase in subsequent years.[231] This is consistent with historical experience, which shows that reductions in abortion restrictions correspond to decreased maternal mortality for women of

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[226] *Id.*

[227] Meredith Grady & Tim Edgar, *Appendix D: Racial Disparities in Health Care: Highlights from Focus Group Findings*, *in* UNEQUAL TREATMENT: CONFRONTING RACIAL AND ETHNIC DISPARITIES IN HEALTH CARE 392 (Brian D. Smedley et al. eds., 2003), *available at* https://www.ncbi.nlm.nih.gov/books/NBK220358/pdf/Bookshelf_NBK220358.pdf.

[228] Cristina Novoa & Jamila Taylor, *Exploring African Americans' High Maternal and Infant Death Rates,* CTR. FOR AM. PROGRESS (Feb. 1, 2018), https://www.americanprogress.org/article/exploring-african-americans-high-maternal-infant-death-rates/.

[229] Amanda Jean Stevenson, *The Pregnancy-Related Mortality Impact of a Total Abortion Ban in the United States: A Research Note on Increased Deaths Due to Remaining Pregnant*, 58 DEMOGRAPHY 2019 (2021).

[230] *Id.*

[231] *Id.*

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color. For example, a recent study found that the decrease of abortion restrictions following *Roe v. Wade* in 1973 reduced maternal mortality among Black women by 30-40%, but had little impact on the maternal mortality rates of White women.[232] The study explains that when abortion was not legal in every state, Black women were less likely to be able to obtain safe abortions by traveling to other states or countries, or by obtaining an illegal yet safe abortion within the state from a capable healthcare provider.[233] Overall, the study's "findings suggest that legal abortion substantially improved maternal health for disadvantaged groups." [234]

III. Conclusion

In the United States, one legacy of systemic racism is that Black women and people of color suffer greater disparities in reproductive healthcare both before and during pregnancy, as well as during childbirth, as a result of their increased barriers to affordable, good-quality health services. These disparities are expected to widen with the promulgation of abortion bans nationwide. As more people are forced to carry unsought pregnancies to term or seek illegal and potentially less safe abortion care due to abortion bans, Black women and people of color will suffer the direst consequences. Abortion bans only exacerbate the legacy of racism in healthcare by increasing maternal morbidity and mortality rates for Black women and people of color, and thereby perpetuate the racism experienced by these groups within the American healthcare system.

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[232] Sherajum Monira Farin et al., The Impact of Legal Abortion on Maternal Mortality 3, 17 (December 2021) (unpublished study) (on file with authors), *available at* https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3913899.

[233] *Id.*

[234] *Id.*

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SECTION 3 – Disparities in Access to Financial Stability, Quality Healthcare, and Childcare Post-Birth

Studies show people of color face significant disparities following birth, including access to childcare, family support, and quality healthcare. Abortion bans and restrictions generally result in higher birth rates, and for Black women and people of color who are more likely to be low income to start with, this can lead to negative financial, economic, and psychological outcomes. For example, people of color with children are less likely to be able to access childcare and parental leave and are therefore more likely to be pushed out of the workforce after childbirth.

I. Black Women and People of Color Experience Greater Financial Challenges in Child Upbringing

Low-income people face a host of financial challenges in raising a child. Black women and women of color are more likely to be low income than their White counterparts because of a myriad of factors connected to structural racism. Thus, they often bear the brunt of the financial challenges in parenting. The Wall Street Journal recently reported that it costs $300,000 to raise a child through high school in the U.S. For many people living in the U.S., this is insurmountable.[235] Skyrocketing consumer prices create a hardship for many Black women and people of color because of the particular burdens in securing and maintaining employment with equitable wages.

To start, all working women and others who have given birth experience a "motherhood wage penalty."[236] This refers to a host of prejudicial stereotypes faced by working people who can become pregnant, based on stereotypical beliefs about the role a "mother" should play in a child's life. For example, management may see women and birthing people with children as less committed to their jobs, which can affect their hiring potential, chance of promotion, and wage

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[235] Neil Shah, *The Earnings Gap Between Married and Non-Married Moms is Widening*, WALL ST. J., Aug, 5, 2014, https://www.wsj.com/articles/BL-REB-2712.

[236] *Id*.

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increases.[237] These impacts are particularly relevant for Black and Hispanic people who can become pregnant, as they have historically faced higher barriers in accessing economic security and educational opportunities.[238]

Women of color traditionally suffer the most severe wage gaps regardless of whether they are mothers. Hispanic women experience the largest pay gap, earning 57 cents for every $1 earned by White, non-Hispanic men in 2020.[239] Black women, despite having the highest labor force participation rates, earned 64 cents for every $1 earned by White, non-Hispanic men in 2020.[240] These gaps are much wider than the already-large gap experienced by White, non-Hispanic women, who earned 79 cents for every $1 earned by White, non-Hispanic men in 2020.[241] The wage gap is even worse for mothers. Nationwide, Black mothers are paid 52 cents for every dollar paid to White, non-Hispanic fathers.[242]

Evidence shows that the recent COVID-19 pandemic has exacerbated the prejudices against mothers of color in the workforce. For example, between December 2018 and December 2020, the initial decline in labor force participation among Black and Latin women was more than twice as large as it was for White women.[243] This was partially due to an

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[237] Shelley Correll et al., *Getting a Job: Is There a Motherhood Penalty*, AM. J. OF SOCIOLOGY (Mar. 2017), *available at* https://www.journals.uchicago.edu/doi/full/10.1086/511799.

[238] John Creamer, *Inequalities Persist Despite Decline in Poverty For All Major Race and Hispanic Origin Groups*, U.S. CENSUS BUREAU (Sept. 15, 2020), https://www.census.gov/library/stories/2020/09/poverty-rates-for-blacks-and-hispanics-reached-historic-lows-in-2019.html.

[239] Robin Bleiweis et al., *Women of Color and the Wage Gap*, CTR. FOR AM. PROGRESS (Nov. 17, 2021), https://www.americanprogress.org/article/women-of-color-and-the-wage-gap/.

[240] *Id.*

[241] *Id.*

[242] *Motherhood Wage Gap for Black Mothers*, NAT'L WOMEN'S LAW CTR. (Apr. 29, 2021), https://nwlc.org/resource/motherhood-wage-gap-for-black-mothers/.

[243] Katherine Lim & Mike Zabek, *Women of Color and Women with Children Disproportionately Left the Labor Force During the COVID-19 Pandemic*, FED. RES. BANK OF MINNEAPOLIS (Feb. 28, 2022), https://www.minneapolisfed.org/article/2022/women-of-color-and-women-with-children-disproportionately-left-the-labor-force-during-the-covid-19-pandemic.

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overrepresentation of people of color in industries such as hospitality, which suffered from mass layoffs during the pandemic.[244]

A further consideration is the disparity in access to leave policies between parents of color and White parents. Black and Hispanic parents are less likely to enjoy the benefits of paid sick leave and family leave, which pushes them out of the workforce at higher rates in comparison to White parents.[245] Studies show that even those who technically have access to leave are not able to take advantage of it for practical or financial reasons. For example, 38% of Black women who need leave do not take it because at least some of these leaves are unpaid or pay is reduced.[246] In a given year, Black women take 1.8 million leaves from work, but about 42% of those leaves are without pay. This is particularly burdensome for the many Black mothers who are the sole or primary breadwinners for their households.[247]

Black and Latin pregnant people are also less likely to have employment that provides them with health insurance. Compared to 37% of White workers, only 26% of Black workers and 19% of Hispanic workers were employed in management or professional occupations in 2018.[248] It is in these roles that employers traditionally provide insurance and healthcare benefits for their workers. Comparatively, Black people are more likely to work in roles such as home health aides

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[244] *The Unequal Impact of COVID-19: A Spotlight on Frontline Workers, Migrants and Racial/Ethnic Minorities*, ORGANIZATION FOR ECONOMIC CO-OPERATION AND DEVELOPMENT (Mar. 17, 2022), https://read.oecd-ilibrary.org/view/?ref=1133_1133188-lq9ii66g9w&title=The-unequal-impact-of-COVID-19-A-spotlight-on-frontline-workers-migrants-and-racial-ethnic-minorities.

[245] Ann P. Bartel et.al., *Racial and Ethnic Disparities in Access to and Use of Paid Family and Medical Leave: Evidence From Four Nationally Representative Datasets*, MONTHLY LAB. REV. (Jan. 2019), https://www.bls.gov/opub/mlr/2019/article/racial-and-ethnic-disparities-in-access-to-and-use-of-paid-family-and-medical-leave.htm.

[246] Jessica Milli et al., *Black Women Need Access to Paid Family and Medical Leave*, CTR. FOR AM. PROGRESS (Mar. 4, 2022), https://www.americanprogress.org/article/black-women-need-access-to-paid-family-and-medical-leave.

[247] *Id.*

[248] *Labor Force Characteristics by Race and Ethnicity, 2018*, BLS REP. (Oct. 2019), https://www.bls.gov/opub/reports/race-and-ethnicity/2018/home.htm.

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and freelance work for a host of reasons connected to structural racism, such as unequal educational opportunities.[249] Additionally, Black people's participation in the labor force hovers around 62%.[250] This means that a significant proportion of Black pregnant people are unemployed, resulting in their reduced access to insurance and healthcare benefits.[251] Working jobs with no insurance significantly affects the pediatric care that Black and Hispanic parents can access for their children, which leads to worse health outcomes for children and adds to the significant economic strain on parents.[252]

II. Lack of Access to Affordable Childcare Negatively Affects Children and their Families, with Communities of Color Being Significantly More Likely to Be Unable to Achieve Appropriate Childcare

There is also a disparity in the quality of childcare that parents are able to access that runs along racial lines and results in low-income parents (who are disproportionately Black women and people of color) needing to leave the workforce or utilize subpar standards of childcare.[253] Studies indicate that inequity in access to early childhood care exacerbates existing socioeconomic and racial inequalities.[254] Conversely, high-quality early childcare and education can increase social

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[249] *See* Derek Thompson, *The Workforce Is Even More Divided by Race Than You Think*, ATLANTIC, Nov. 6, 2013, https://www.theatlantic.com/business/archive/2013/11/the-workforce-is-even-more-divided-by-race-than-you-think/281175.

[250] Samantha Subin, *Unemployment Rate for Black Women Fell in June, but so Did Their Participation in the Labor Force*, CNBC (July 8, 2022), https://www.cnbc.com/2022/07/08/unemployment-rate-for-black-women-fell-in-june-but-so-did-their-participation-in-the-labor-force.html.

[251] *Id.*

[252] Krista M. Perreira et al., *Access to Health Insurance and Health Care for Hispanic Children in the United States*, 696 THE ANNALS OF THE AMERICAN ACADEMY OF POLITICAL AND SOCIAL SCIENCE 223 (July 2021), *available at* https://journals.sagepub.com/doi/pdf/10.1177/00027162211050007?download=true.

[253] Taryn Morrissey, *Addressing the Need for Affordable, High-Quality Early Childhood Care and Education for all in the United States*, *in* VISION 2020: EVIDENCE FOR A STRONGER ECONOMY 86 (Wash. Ctr. for Equitable Growth ed., 2022), *available at* https://equitablegrowth.org/addressing-the-need-for-affordable-high-quality-early-childhood-care-and-education-for-all-in-the-united-states/.

[254] *Id*.

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and academic outcomes for children.[255] Although these groups tend to be lower income, Black and Hispanic children receive substantially less tiered government funding than the average White child in early childhood education programs (ECE).[256] Specifically, the ECE programs that low-income children and children of color can typically access tend to provide inadequate care to promote the children's learning and development.[257] This is despite the fact that families below the FPL ($12,000 per year) spend 30% of their income on childcare, a percentage which is roughly three times the national average.[258] It is unsurprising that economic constraints force families living below the FPL to choose lower-cost (and lower-quality) childcare.[259]

Moreover, low-income parents and parents of color are disproportionately affected by a lack of access to paid leave. This forces parents to expend significant resources to access childcare.[260] Adequate access to affordable childcare increases parents' labor force participation, especially for single mothers.[261] Mothers are much more likely to be forced out of the workforce due to a lack of adequate childcare, and this has both short- and long-term economic ramifications for families in terms of lost wages, retirement savings, and other benefits. Mothers pushed out of the workforce suffer an estimated average reduction of 19% in lifetime earnings.[262] When parents

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[255] Taryn Morrissey, *The Effects of Early Care and Education on Children's Health*, HEALTH AFFAIRS HEALTH POLICY BRIEF 1 (Apr. 25, 2019), *available at* www.healthaffairs.org/do/10.1377/hpb20190325.519221/full/HPB_2019_RWJF_11_w.pdf

[256] CHILD. BUREAU, CHILD WELFARE PRACTICE TO ADDRESS RACIAL DISPROPORTIONALITY AND DISPARITY (2021), https://www.childwelfare.gov/pubpdfs/racial_disproportionality.pdf.

[257] Taryn Morrissey, *Addressing the Need for Affordable, High-Quality Early Childhood Care and Education for all in the United States*, *in* VISION 2020: EVIDENCE FOR A STRONGER ECONOMY 86 (Wash. Ctr. for Equitable Growth ed., 2022), *available at* https://equitablegrowth.org/addressing-the-need-for-affordable-high-quality-early-childhood-care-and-education-for-all-in-the-united-states/.

[258] *Id*.

[259] *Id*.

[260] *Id.*

[261] *Id*.

[262] *Id*.

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leave the workforce in order to take care of children themselves they are able to avoid the high cost of childcare. However, the long-term financial penalty of leaving the workforce can actually exceed annual childcare costs. In addition to lost wages, parents who interrupt their career earn less when they return to the workforce, which impacts their retirement savings and social security benefits.[263] Public funding in the form of childcare subsidies is also insufficient. Only one in six eligible families (by federal income standards) actually receives childcare subsidies. Even for families that receive the subsidies, the reimbursement rate is often inadequate to cover the high cost of childcare.[264]

III. Conclusion

Abortion bans perpetuate the socioeconomic disparities within the U.S. driven by structural racism and limit the economic potential of Black families and families of color. These bans widen both the racial wealth gap and the gender wage gap for Black women and people of color. Abortion access is plainly a matter of economic and racial justice. Current efforts to ban abortions are thinly-veiled attempts to reinforce racist wealth inequality within the U.S. for Black women and people of color.

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[263] Michael Madowitz et.al., *Calculating the Hidden Cost of Interrupting a Career for Child Care,* CTR. FOR AM. PROGRESS (June 21, 2016), https://americanprogress.org/article/calculating-the-hidden-cost-of-interrupting-a-career-for-child-care/.

[264] Steven Jessen-Howard et.al., *Costly and Unavailable: America Lacks Sufficient Child Care Supply for Infants and Toddlers*, CTR. FOR AM. PROGRESS (Aug. 4, 2020) https://www.americanprogress.org/article/costly-unavailable-america-lacks-sufficient-child-care-supply-infants-toddlers/.

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SECTION 4 – Disparities in Ability to Travel Out of State for Abortion Care

Abortion-related travel is not a new phenomenon. The proportion of pregnant people traveling out of state to obtain an abortion has risen steadily over the past decade, from 6% in 2011 to 9% in 2020.[265] The U.S. Supreme Court's decision in *Dobbs v. Jackson Women's Health Organization*[266] has only exacerbated the problem.

In the continental U.S., the average travel distance for pregnant people seeking care at an abortion clinic doubled (to around 50 miles) just two weeks after the *Dobbs* decision.[267] If all states that are considered high risk for banning abortion do so, the distance is expected to increase by even more.[268] It is estimated that within just months following the *Dobbs* decision, more than half (54%) of women will travel farther than they would have previously in order to access the nearest abortion provider—and for those affected, the increase will likely be substantial.[269] If previous trends hold, roughly a quarter of abortion seekers (representing the poorest and most vulnerable) will not be able to overcome the distance and increased costs.[270]

In Part I of this Section, we will briefly describe travel-related hurdles to accessing abortion care, and how the impact of those hurdles disproportionately falls on Black women and people of color. In Part II, we will summarize how the *Dobbs* decision negatively impacts both abortion-related travel and congestion at remaining facilities, again with an emphasis on the resulting

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[265] Isaac Maddow-Zimet & Kathryn Kost, *Even Before Row Was Overturned, Nearly One in 10 People Obtaining an Abortion Traveled Across State Lines for Care*, GUTTMACHER INST. (July 21, 2022), https://www.guttmacher.org/article/2022/07/even-roe-was-overturned-nearly-one-10-people-obtaining-abortion-traveled-across.

[266] 142 S. Ct. 2228 (2022).

[267] Saima May Sidik, *The Effects of Overturning* Roe v. Wade, 608 NATURE 254, 254 (2022).

[268] *Id.*; Caitlin Myers et al., *Predicted Changes in Abortion Access and Incidence in a Post-Roe World*, 100 CONTRACEPTION 367 (2019).

[269] Mariana Lenharo, *After* Roe v. Wade*: US Researchers Warn of What's to Come*, NATURE (June 24, 2022), https://www.nature.com/articles/d41586-022-01775-z.

[270] *Id.*

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burdens on already vulnerable communities. In Part III, we will look to historical examples of abortion restrictions and their disproportionate impact on Black women and people of color, as those examples provide some insight into what we may see in a post-*Roe* world over the longer term.

I. Impact of Abortion Travel: Economic & Noneconomic Burdens

Travel impacts access to abortion in numerous ways, causing delays, monetary costs, and imposing other burdens.[271] As was true before the *Dobbs* decision, Black women and people of color[272] face significant and disproportionate challenges when seeking abortion care in a post-*Roe* America.[273] The challenges faced by these communities are both economic and noneconomic, and their consequences are often multi-dimensional.[274]

Here, we will briefly summarize the economic and noneconomic impacts of having to travel for an abortion. Collectively, the sources reviewed illustrate that Black women and people of color are most likely to be affected by the increased travel-related hurdles resulting from the abortion bans and restrictions made possible by the *Dobbs* decision.[275] Simply put, the *Dobbs* decision was an "attack on racial justice, economic justice, and equality" that is predicted to

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[271] Jill Barr-Walker et al., *Experiences of Women Who Travel for Abortion: A Mixed Methods Systematic Review*, 14 PLOS ONE (Apr. 9, 2019), https://www.ncbi.nlm.nih.gov/pmc/articles/PMC6456165/pdf/pone.0209991.pdf.

[272] Advocates point out that difficulty accessing care will be compounded for trans people of color, many of whom report facing stigma or discrimination when navigating the healthcare system. Olivia McCormack, *Transgender Advocates Say the End of Roe Would Have Dire Consequences*, WASH. POST, May 6, 2022, https://www.washingtonpost.com/politics/2022/05/06/transgender-men-nonbinary-people-abortion-roe/.

[273] Kirsten M. J. Thompson et al., *Association of Travel Distance to Nearest Abortion Facility With Rates of Abortion*, 4 JAMA NETWORK OPEN (2021), *available at* https://jamanetwork.com/journals/jamanetworkopen/fullarticle/2781624.

[274] Anne Branigin & Samantha Chery, *Women of Color Will be Most Impacted by the End of Roe, Experts Say*, WASH. POST, June 24, 2022, https://www.washingtonpost.com/nation/2022/06/24/women-of-color-end-of-roe/.

[275] *Id.*

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disproportionately affect women of color's access to abortion care.[276] That is true with respect to travel, and it is true along other fronts.

A. Economic Burdens & Systemic Financial Inequality as Hurdles to Accessing Abortion Care

Traveling for an abortion is expensive—and in ways that cost more than just money. Abortion travel often requires researching where and how to get an abortion, securing transportation and lodging, taking time off of work, making childcare arrangements, and navigating a rapidly-changing legal landscape.[277] Costs increase further if a longer stay is required or more than one trip is necessary, such as additional travel to obtain follow-up care or to comply with consultation or waiting period requirements.[278]

While women of color are more likely to *have to* travel longer distances to reach an abortion facility (i.e., because they live in an abortion desert),[279] White women are more likely to *be able to* travel to obtain an abortion (i.e., because they have the means to do so).[280] Thus,

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[276] *Id.*

[277] Jill Barr-Walker et al., *Experiences of Women Who Travel for Abortion: A Mixed Methods Systematic Review*, 14 PLOS ONE (Apr. 9, 2019), https://www.ncbi.nlm.nih.gov/pmc/articles/PMC6456165/pdf/pone.0209991.pdf.; *see also* Elizabeth A. Pleasants et al., *Association Between Distance to an Abortion Facility and Abortion or Pregnancy Outcome Among a Prospective Cohort of People Seeking Abortion Online*, 5 JAMA NETWORK OPEN e2212065 (2022), *available at* https://jamanetwork.com/journals/jamanetworkopen/fullarticle/2792291.

[278] *See* Jill Barr-Walker et al., *Experiences of Women Who Travel for Abortion: A Mixed Methods Systematic Review*, 14 PLOS ONE (Apr. 9, 2019), https://www.ncbi.nlm.nih.gov/pmc/articles/PMC6456165/pdf/pone.0209991.pdf.

[279] Brad Sears et al., *People Traveling to California and Los Angeles for Abortion Care if* Roe v. Wade *is Overturned*, UCLA SCHOOL L. CTR. ON REPROD. HEALTH, L., & POL'Y (June 2022), https://law.ucla.edu/sites/default/files/PDFs/Center_on_Reproductive_Health/California_Abortion_Estimates.pdf (citing Jill Barr-Walker et al., *Experiences of Women Who Travel for Abortion: A Mixed Methods Systematic Review*, 14 PLOS ONE (Apr. 9, 2019), https://www.ncbi.nlm.nih.gov/pmc/articles/PMC6456165/pdf/pone.0209991.pdf).

[280] Brad Sears et al., *People Traveling to California and Los Angeles for Abortion Care if* Roe v. Wade *is Overturned*, UCLA SCHOOL L. CTR. ON REPROD. HEALTH, L., & POL'Y (June 2022), https://law.ucla.edu/sites/default/files/PDFs/Center_on_Reproductive_Health/California_Abortion_Estimates.pdf (citing Liza Fuentes & Jenna Jerman, *Distance Traveled to Obtain Clinical Abortion Care in the United States and Reasons for Clinic Choice*, 28 J. WOMEN'S HEALTH 1623 (Dec. 2019); Rachel K. Jones & Jenna Jerman, *How Far Did US Women Travel for Abortion Services in 2008?*, 22 J. WOMEN'S HEALTH 706

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although *Dobbs* has affected everyone's access to abortion, those with more resources will be less affected as they are able to travel and have access to other resources and networks, while those who lack such means and resources (many of whom are Black women and pregnant people of color) will be affected the most.[281] This effect is magnified because of what we know about who is most likely to obtain an abortion. The Centers for Disease Control and Prevention has found that of the states that report racial and ethnic data on abortion (29 states and D.C.), women of color represent a disproportionately high share. In 2019, the abortion rates for Black women, Hispanic women, and White women were 23.8 per 1,000 women, 11.7 per 1,000, and 6.6 per 1,000, respectively.[282]

As a result of the *Dobbs* decision, the total cost of abortion has increased dramatically.[283] Travel-related expenses are a large part of that. In addition to the costs of the procedure itself (roughly $500 for a first trimester abortion, and $2,000 or more for a second trimester abortion), many pregnant people must travel farther and stay longer, often incurring thousands of dollars of added costs, including gas, flights, lodging, food, lost wages, and childcare.[284] These increases

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(Aug. 2013) (finding that women of color were less likely to travel long distances compared to non-Hispanic white women)).

[281] Kirsten M. J. Thompson et al., *Association of Travel Distance to Nearest Abortion Facility with Rates of Abortion*, 4 JAMA NETWORK OPEN (2021), *available at* https://jamanetwork.com/journals/jamanetworkopen/fullarticle/2781624.

[282] Jeff Diamant & Besheer Mohamed, *What the Data Says About Abortion in the U.S.*, PEW RESEARCH (June 24, 2022), https://www.pewresearch.org/fact-tank/2022/06/24/what-the-data-says-about-abortion-in-the-u-s-2/. According to the Guttmacher Institute, these higher rates are systemic, driven in part by widespread disparities in access to healthcare and contraceptives. Susan A. Cohen, *Abortion and Women of Color: The Bigger Picture*, GUTTMACHER POLICY REVIEW (Aug. 6, 2008), https://www.guttmacher.org/gpr/2008/08/abortion-and-women-color-bigger-picture.

[283] Laura Valle Gutierrez, *The* Dobbs *Decision's Cost to Women and Families*, THE CENTURY FOUND. (Aug. 18, 2022), https://tcf.org/content/commentary/the-dobbs-decisions-cost-to-women-and-families/?agreed=1.

[284] Allison McCann, *What It Costs to Get an Abortion Now*, N.Y. TIMES, Sept. 28, 2022, https://www.nytimes.com/interactive/2022/09/28/us/abortion-costs-funds.html.

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are already apparent and are likely to increase, as recent abortion fund surveys indicate.[285] For example, prior to *Dobbs*, Midwest Access Coalition (an abortion fund serving the Midwest) used to provide a typical client with about $1,000 to fund expenses.[286] Following *Dobbs*, its cost per client is twice as much.[287] The increase stems from both increased travel expenses and delays in obtaining care.[288] Both of these reasons are related to the increased need for women to travel from a state where abortion services are unavailable to a state where they are available. More travel means more congestion and longer wait times at remaining clinics. Because of long wait times (some clinics now have wait times up to three or four weeks) and the increasingly complicated legal landscape, many pregnant people are forced to delay their abortions, which increases the cost of the procedure.[289]

It is helpful to keep in mind the magnitude of the travel now required to reach an abortion facility. For states with 6-week or total abortion bans (discussed in more detail in Part II below), travel time to access abortion services will increase by an average of about 4 hours each way, on top of whatever it would have been already.[290] To put this in perspective, the roundtrip travel required to obtain a facility-based abortion for residents of these states equals or exceeds the typical workday (generally defined as eight hours in the U.S.). For some Ban States,[291] the

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285 *Id.*

286 *Id.*

287 *Id.*

288 *Id.*

289 *Id.*

290 Benjamin Rader et al., *Estimated Travel Time and Spatial Access to Abortion Facilities in the US Before and After the Dobbs v Jackson Women's Health Decision*, JAMA (Nov. 1, 2022), https://jamanetwork.com/journals/jama/fullarticle/2798215?guestAccessKey=70c1bc40-5cc0-4bcf-a73d-a5b9b26ccf01&utm_source=For_The_Media&utm_medium=referral&utm_campaign=ftm_links&utm_content=tfl&utm_term=110122.

291 "Ban States" refers to the states with total abortion bans and 6-week abortion bans (often referred to as fetal heartbeat laws) as of the end of December 2022. The term "Access States" refers to the remaining states. *See* Part II, below.

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required travel is even greater. For example, the one-way travel required for a Texas resident was estimated to increase by a full work day (roughly an eight hour increase).[292] These significant travel increases lead to increases in direct costs, such as increased costs for gas and airfare, as well as lodging costs for trips that cannot be completed in a day.[293] Longer travel times often also mean additional time off of work, leading to lost wages for those without access to paid leave. Racial disparities in access to leave policies[294] further compound the impact of these burdens on Black women and people of color.

Increased costs of abortion travel do not affect all women or pregnant people equally, as the burden disproportionately falls on communities of color, who can least afford it.[295] The vast majority of women who have an abortion in the U.S. are economically disadvantaged.[296] However, Black women and pregnant people of color face intersecting burdens, as communities

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[292] *Id.*

[293] Overnight stays may be required for many reasons, including travel distances that cannot be safely completed in a day, the desire to stay close to the abortion facility for follow-up visits or to take the second dose of a medicated abortion, or to accommodate mandated counseling and waiting periods. *See* Jonathan M. Bearak et al., *Disparities and Change Over Time in Distance Women Would Need to Travel to Have an Abortion in the USA: A Spatial Analysis*, 2 LANCET PUB. HEALTH e493 (2017), *available at* https://www.thelancet.com/action/showPdf?pii=S2468-2667%2817%2930158-5.

[294] Jessica Milli et al., *Black Women Need Access to Paid Family and Medical Leave*, CTR. FOR AM. PROGRESS (Mar. 4, 2022), https://www.americanprogress.org/article/black-women-need-access-to-paid-family-and-medical-leave/. For further information on this topic, see Section 2 (Disparities in Access to Healthcare and Unequal Maternal Health Outcomes During Pregnancy and Childbirth).

[295] Mariana Lenharo, *After* Roe v. Wade*: US Researchers Warn of What's to Come*, NATURE (June 24, 2022), https://www.nature.com/articles/d41586-022-01775-z ("Mary Faith Marshall, a biomedical ethicist at the University of Virginia School of Medicine in Charlottesville, says that, on the basis of data collected over years, the upcoming abortion restrictions will have their deepest impacts on people of colour and poor communities. 'Being forced to have a child when it is not the right time puts people who are already in poverty further into poverty.'").

[296] Jonathan M. Bearak et al., *Disparities and Change Over Time in Distance Women Would Need to Travel to Have an Abortion in the USA: A Spatial Analysis*, 2 LANCET PUB. HEALTH e493 (2017), *available at* https://www.thelancet.com/action/showPdf?pii=S2468-2667%2817%2930158-5. According to 2014 estimates, 75% of abortion seekers were considered to be living on low incomes. Benjamin Rader et al., *Estimated Travel Time and Spatial Access to Abortion Facilities in the US Before and After the Dobbs v Jackson Women's Health Decision*, JAMA (Nov. 1, 2022), https://jamanetwork.com/journals/jama/fullarticle/2798215?guestAccessKey=70c1bc40-5cc0-4bcf-a73d-a5b9b26ccf01&utm_source=For_The_Media&utm_medium=referral&utm_campaign=ftm_links&utm_content=tfl&utm_term=110122.

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of color already face an onslaught of additional challenges that other groups do not, such challenges largely stemming from systemic financial inequality.[297] For example, the typical White American family has roughly 10 times more wealth than the typical Black or Latin family.[298] In other words, while the average White household has about a $100,000-$200,000 net worth, Black and Latin households have an average net worth of $10,000-$20,000.[299] Behind the steep financial inequality reflected by this statistic are all the other things tied to wealth – including opportunity, network, access to transportation, disposable time, and energy – all of which affect one's ability to access abortion care. Referred to as "persistent and extreme," this inequality is not going away any time soon: no progress has been made in reducing income and wealth inequalities between Black and White households over the past 70 years.[300] Systemic financial inequality and the increased costs of obtaining an abortion due to these policies make accessing such care prohibitive for Black women and pregnant people of color.[301]

In addition to systemic financial inequality, Black women and people of color often have jobs that create additional barriers, including low wages;[302] the inability to take time off work; and lack of parental leave, insurance, and other benefits.[303] Females with lower incomes and

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[297] Paula A. Braveman et al., *Systemic and Structural Racism: Definitions, Examples, Health Damages, and Approaches to Dismantling*, 41 HEALTH AFF. 171 (2022), *available at* https://www.healthaffairs.org/doi/epdf/10.1377/hlthaff.2021.01394.

[298] Liz Mineo, *Racial Wealth Gap May Be a Key to Other Inequities*, HARVARD GAZETTE, June 3, 2021, https://news.harvard.edu/gazette/story/2021/06/racial-wealth-gap-may-be-a-key-to-other-inequities/.

[299] *Id.*

[300] *Id.*

[301] *See* Joanna Venator & Jason Fletcher, *Undue Burden Beyond Texas: An Analysis of Abortion Clinic Closures, Births, and Abortions in Wisconsin*, 40 J. POL'Y ANALYSIS & MANAGEMENT 774 (2021).

[302] *See* discussion *infra* Part II.B.

[303] *See* discussion *supra* Section 2 (Disparities in Access to Healthcare and Unequal Maternal Health Outcomes During Pregnancy and Childbirth).

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uninsured females are predicted to have less access to abortion facilities following *Dobbs*, as compared with their wealthier, insured counterparts.[304] Thus, the systemic financial inequality facing Black women and people of color has compounding effects in the context of abortion care.

B. Noneconomic Burdens & Negative Health Consequences

The increase in abortion bans and restrictions following the *Dobbs* decision will also result in noneconomic consequences.[305] Increases in abortion-related travel are also associated with increased costs, stress, and delays in obtaining care for those women and pregnant people who are ultimately able to access care.[306] Unsurprisingly, a pregnant person becomes less likely to ultimately obtain abortion care the farther they live from an abortion facility.[307]

Emotional burdens caused by increased travel (as opposed to the abortion itself) include feeling stressed from the need to coordinate transportation and other logistics, feeling lonely and uncomfortable while traveling alone for the abortion, as well as feeling stigmatized for the need to travel to obtain routine healthcare services.[308] Pregnant people may also be forced to tell other people (often individuals who they do not want to tell) about their abortions as a direct result of the burden posed by increased travel.[309] For instance, the need to borrow money for travel or the

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[304] Benjamin Rader et al., *Estimated Travel Time and Spatial Access to Abortion Facilities in the US Before and After the Dobbs v Jackson Women's Health Decision*, JAMA (Nov. 1, 2022), https://jamanetwork.com/journals/jama/fullarticle/2798215?guestAccessKey=70c1bc40-5cc0-4bcf-a73d-a5b9b26ccf01&utm_source=For_The_Media&utm_medium=referral&utm_campaign=ftm_links&utm_content=tfl&utm_term=110122.

[305] Mariana Lenharo, *After* Roe v. Wade*: US Researchers Warn of What's to Come*, NATURE (June 24, 2022), https://www.nature.com/articles/d41586-022-01775-z.

[306] *Id.*

[307] Kirsten M. J. Thompson et al., *Association of Travel Distance to Nearest Abortion Facility With Rates of Abortion*, 4 JAMA NETWORK OPEN (2021), *available at* https://jamanetwork.com/journals/jamanetworkopen/fullarticle/2781624.

[308] Jill Barr-Walker et al., *Experiences of Women Who Travel for Abortion: A Mixed Methods Systematic Review*, 14 PLOS ONE (Apr. 9, 2019), https://www.ncbi.nlm.nih.gov/pmc/articles/PMC6456165/pdf/pone.0209991.pdf.

[309] *Id.*

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procedure, arrange childcare, or secure time off of work may leave people no other choice but to tell others at work and in their personal lives about their abortions, many of whom they would not otherwise tell.[310]

Increased travel is also associated with long delays and the inability to obtain abortions.[311] According to research, women of color, women who have experienced recent negative life events, and women with lower levels of education are most likely to have a second-trimester abortion.[312] This suggests that these groups (for various reasons) may be experiencing particular difficulty in accessing abortion during the first trimester.[313] Difficulty financing an abortion is one of the reported reasons for delaying abortion care,[314] and increasing costs associated with increasing travel will undoubtedly compound those burdens. Delays in obtaining an abortion can limit what procedures are available to the woman or pregnant person, and generally increase the costs.[315] Procedures later in pregnancy are also offered at fewer facilities, which further increases financial and logistical barriers.[316] And, while abortion generally poses very low medical risk, the risks "rise

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[310] *Id.*

[311] Benjamin Rader et al., *Estimated Travel Time and Spatial Access to Abortion Facilities in the US Before and After the Dobbs v Jackson Women's Health Decision*, JAMA (Nov. 1, 2022), https://jamanetwork.com/journals/jama/fullarticle/2798215?guestAccessKey=70c1bc40-5cc0-4bcf-a73d-a5b9b26ccf01&utm_source=For_The_Media&utm_medium=referral&utm_campaign=ftm_links&utm_content=tfl&utm_term=110122.

[312] Gretchen E. Ely et al., *Where Are They from and How Far Must They Go? Examining Location and Travel Distance in U.S. Abortion Fund Patients*, 29 INT'L J. SEXUAL HEALTH 313 (2017).

[313] *Id.*

[314] *Id.*

[315] Jason M. Lindo & Mayra Pineda-Torres, *New Evidence on the Effects of Mandatory Waiting Periods for Abortion*, 80 J. HEALTH ECON. 102533 (2021).

[316] Kari White et al., *Association of Texas' 2021 Ban on Abortion in Early Pregnancy with the Number of Facility-Based Abortions in Texas and Surrounding States*, JAMA (Nov. 1, 2022), https://jamanetwork.com/journals/jama/fullarticle/2798216?guestAccessKey=632f2f19-ea02-46ff-814b-a95d7b371568&utm_source=For_The_Media&utm_medium=referral&utm_campaign=ftm_links&utm_content=tfl&utm_term=110122.

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geometrically from the first trimester to the second."[317] Thus, a delay in care could lead to unnecessary and highly-preventable health complications. Even for those pregnant people who can obtain an abortion, longer travel distances have been found to decrease the odds of returning for follow-up care and increase the odds of an emergency hospital visit.[318]

Immigrants, particularly undocumented people, face additional barriers when attempting to access abortion care, including travel restrictions and language difficulties.[319] Women and pregnant people without legal immigration status are more likely to encounter difficulties in crossing state lines to obtain abortion care.[320] The U.S. Border Patrol maintains a network of roughly 110 road checkpoints, many of which are located near U.S. borders.[321] These checkpoints make it nearly impossible for those without legal status to travel across state lines to obtain abortion care.[322] Those that choose to travel through these checkpoints risk their ability to stay in the country and the security of their children and families.[323] Texas – a Ban State with a large immigrant population – has many of these checkpoints and deputizes law enforcement with

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[317] Ted Joyce & Robert Kaestner, *The Impact of Mississippi's Mandatory Delay Law on the Timing of Abortion*, 32 FAM. PLAN. PERSP. 4, 12 (2000) (citing D.A. Grimes & K.F. Schulz, *Morbidity and Mortality from Second-Trimester Abortions*, 30 J. REPROD. MED. 505 (1985); RACHEL B. GOLD, ABORTION AND WOMEN'S HEALTH: A TURNING POINT FOR AMERICA? (1990)).

[318] Gretchen E. Ely et al., *Where Are They from and How Far Must They Go? Examining Location and Travel Distance in U.S. Abortion Fund Patients*, 29 INT'L J. SEXUAL HEALTH 313 (2017).

[319] Amanda Su, *Challenges Increase for Immigrants Accessing Abortion after Roe Reversal*, ABC NEWS (July 17, 2022), https://abcnews.go.com/US/challenges-increase-immigrants-accessing-abortion-roe-reversal/story?id=86404717.

[320] Sofia Ahmed, *Abortion Worries Heightened for Unauthorized Immigrants in the U.S.*, REUTERS (July 5, 2022), https://www.reuters.com/world/us/abortion-worries-heightened-unauthorized-immigrants-us-2022-07-05/.

[321] *Id.*

[322] *Id.*

[323] Amanda Su, *Challenges Increase for Immigrants Accessing Abortion after Roe Reversal*, ABC NEWS (July 17, 2022), https://abcnews.go.com/US/challenges-increase-immigrants-accessing-abortion-roe-reversal/story?id=86404717.

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considerable discretion to target immigrants.[324] Also, many Ban States (including Texas) do not allow a person without legal immigration status to obtain a driver's license, further impeding travel.[325]

Barriers to accessing abortions are heightened for those who do not speak English or have limited English proficiency.[326] Much of the legal and medical guidance that has been issued following *Dobbs* is difficult enough for native English speakers to comprehend, and it is virtually unintelligible for individuals with limited English proficiency, according to Nancy Cárdenas Peña, who serves as the Texas director for policy and advocacy at the National Latina Institute for Reproductive Justice.[327] Without access to truthful information in their own language, people with limited English proficiency may be unable to access safe abortion care (whether self-managed or facility-based care) and may be misled by controversial pregnancy crisis centers or others that aim to discourage people from obtaining abortions.[328] According to Seri Lee (who serves as the national campaign and membership director at the National Asian Pacific American Women's Forum), while prevalent in every community, this threat is particularly common in the Asian American and Pacific Islander community, through the spread of misinformation via social medial channels like WhatsApp and WeChat.[329] For Asian American and Pacific Islander communities, obtaining abortion care often implicates multiple intersecting barriers for the most vulnerable within these communities, including language difficulties, cultural stigmas, and low rates of

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[324] *Id.*

[325] *Id.*

[326] *Id.*

[327] *Id.*

[328] *Id.*

[329] *Id.*

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insurance coverage.[330] Similar compounding and intersecting systems of oppression affect immigrants and people of color generally.[331]

II. Increases in Travel in "Ban States" & Surges in "Access States"

In this Part II, we will summarize the increases in abortion-related travel that have resulted from the onslaught of abortion bans and restrictions that have become enforceable following *Dobbs*. We will also provide background and demographic information on the areas that are most likely to be impacted. Finally, we will discuss the initial impact of abortion bans and restrictions, including the effects on states that have maintained abortion access.

A. Overview of Travel Increases

A recent study estimated the changes in travel time to the nearest abortion facility and found significant increases following *Dobbs*.[332] In 2021, prior to *Dobbs*, average travel time to an abortion facility was estimated to be approximately 10 to 30 minutes.[333] In September 2022, following *Dobbs*, average travel time increased to over an hour and a half.[334]

But national averages do not tell nearly the whole story. The increased travel burden does not fall proportionately on all states. Rather, the burden falls primarily on residents of states that have banned or severely restricted abortion, many of which are in the South and Midwest. For states with 6-week or total abortion bans, travel time increased by an average of about 4 hours—

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[330] Anne Branigin & Samantha Chery, *Women of Color Will be Most Impacted by the End of Roe, Experts Say*, WASH. POST, June 24, 2022, https://www.washingtonpost.com/nation/2022/06/24/women-of-color-end-of-roe/.

[331] Amanda Su, *Challenges Increase for Immigrants Accessing Abortion after Roe Reversal*, ABC NEWS (July 17, 2022), https://abcnews.go.com/US/challenges-increase-immigrants-accessing-abortion-roe-reversal/story?id=86404717.

[332] Benjamin Rader et al., *Estimated Travel Time and Spatial Access to Abortion Facilities in the US Before and After the Dobbs v Jackson Women's Health Decision*, JAMA (Nov. 1, 2022), https://jamanetwork.com/journals/jama/fullarticle/2798215?guestAccessKey=70c1bc40-5cc0-4bcf-a73d-a5b9b26ccf01&utm_source=For_The_Media&utm_medium=referral&utm_campaign=ftm_links&utm_content=tfl&utm_term=110122.

[333] *Id.*

[334] *Id.*

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whereas there was almost no change in travel time in the remaining states.[335] The largest increases in travel time were estimated for the South, including Texas (average increase of 7-8 hours) and Louisiana (average increase of 7 hours).[336] Travel increases of this size not only affect the amount of time spent traveling, but increase logistical hurdles as well (such as costs, lodging, childcare, and time off work).

As discussed above in Section 1 (Overview of the Current State of the Law), 17 states had banned access to abortion within their borders as of the end of December 2022. According to the Guttmacher Institute, the average one-way driving distance to the nearest clinic that performs abortions for women aged 15-49 in these states is as follows:[337]

State	Before 6 Weeks	Before 12 Weeks	Before 15 Weeks	Before 20 Weeks	Before 22 Weeks	Before 24 Weeks	After 24 Weeks
Alabama	115 miles			374 miles	406 miles		507 miles
Arkansas	161 miles			224 miles	328 miles		360 miles
Idaho		21 miles		36 miles	286 miles		428 miles
Indiana		20 miles (37 miles before 14 weeks)	107 miles	155 miles		174 miles	235 miles
Kentucky	70 miles		89 miles	218 miles	268 miles		274 miles
Louisiana			37 miles (before 14 weeks)	71 miles	672 miles		673 miles
Mississippi	118 miles	183 miles (before 14 weeks)	184 miles	194 miles			499 miles
Missouri					44 miles		155 miles

335 *Id.*

336 *Id.*

337 *Interactive Map: US Abortion Policies and Access After Roe*, GUTTMACHER INST. (last updated Sept. 20, 2022), https://states.guttmacher.org/policies/.

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State	Before 6 Weeks	Before 12 Weeks	Before 15 Weeks	Before 20 Weeks	Before 22 Weeks	Before 24 Weeks	After 24 Weeks
North Dakota				165 miles	326 miles	399 miles	402 miles
Oklahoma				180 miles	181 miles	500 miles	512 miles
South Dakota		190 miles		191 miles	220 miles	277 miles	290 miles
Tennessee	26 miles	186 miles (before 14 weeks)	223 miles		298 miles		320 miles
Texas				250 miles	547 miles	705 miles	786 miles
Utah			30 miles		33 miles	416 miles	652 miles
West Virginia			64 miles (before 14 weeks)	65 miles	126 miles	167 miles	283 miles
Wisconsin		34 miles		37 miles	77 miles	125 miles	242 miles
Wyoming			169 miles	171 miles	181 miles	331 miles	829 miles

As of the end of December 2022, another four states had prohibited abortion after the detection of a "fetal heartbeat"[338] (approximately six weeks gestation), which is before many women and people know they are pregnant. According to the Guttmacher Institute, the average one-way driving distance to the nearest clinic that performs abortions for women aged 15-49 in these states is as follows:[339]

[338] Much of the medical community contests the use of the term "fetal heartbeat" in early pregnancy. While a sound that resembles a heartbeat can often be heard on an ultrasound at around six weeks gestation, this term is inaccurate as a fetus typically does not develop heart chambers until 17-20 weeks gestation. Therefore, this sound is not a heartbeat, but rather the ultrasound machine translating electronic impulses that signify fetal cardiac activity. *ACOG Guide to Language and Abortion*, AM. COLL. OF OBSTETRICIANS & GYNECOLOGISTS, https://www.acog.org/contact/media-center/abortion-language-guide (last visited Aug. 30, 2022).

[339] *Interactive Map: US Abortion Policies and Access After Roe*, GUTTMACHER INST. (last updated Sept. 20, 2022), https://states.guttmacher.org/policies/.

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State	Before 6 Weeks	Before 12 Weeks	Before 15 Weeks	Before 20 Weeks	Before 22 Weeks	Before 24 Weeks	After 24 Weeks
Georgia	17 miles	188 miles (before 14 weeks)	242 miles		253 miles		558 miles
Iowa		33 miles		47 miles	170 miles	229 miles	252 miles
Ohio	19 miles	119 miles (before 14 weeks)	128 miles	149 miles		157 miles	195 miles
South Carolina[340]	23 miles	88 miles (before 14 weeks)			108 miles		492 miles

In short, travel times and distances to the nearest abortion facility have significantly increased following *Dobbs*. Post-*Dobbs*, an estimated 33.3% of reproductive-age females lived more than 60 minutes from an abortion facility, compared to 14.6% in the pre-*Dobbs* period, which is more than a doubling of that percentage.[341] However, these numbers vary by race and ethnicity, with a greater proportion of Black and American Indian or Alaska Native females now located more than 60 minutes from an abortion facility than any other ethnicity.[342]

B. Background & Demographics of Areas Most Likely to Be Impacted

Prior to *Dobbs*, many residents of Ban States already struggled to access the few abortion services that existed in those states. Abortion bans and fetal heartbeat laws are heavily

[340] S.C. CODE ANN. § 44-41-680. This statute was successfully challenged in *Planned Parenthood South Atlantic v. State*, in which the South Carolina Supreme Court held the heartbeat ban violated the right to privacy provided by the South Carolina Constitution. *See* Planned Parenthood S. Atl. v. State, 2023 S.C. LEXIS 3 (S.C. 2023). This development came too late to be included in full in this report's evaluation, which is current as of the end of December 2022, underscoring the rapidly shifting law in this area at present.

[341] Benjamin Rader et al., *Estimated Travel Time and Spatial Access to Abortion Facilities in the US Before and After the Dobbs v Jackson Women's Health Decision*, JAMA (Nov. 1, 2022), https://jamanetwork.com/journals/jama/fullarticle/2798215?guestAccessKey=70c1bc40-5cc0-4bcf-a73d-a5b9b26ccf01&utm_source=For_The_Media&utm_medium=referral&utm_campaign=ftm_links&utm_content=tfl&utm_term=110122.

[342] *Id.*

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concentrated in Southern and Midwestern states. Many of the Ban States, particularly those in the South, have disproportionately high populations of Black people and people of color, as compared to the rest of the United States.[343] Additionally, many Ban States have enacted laws and policies that add to the socioeconomic disparities and healthcare inequities experienced by many Black women and people of color living in those states.

For example, Ban States generally have much less favorable minimum wage laws, as compared with Access States. Of the 21 Ban States, only five have state minimum wage rates that exceed the federal minimum wage (Arkansas, Missouri, Ohio, South Dakota, and West Virginia).[344] Conversely, 25 of the 29 Access States have state minimum wage rates that exceed the federal minimum.[345] Of the remaining 16 Ban States, nine states have the same minimum wage rate as the federal rate (Idaho, Indiana, Iowa, Kentucky, North Dakota, Oklahoma, Texas, Utah, and Wisconsin), while seven states either have no state minimum wage or set a minimum wage lower than the federal rate (Alabama, Georgia, Louisiana, Mississippi, South Carolina, Tennessee, and Wyoming), which results in the federal rate applying.[346] Significantly, there are no Access States that have either no state minimum wage or a minimum wage lower than the federal rate.[347] Minimum wage policies are significant because of who is most likely to be paid

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[343] William H. Frey, *Mapping America's Diversity with the 2020 Census*, BROOKINGS (Sept. 21, 2021), https://www.brookings.edu/research/mapping-americas-diversity-with-the-2020-census/#:~:text=America's%20emerging%20demographic%20kaleidoscope,%25%20and%206.1%25%2C%20respectively. According to the 2020 U.S. census, nationally, Black residents comprise 12.1% of the population, while Hispanic and Native American residents are 18.7% and 0.7%, respectively. *Id.* However, these numbers vary greatly state-to-state and county-to-county. For example, Black Americans disproportionately live in Southern states, where 58% of the U.S.'s Black population resides. *Id.* Hispanic Americans are highly represented in the Southwest, including Texas, while Native Americans are highly concentrated in Oklahoma. *Id.*

[344] *State Minimum Wage Laws*, U.S. DEPARTMENT OF LABOR (last updated Oct. 1, 2022), https://www.dol.gov/agencies/whd/minimum-wage/state#sc.

[345] *Id.*

[346] *Id.*

[347] *Id.*

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lower wages, with Hispanic and Black women consistently paid the least (see Section 3 (Disparities in Access to Financial Stability, Quality Healthcare, and Childcare Post-Birth)).

People of color are also more likely to live below the poverty line. Nationally, in 2021, 21.7% of Black Americans, 17.6% of Hispanic Americans, and 25.9% of American Indians and Alaska Natives lived below the poverty line, as compared to 9.5% of White Americans.[348] The three states with the highest percentage of Black Americans living in poverty were Louisiana (32.1%), Iowa (31.2%), and Mississippi (31.1%), all of which are Ban States.[349] The three states with the highest percentage of Hispanic Americans living in poverty were Kentucky (26.1%), Alabama (24.4%), and Mississippi (24.1%), all of which are Ban States.[350] The three states with the highest percentage of American Indians and Alaska Natives living in poverty were South Dakota (52.6%), Wyoming (43.3%), and Kentucky (42.4%), all of which are Ban States.[351]

Ban States have also disproportionately failed to expand Medicaid. The Affordable Care Act (ACA) expanded Medicaid coverage to almost all adults who have incomes up to 138% of the federal poverty level.[352] The ACA also provides states with increased federal matching funds for the expanded populations.[353] Currently, 39 states (and the District of Columbia) have adopted Medicaid expansion, and 11 have not.[354] Of the 11 states that have not adopted Medicaid

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348 *Poverty Rate by Race/Ethnicity*, KAISER FAMILY FOUND., https://www.kff.org/other/state-indicator/poverty-rate-by-raceethnicity/?currentTimeframe=0&sortModel=%7B%22colId%22:%22Location%22,%22sort%22:%22asc%22%7D (last visited Nov. 19, 2022) (providing poverty rates for 2021).

349 *Id.*

350 *Id.*

351 *Id.*

352 *Status of State Medicaid Expansion Decisions: Interactive Map*, KAISER FAMILY FOUND. (Nov. 9, 2022), https://www.kff.org/medicaid/issue-brief/status-of-state-medicaid-expansion-decisions-interactive-map/.

353 *Id.*

354 *Id.*

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expansion, 8 are Ban States and only 3 are Access States.[355] The vast majority of the states that have refused Medicaid expansion are in the South.[356] Failure to expand Medicaid disproportionately affects Black people and people of color, as several states that have not adopted Medicaid expansion have large populations of people of color.[357] Research has shown that Medicaid expansion has helped narrow racial disparities in healthcare coverage and access to care, and initial evidence indicates it also improves health outcomes for people of color.[358] Thus, state decisions regarding Medicaid expansion represent attempts or refusals to reduce disparities in health coverage, access, and outcomes for people of color.[359]

Finally, and relevant to increases in abortion-related travel, Black people and people of color have been more likely to live in a household without a vehicle, as compared to their White counterparts, both nationally and in each of the Ban States.[360] For 2019, 6% of White households did not have a vehicle.[361] This number was more than double for people of color (14%), and was roughly triple for Black people (18%).[362]

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[355] *Id.*

[356] *Id.*

[357] Rachel Garfield et al., *The Coverage Gap: Uninsured Poor Adults in States that Do Not Expand Medicaid*, KAISER FAMILY FOUND. (Jan. 21, 2021), https://www.kff.org/medicaid/issue-brief/the-coverage-gap-uninsured-poor-adults-in-states-that-do-not-expand-medicaid/.

[358] Jesse Cross-Call, *Medicaid Expansion Has Helped Narrow Racial Disparities in Health Coverage and Access to Care*, CTR. ON BUDGET & POLICY PRIORITIES (Oct. 21, 2020), https://www.cbpp.org/research/health/medicaid-expansion-has-helped-narrow-racial-disparities-in-health-coverage-and.

[359] Rachel Garfield et al., *The Coverage Gap: Uninsured Poor Adults in States that Do Not Expand Medicaid*, KAISER FAMILY FOUND. (Jan. 21, 2021), https://www.kff.org/medicaid/issue-brief/the-coverage-gap-uninsured-poor-adults-in-states-that-do-not-expand-medicaid/.

[360] *Car Access*, NAT'L EQUITY ATLAS (last visited Nov. 13, 2022), https://nationalequityatlas.org/indicators/Car_access#/?geo_compa%20re=02000000000022000&geo_compare=02000000000045000.

[361] *Id.*

[362] *Id.*

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C. Initial Impact of *Dobbs*, including Effects on "Access States"

The *Dobbs* decision's negative implications will affect access to abortion care in every state, including Access States. In the immediate aftermath of *Dobbs*, demand for abortion services in Access States is predicted to surge.[363] Abortion clinics in Access States are likely not prepared to fully absorb the huge increase in demand.[364] This will lead to longer wait times for residents of Ban States and Access States alike.

There have been many examples of increased congestion and wait times since *Dobbs*. For example, prior to *Dobbs*, Planned Parenthood of Illinois (which operates around Chicago) generally had about 100 appointments for out-of-state patients in a month.[365] That number rose to almost 750 in just the week after *Dobbs*.[366] Patients have come from as many as 20 states, but primarily from Wisconsin and Ohio, nearby states which restrict abortion.[367] Planned Parenthood of the Rockies has experienced a similar influx of out-of-state patients, with more than half of patients visiting clinics in Colorado, Nevada, and New Mexico traveling from out of state.[368] Allegheny Reproductive Health Center (based in Pennsylvania) has experienced 10 times the call volume since *Dobbs*, as its percentage of out-of-state patients has risen from

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[363] Mariana Lenharo, *After* Roe v. Wade*: US Researchers Warn of What's to Come*, NATURE (June 24, 2022), https://www.nature.com/articles/d41586-022-01775-z.

[364] *Id.*

[365] Elvia Malagón, *Illinois Abortion Providers See Demand, Wait Times Rise a Month After Supreme Court Struck Down Roe v. Wade*, CHI. SUN TIMES, July 23, 2022, https://chicago.suntimes.com/2022/7/23/23271342/abortion-demand-midwest-access-coalition-supreme-court-dobbs-jackson-reproductive-rights-roe-wade.

[366] *Id.*

[367] *Id.*

[368] Megan Gleason, *New Mexico Abortion Clinics Strained Over Capacity with Out-of-State Patients*, SOURCE NM (Aug. 8, 2022), https://sourcenm.com/2022/08/08/new-mexico-abortion-clinics-strained-over-capacity-with-out-of-state-patients/.

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roughly 30% to between 60% and 70%.[369] In California, out-of-state patients increased by 900% at nine Planned Parenthood clinics in San Bernardino and Orange counties in the week following *Dobbs*.[370]

Unsurprisingly, this massive influx of out-of-state patients has led to delays in abortion-related care. Planned Parenthood of the Rockies generally tries to schedule appointments no later than three days after patients reach out.[371] Following *Dobbs*, appointments are being scheduled two to three weeks out.[372] Other centers have seen even greater delays. For example, the University of New Mexico Center for Reproductive Health – which has seen roughly 75% of its patients come from Texas in the last few months – has had to schedule appointments four weeks out.[373] A Planned Parenthood clinic in downstate Illinois has seen an increase in abortions performed after 15 weeks of pregnancy, which may be another indication that patients are facing longer wait times to get an abortion.[374]

These delays affect in-state and out-of-state residents alike. Delays mean that patients are further along in a pregnancy at the time they are seen for an appointment, and that can affect

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[369] Cassie Miller, *Western Pa. Abortion Providers Say They Are Seeing an Increase in Out-of-State Patients Post-Dobbs*, PA. CAPITAL STAR, Aug. 11, 2022, https://www.penncapital-star.com/health-care/western-pa-abortion-providers-say-they-are-seeing-an-increase-in-out-of-state-patients-post-dobbs/.

[370] The Press Enterprise, *End of Roe v. Wade Makes California an Abortion Destination*, PLANNED PARENTHOOD (July 11, 2022), https://www.plannedparenthood.org/planned-parenthood-orange-san-bernardino/about-us/news/end-of-roe-v-wade-makes-california-an-abortion-destination.

[371] Carina Julig, *Colorado Abortion Providers, Protected by the State, Strained by Flood of Patients from States Limiting or Ending Reproductive Rights*, SENTINEL, Sept. 3, 2022, https://sentinelcolorado.com/orecent-headlines/colorado-abortion-providers-protected-by-the-state-strained-by-flood-of-patients-from-states-limiting-or-ending-reproductive-rights/.

[372] *Id.*

[373] Abigail Adcox, *New Mexico Emerges as New Abortion Battleground*, WASH. EXAMINER, Aug. 25, 2022, https://www.washingtonexaminer.com/policy/healthcare/new-mexico-battleground-abortion-providers-opponents.

[374] Elvia Malagón, *Illinois Abortion Providers See Demand, Wait Times Rise a Month After Supreme Court Struck Down Roe v. Wade*, CHI. SUN TIMES, July 23, 2022, https://chicago.suntimes.com/2022/7/23/23271342/abortion-demand-midwest-access-coalition-supreme-court-dobbs-jackson-reproductive-rights-roe-wade.

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the options that are available to them. But the effects spread beyond time-sensitive abortion procedures, as other healthcare services provided by the clinics are also impacted. "'When we are literally overrun with patients who need abortion services, patients can't get in to see us for birth control, cancer screenings, wellness exams, or emergency contraception[,]'" said Dr. Kristina Tocce of Planned Parenthood of the Rocky Mountains.[375]

The long-term effects of travel, congestion, and resulting delays may take some time to be fully apparent, but some recent experience is illustrative. For example, similar surges in travel and delays were recently documented in the six months after Texas SB 8 went into effect (September 2021 through February 2022).[376] Briefly, Texas SB 8 generally prohibits abortion after approximately six weeks of pregnancy.[377] It is enforced through a private cause of action, which allows "any person" other than government officials to bring a civil lawsuit against anyone who (1) provides an abortion in violation of Texas SB 8, (2) "aids or abets" such an abortion, or (3) intends to do these things.[378] In effect, Texas SB 8 places a bounty on people who provide or aid abortions, inviting random strangers to sue them, and mandates a minimum award of $10,000.[379]

When Texas SB 8 came into effect in Texas, the effects were dramatic and multifaceted. First, the number of facility-based abortions in Texas predictably decreased. Second, the number of facility-based abortions in neighboring states increased—but not by enough to make up for the

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375 *Id.*

376 Kari White et al., *Association of Texas' 2021 Ban on Abortion in Early Pregnancy with the Number of Facility-Based Abortions in Texas and Surrounding States*, JAMA (Nov. 1, 2022), https://jamanetwork.com/journals/jama/fullarticle/2798216?guestAccessKey=632f2f19-ea02-46ff-814b-a95d7b371568&utm_source=For_The_Media&utm_medium=referral&utm_campaign=ftm_links&utm_content=tfl&utm_term=110122.

377 Timothy Bella, *Texas Governor Signs Abortion Bill Banning Procedure as Early as Six Weeks into Pregnancy*, WASH. POST, May 19, 2021, https://www.washingtonpost.com/nation/2021/05/19/texas-abortion-law-abbott/.

378 TEX. HEALTH & SAFETY CODE ANN. § 171.208.

379 TEX. HEALTH & SAFETY CODE ANN. § 171.208(b).

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drop in Texas. Specifically, when comparing the month immediately before and the month immediately after Texas SB 8 went into effect there was a significant increase in the number of abortions performed on Texas residents at abortion facilities in states neighboring Texas, but a significant decrease in the overall number of facility-based abortions received by Texas residents in Texas and its surrounding states.[380] This means that out-of-state facilities in neighboring states did not fully absorb the decrease experienced by in-state facilities, suggesting that many Texas residents chose an alternative option (such as traveling to abortion facilities in states further than the surrounding states, self-managing their abortions, or continuing unwanted pregnancies to term).[381] Third, Texas residents receiving abortions outside of Texas received them later in pregnancy, with the percentage of out-of-state abortions performed on Texas residents at 12 or more weeks of pregnancy increasing from 17.1% to 31.0%.[382] Study authors concluded that "[o]ut-of-state facilities were challenged to absorb a sudden surge of patients, which might have contributed to long waits for appointments and pregnant Texas residents obtaining abortions later in pregnancy."[383]

Efforts are underway to measure the extent to which *Dobbs* has affected who gets an abortion, as well as where, when, and how they get their abortion. Although it is too early to observe the full effect of *Dobbs*, the Society of Family Planning has launched a national research

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[380] Kari White et al., *Association of Texas' 2021 Ban on Abortion in Early Pregnancy with the Number of Facility-Based Abortions in Texas and Surrounding States*, JAMA (Nov. 1, 2022), https://jamanetwork.com/journals/jama/fullarticle/2798216?guestAccessKey=632f2f19-ea02-46ff-814b-a95d7b371568&utm_source=For_The_Media&utm_medium=referral&utm_campaign=ftm_links&utm_content=tfl&utm_term=110122. The number of out-of-state abortions among Texas residents performed in states surrounding Texas rose from 222 to 1,332, whereas the total number of abortions among Texas residents in facilities in Texas and its surrounding states decreased from 5,673 to 3,501. *Id.* The study's authors were unable to assess disparities related to race and ethnicity, as the significant changes in facility-based care during the period made it difficult for clinic staff to collect this patient information. *Id.*

[381] *Id.*

[382] *Id.*

[383] *Id.*

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project to capture post-*Dobbs* shifts in abortion volume by state, which it has named #WeCount.[384] #WeCount has compared the first two full months after *Dobbs* (July and August 2022) to a pre-*Dobbs* baseline (April 2022).[385] As was true in the wake of Texas SB 8, they found that there was a significant drop in facility-based abortions in states that banned abortion, with only a small rise in facility-based abortions in states that maintained access to abortion.[386] Nationally, there were 5,270 and 5,400 fewer facility-based abortions in July and August 2022 (post-*Dobbs*), respectively, as compared with April 2022 (pre-*Dobbs*).[387] For August, this represents a decrease of 6% in the number of facility-based abortions performed in the U.S., as compared with April.[388] And, of course, this national difference fails to tell the whole story, as there are significant disparities observed amongst the states, with "severe declines" in the number of facility-based abortions performed in states banning or severely restricting abortion (roughly a 95% decrease), "large declines" in states with restricted access to abortion (roughly a 32% decrease), and "small increases" in states maintaining abortion access (roughly an 11% increase).[389] Notably, abortions provided by virtual clinics increased roughly 33% nationwide from April to August 2022.[390]

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384 *#WeCount*, SOCIETY OF FAMILY PLANNING, https://www.societyfp.org/wecount/ (last visited Nov. 23, 2022).

385 *Id.*

386 ALISON NORRIS ET AL., #WECOUNT REPORT (2022), *available at* https://www.societyfp.org/wp-content/uploads/2022/10/SFPWeCountReport_AprtoAug2022_ReleaseOct2022-1.pdf.

387 *Id.*

388 *Id.*

389 *Id.*

390 *Id.* States with the largest percentage increases include North Carolina (37%), Kansas (36%), Colorado (33%), and Illinois (28%). *Id.*

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III. Past and Future: Travel Burdens Caused by Past Abortion Restrictions Often Disproportionately Impacted Black Women and People of Color, and Future Restrictions Will Likely Do the Same

There has been a marked increase in abortion restriction legislation passed since 2011.[391] These restrictions have allowed researchers to examine the impact of anti-abortion legislation, including the effects on travel distances, abortion rates, and abortion wait times. Numerous studies have shown that abortion rates significantly decrease as travel distances increase.[392] Predictably, these effects do not impact all communities equally. Research has shown that travel distances to abortion providers have impacted access to care, and that Black women and women of color have been disproportionately impacted by abortion-related travel.[393]

In this Part III, we will briefly summarize the observed effects on travel and abortion rates resulting from anti-abortion legislation in two different states: (1) three major pieces of anti-abortion legislation enacted in Wisconsin between 2011 and 2013; and (2) Texas House Bill 2 ("Texas HB 2"), which was enacted in 2013. We will also review the periods before and after *Roe v. Wade*[394] to observe whether the national legalization of abortion and subsequent dramatic increase in the supply of abortion services impacted abortion rates, and if there were any differences between the effects for pregnant people of color and White pregnant people. Finally, we will discuss how these historical findings may be applied to a post-*Roe* world. Collectively,

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[391] Elizabeth Nash et al., *For the First Time Ever, U.S. States Enacted More Than 100 Abortion Restrictions in a Single Year*, GUTTMACHER INST. (Oct. 2021), https://www.guttmacher.org/article/2021/10/first-time-ever-us-states-enacted-more-100-abortion-restrictions-single-year.

[392] Jason M. Lindo & Mayra Pineda-Torres, *New Evidence on the Effects of Mandatory Waiting Periods for Abortion*, 80 J. HEALTH ECON. 102533 (2021) (citing Troy Quast et al., *Abortion Facility Closings and Abortion Rates in Texas*, 54 J. HEALTH CARE ORG. 1 (2017); Stefanie Fischer et al., *The Impacts of Reduced Access to Abortion and Family Planning Services on Abortions, Births, and Contraceptive Purchases*, 167 J. PUB. ECON. 43 (2018); Jason M. Lindo et al., *How Far Is Too Far? New Evidence on Abortion Clinic Closures, Access, and Abortions*, 55 J. HUM. RESOURCES 1137 (2020)).

[393] Gretchen E. Ely et al., *Where Are They from and How Far Must They Go? Examining Location and Travel Distance in U.S. Abortion Fund Patients*, 29 INT'L J. SEXUAL HEALTH 313 (2017).

[394] 410 U.S. 113 (1973).

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the sources reviewed generally illustrate that abortion restrictions disproportionately affect Black women and pregnant people of color, as compared with White pregnant people.

A. Wisconsin Anti-Abortion Restrictions (2011-2013)

Between 2011 and 2013, three major pieces of anti-abortion legislation were enacted in Wisconsin – 2011 Wisconsin Act 32, 2012 Wisconsin Act 217, and 2013 Wisconsin Act 37. This legislation reduced state funding for clinics affiliated with abortion services, increased regulations imposed on abortion providers (e.g., adding enhanced procedures for how and when a physician may administer a medication abortion), and added restrictions on how and when pregnant people could obtain abortions (e.g., by imposing a 24 hour waiting period and requiring that a fetal ultrasound be performed prior to an abortion).[395] The legislation ultimately led to the closure of two of the five abortion clinics in Wisconsin, which increased the average distance to the nearest clinic to 55 miles (with some increases over 100 miles).[396]

A 2021 study analyzed whether the closure of Wisconsin clinics in the wake of Wisconsin's 2011-2013 anti-abortion legislation affected abortion rates (the "Wisconsin Study").[397] The study found that abortions declined in Wisconsin as clinics closed, and that the number of abortions performed out-of-state on Wisconsin residents did not increase enough to fully account for the decline.[398] A 100 mile increase in distance to a clinic was associated with a 24.9% decline in abortion rates, and an increase in birth rates of about 3.3%.[399] Significantly, the Wisconsin Study found significant racial disparities in who was most impacted by abortion clinic closures – increases in distance increased birth rates significantly more for Black, Hispanic, and Asian

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395 Joanna Venator & Jason Fletcher, *Undue Burden Beyond Texas: An Analysis of Abortion Clinic Closures, Births, and Abortions in Wisconsin*, 40 J. POL'Y ANALYSIS & MANAGEMENT 774 (2021).

396 *Id.*

397 *Id.*

398 *Id.*

399 *Id.*

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women.[400] The authors conclude that their results suggest that anti-abortion laws "may have racially disparate effects on access to abortion services."[401]

B. Texas HB 2 (2013)

Texas HB 2 was an omnibus abortion bill enacted in July 2013. Texas HB 2 had two key provisions: (1) an admitting privileges requirement, which required abortion providers to obtain admitting privileges at a hospital located within 30 miles of the location where the abortion was performed,[402] and (2) a surgical center requirement, which required all abortion facilities to meet the standards of ambulatory surgical centers, even if they were only providing medication abortions.[403] Prior to Texas HB 2, there were more than 40 abortion facilities in Texas. As of October 2015, the number of abortion clinics dwindled to 19.[404] In June 2016, the U.S. Supreme Court held both the admitting privileges requirement and the surgical center requirement unconstitutional.[405] However, the Supreme Court's decision did little to reverse the abortion clinic closures. As of July 2017, only three abortion clinics that closed as a result of Texas HB 2 had reopened.[406]

A 2020 study analyzes whether the closure of Texas clinics in the wake of Texas HB 2 affected abortion rates (the "Texas HB 2 Study").[407] As a result of the clinic closures, the distance

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400 *Id.*

401 *Id.*

402 TEX. HEALTH & SAFETY CODE ANN. § 171.0031(a) (West Cum. Supp. 2015).

403 TEX. HEALTH & SAFETY CODE ANN. § 245.010(a) (West 2015). Texas HB 2 imposed additional restrictions. For example, the act also prohibited abortions after 20 weeks gestation and required physicians to follow the then FDA protocols for medication abortion (which required the medication to be administered by a physician and restricted the use of the medication to within 49 days of fertilization).

404 *Whole Woman's Health v. Hellerstedt*, CTR. FOR. REPROD. RTS. (last visited Sept. 21, 2022), https://reproductiverights.org/case/whole-womans-health-v-hellerstedt/.

405 *See* Whole Woman's Health v. Hellerstedt, 579 U.S. 582 (2016).

406 Jason M. Lindo et al., *How Far Is Too Far? New Evidence on Abortion Clinic Closures, Access, and Abortions*, 55 J. HUM. RESOURCES 1137 (2020).

407 *See id.*

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to the nearest abortion clinic (on average) doubled for Texas residents, increasing from 21 miles in the quarter prior to Texas HB 2 to 44 miles in the immediately following quarter.[408] The clinic closures also led to an increase in the average number of women served per abortion clinic – increasing the average service population from 150,000 to 290,000 in Texas.[409] Unlike the Wisconsin Study, which attributed the decline in abortion rates to distance traveled but not congestion, the Texas HB 2 Study found that both the increased distances and the increased congestion reduced abortion rates.[410]

With respect to travel, the Texas HB 2 Study finds that even modest increases in distances may have "substantial effects on abortion rates."[411] For example, if the nearest abortion clinic is 0 miles away, the Texas HB 2 Study estimates that a 25 mile increase in distance would reduce the abortion rate by roughly 10%.[412] The Texas HB 2 Study finds that the effect of additional increases in distance are smaller if the nearest clinic is further away.[413] If the nearest clinic is 200 miles away, the study no longer detects statistically significant reductions in abortion rates caused by further increases in travel distance.[414] Unlike the Wisconsin Study, the Texas HB 2 Study did not generally find statistically significant differences in the estimated effects of distance on

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408 *Id.*

409 *Id.*

410 *See id.*; Joanna Venator & Jason Fletcher, *Undue Burden Beyond Texas: An Analysis of Abortion Clinic Closures, Births, and Abortions in Wisconsin*, 40 J. POL'Y ANALYSIS & MANAGEMENT 774 (2021).

411 Jason M. Lindo et al., *How Far Is Too Far? New Evidence on Abortion Clinic Closures, Access, and Abortions*, 55 J. HUM. RESOURCES 1137 (2020).

412 *Id.*

413 *Id.*

414 *Id.*

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abortion rates by race or ethnicity.[415] However, the study did find that the effects of distance may be larger for Hispanic women living close to the Mexican border.[416]

Taken together, these two studies provide insight into the impact of further restrictions on abortion and the likely impact on different communities. First, the distance one must travel to access abortion will clearly impact who can access abortions, and how. Second, congestion at remaining clinics (either within a state, or in neighboring states) may also play a role. And third, the impact of those restrictions and bans on vulnerable communities may vary based on the demographic makeup of different states. For example, as suggested by the authors of the Wisconsin Study, results in Texas may not reflect other states where abortion access is most threatened (e.g., Midwestern and Southern states) because of Texas' disproportionately high percentage of Hispanic residents,[417] and "[i]n the context of research on reproductive policies, Latinx heritage is a particularly important demographic characteristic to consider given significantly different fertility rates among Hispanic, White, and Black Americans."[418] As a result, further study may be needed to elucidate the effects of abortion bans and restrictions on different communities and in different settings.

C. Abortion Before & After *Roe*

The national legalization of abortion that occurred with *Roe v. Wade* may also help us to understand how state abortion bans affect abortion rates, and what differences there are between

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[415] *See id.*; Joanna Venator & Jason Fletcher, *Undue Burden Beyond Texas: An Analysis of Abortion Clinic Closures, Births, and Abortions in Wisconsin*, 40 J. POL'Y ANALYSIS & MANAGEMENT 774 (2021).

[416] Jason M. Lindo et al., *How Far Is Too Far? New Evidence on Abortion Clinic Closures, Access, and Abortions*, 55 J. HUM. RESOURCES 1137 (2020).

[417] As of 2016, 39.4% of the Texas population was Hispanic, whereas the U.S. as a whole is only 18.1% Hispanic. Joanna Venator & Jason Fletcher, *Undue Burden Beyond Texas: An Analysis of Abortion Clinic Closures, Births, and Abortions in Wisconsin*, 40 J. POL'Y ANALYSIS & MANAGEMENT 774 (2021).

[418] *Id.*

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the effects for pregnant people of color and White pregnant people. However, some caution is warranted in extrapolating from these results to the current landscape given changes in abortion and medical care over the past 50 years.

Communities of color may be less able to access safe abortion care than White pregnant people when abortion is banned or restricted in a greater number of states. For example, a recent survey of historical accounts found that safe abortion access prior to legalization was divided by socioeconomic status, with privileged women (who were likely to be White) better poised to navigate and be acknowledged by the medical system to obtain therapeutic abortions (abortions to prevent medical harm), as well as more likely to have the resources to be able to travel across state lines or to other countries for legal abortions.[419] The authors conclude from their data that the legalization of abortion was crucial for non-White women, who struggled more to obtain safe abortions before legalization than did their White counterparts.[420]

Pre-*Roe* experience also suggests that Black people and other communities of color are disproportionately negatively impacted in terms of abortion rates,[421] birth rates[422] and maternal mortality when legal access to abortion is restricted. Significantly, for example, one study found that maternal mortality among Black women fell by 30-40% following *Roe*, with little effect for

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[419] Sherajum Monira Farin et al., The Impact of Legal Abortion on Maternal Mortality 3, 17 (December 2021) (unpublished study) (on file with authors), *available at* https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3913899.

[420] *Id.*

[421] Phillip B. Levine et al., *Roe v Wade and American Fertility*, 89 AM. J. PUB. HEALTH 199 (1999); John D. Angrist & William N. Evans, *Schooling and Labor Market Consequences of the 1970 State Abortion Reforms*, 18 RES. LAB. ECON. 75 (2000).

[422] Ted Joyce et al., *Abortion Before & After Roe*, 32 J. HEALTH ECON. 804 (2013); Phillip B. Levine et al., *Roe v Wade and American Fertility*, 89 AM. J. PUB. HEALTH 199, 200 (1999). One study found that birth rate reductions for women of color were nearly three times greater than those for White women. Phillip B. Levine et al., *Roe v Wade and American Fertility*, 89 AM. J. PUB. HEALTH 199, 200 (1999).

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White women.[423] Taken together, these studies suggest that nationwide legalized abortion had a larger impact on Black women and pregnant people of color, as compared to White pregnant people. As indicated by the studies, this may be for multiple reasons, including that Black women and pregnant people of color may have been less able to absorb the increased travel costs and had less resources to navigate the challenging legal and medical landscape.

D. Application to Today's Environment

Authors often caution against applying pre-*Roe* results to our contemporary environment wholesale, given the technological changes and medical advancements that have occurred within the last 50 years.[424] The *Dobbs* opinion marks a paradigm shift, and it is unclear whether even recent historical examples are relevant for forecasting the effects of a post-*Roe* world. Indeed, sociologist Jonathan Bearak from the Guttmacher Institute recently said "'[i]f people want me to extrapolate from prior evidence to what's going on now, I don't think there's any comparable evidence.'"[425] Even so, past experience tells us that banning or severely restricting access to legal abortion disproportionately impacts communities of color. We should not be surprised to see similar results in the post-*Dobbs* era.

In the continental U.S., the average travel distance for pregnant people seeking care at an abortion clinic doubled to around 50 miles just two weeks after the U.S. Supreme Court overturned *Roe v. Wade*.[426] If all states that are considered high risk for banning abortion do so,

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[423] Sherajum Monira Farin et al., The Impact of Legal Abortion on Maternal Mortality 3, 17 (December 2021) (unpublished study) (on file with authors), *available at* https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3913899.

[424] *See* Ted Joyce et al., *Abortion Before & After Roe*, 32 J. HEALTH ECON. 804 (2013); Sherajum Monira Farin et al., The Impact of Legal Abortion on Maternal Mortality 3, 17 (December 2021) (unpublished study) (on file with authors), *available at* https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3913899.

[425] Saima May Sidik, *The Effects of Overturning* Roe v. Wade, 608 NATURE 254, 254 (2022).

[426] *Id.*

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the distance is expected to increase substantially.[427] A recent study found that pregnant individuals seeking abortion care, but living 50+ miles from an abortion clinic, were roughly twice as likely to still be pregnant after four weeks, as compared to those living within five miles of a clinic.[428] This suggests that women and pregnant people are sensitive to increases in abortion-related travel, and that increases in travel lead to delays and inability to receive abortion care.

Earlier studies modeled the results that we are currently experiencing. For instance, in 2019, Myers and colleagues predicted that if all high-risk states banned abortion, the average resident living in an affected county would experience a 249 mile increase in travel distance, with the national average increasing from 25 to 122 miles.[429] This is remarkably consistent with the results observed and predicted post-*Dobbs* and described in Part II above. Increased travel is expected to lead to a decrease in abortion rates, such that tens of thousands to hundreds of thousands of women may be prevented from obtaining abortions in the first year following a *Roe* reversal alone.[430] These estimates, which do not take congestion into account, may well understate the real effects.[431]

In addition, while results vary between studies, past experience and emerging data both support that communities of color are most affected by the need to travel farther for abortion care.

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[427] *Id.*; Caitlin Myers et al., *Predicted Changes in Abortion Access and Incidence in a Post-Roe World*, 100 CONTRACEPTION 367 (2019).

[428] Elizabeth A. Pleasants et al., *Association Between Distance to an Abortion Facility and Abortion or Pregnancy Outcome Among a Prospective Cohort of People Seeking Abortion Online*, 5 JAMA NETWORK OPEN e2212065 (2022), *available at* https://jamanetwork.com/journals/jamanetworkopen/fullarticle/2792291.

[429] Caitlin Myers et al., *Predicted Changes in Abortion Access and Incidence in a Post-Roe World*, 100 CONTRACEPTION 367 (2019). According to another estimate, the average national distance is expected to increase to about 135 miles. *See* Saima May Sidik, *The Effects of Overturning* Roe v. Wade, 608 NATURE 254, 254 (2022).

[430] *Id.*

[431] *Id.*

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And while one study (the Texas HB 2 Study discussed above) found no such effect,[432] other studies have found that the effects of travel vary across race.[433] For instance, according to one study, a 10% reduction in travel distance would cause a 5.36% increase in the probability of a pregnancy ending in abortion for Hispanic women, a 2.79% increase for Black women, and a 2.37% increase for White women.[434] Similarly, in a 2017 study examining how far women traveled for Medicaid-funded abortion in California, researchers found women of color were less likely to travel long distances, as compared to non-Hispanic White women.[435] White women were significantly more likely to travel 50+ miles, as compared with Hispanic and Asian women—a finding that has been reproduced across different studies and in different settings.[436] Undoubtedly some of these differences are explained by differences in where people live; for example, people of color may be concentrated in urban areas (with higher numbers of abortion providers). But given what is known about the burdens travel imposes, it is likely that more people of color are unable to access abortion care if they have to travel long distances for abortion services.

The available data are subject to a number of limitations. For example, the abortion rates discussed in the above studies focus on facility-based abortions, and specifically do not account for self-managed abortions. It will almost certainly be the case that the enforcement of abortion

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[432] *See* Jason M. Lindo et al., *How Far Is Too Far? New Evidence on Abortion Clinic Closures, Access, and Abortions*, 55 J. HUM. RESOURCES 1137 (2020).

[433] Jill Barr-Walker et al., *Experiences of Women Who Travel for Abortion: A Mixed Methods Systematic Review*, 14 PLOS ONE (Apr. 9, 2019), https://www.ncbi.nlm.nih.gov/pmc/articles/PMC6456165/pdf/pone.0209991.pdf (citing Robert W. Brown et al., *Provider Availability, Race, and Abortion Demand*, 67 S. ECON. J. 656 (2001)).

[434] *Id.*

[435] Nicole E. Johns et al., *Distance Traveled for Medicaid-Covered Abortion Care in California*, 17 BMC HEALTH SERVICES RES. (Apr. 19, 2017), https://bmchealthservres.biomedcentral.com/articles/10.1186/s12913-017-2241-0.

[436] *Id.*; *see also* Jill Barr-Walker et al., *Experiences of Women Who Travel for Abortion: A Mixed Methods Systematic Review*, 14 PLOS ONE (Apr. 9, 2019), https://www.ncbi.nlm.nih.gov/pmc/articles/PMC6456165/pdf/pone.0209991.pdf (citing Rachel K. Jones & Jenna Jerman, *How Far Did US Women Travel for Abortion Services in 2008?*, 22 J. WOMEN'S HEALTH 706 (2013)).

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bans and restrictions following *Dobbs* will lead to both decreases in facility-based abortions, as well as increases in self-managed abortions.[437] It is also difficult to predict how, if at all, reduced access to abortion clinics could lead to changes in sexual behavior and contraceptive use, which could also impact abortion rates by reducing the rate of unintended pregnancies. These effects may be more difficult to study in the near future, as people may become less likely to provide details about their abortions for fear of criminal or civil penalties.[438]

As history has shown, people will not stop having abortions if they become prohibited by law. However, they will likely have to travel farther for them, which may overload clinics in states that have not banned abortion.[439] Data suggest that banning abortion reduces the safety of the procedure, slightly increases mortality rates, and increases costs for pregnant people.[440]

IV. Conclusion

Black women and people of color are facing substantial increases in abortion-related travel.[441] Travel impacts access to abortion in numerous ways: causing delays, monetary costs, and other burdens.[442] As discussed above, previous experience shows that increases in travel

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[437] A 2022 study examining the impact of Texas SB 8 on self-managed abortion found a significant increase in requests to Aid Access once Texas SB 8 went into effect. Abigail R.A. Aiken et al., *Association of Texas Senate Bill 8 with Requests for Self-Managed Medication Abortion*, 5 JAMA NETWORK OPEN e221122 (2022), *available at* https://jamanetwork.com/journals/jamanetworkopen/fullarticle/2789428. Aid Access provides self-managed medication abortion in the U.S. via online telemedicine. *Id.* In the first week after Texas SB 8 went into effect (September 1-8, 2021), daily requests to Aid Access from Texas increased by an average of 1,180%. *Id.* In October through December 2021, average daily requests were still up 174%, as compared to the pre-Texas SB 8 baseline. *Id.*

[438] Saima May Sidik, *The Effects of Overturning* Roe v. Wade, 608 NATURE 254, 255 (2022).

[439] *Id.* at 256.

[440] *Id.*

[441] Benjamin Rader et al., *Estimated Travel Time and Spatial Access to Abortion Facilities in the US Before and After the Dobbs v Jackson Women's Health Decision*, JAMA (Nov. 1, 2022), https://jamanetwork.com/journals/jama/fullarticle/2798215?guestAccessKey=70c1bc40-5cc0-4bcf-a73d-a5b9b26ccf01&utm_source=For_The_Media&utm_medium=referral&utm_campaign=ftm_links&utm_content=tfl&utm_term=110122.

[442] Jill Barr-Walker et al., *Experiences of Women Who Travel for Abortion: A Mixed Methods Systematic Review*, 14 PLOS ONE (Apr. 9, 2019), https://www.ncbi.nlm.nih.gov/pmc/articles/PMC6456165/pdf/pone.0209991.pdf.

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often disproportionately affect Black women and pregnant people of color, who face more significant and disproportionate challenges than their White counterparts when seeking an abortion in a post-*Roe* America, as they already did before the *Dobbs* decision.[443]

Unfortunately, when travel distance, costs, and other barriers become insurmountable, some pregnant people will be forced to carry their unwanted pregnancies to term.[444] Carrying unwanted pregnancies to term may increase follow-on risks.[445] This has been demonstrated repeatedly – for example, the Turnaway Study found that being denied an abortion results in worse health, financial, and family outcomes, while receiving an abortion does not harm a person's health and wellbeing.[446]

As detailed above in Section 2 (Disparities in Access to Healthcare and Unequal Maternal Health Outcomes During Pregnancy and Childbirth), pregnancy and childbirth pose disproportionately greater health risks for Black women and pregnant people of color.[447] Thus, forcing a Black woman or person of color to carry an unwanted pregnancy to term exposes them to this disproportionate health risk. A person denied the ability to terminate an unwanted pregnancy is also almost 400% more likely to have a household income below the poverty level,

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[443] Kirsten M. J. Thompson et al., *Association of Travel Distance to Nearest Abortion Facility with Rates of Abortion*, 4 JAMA NETWORK OPEN (2021), *available at* https://jamanetwork.com/journals/jamanetworkopen/fullarticle/2781624.

[444] Nicole E. Johns et al., *Distance Traveled for Medicaid-Covered Abortion Care in California*, 17 BMC HEALTH SERVICES RES. (Apr. 19, 2017), https://bmchealthservres.biomedcentral.com/articles/10.1186/s12913-017-2241-0.

[445] Brief for Amici Curiae for Organizations Dedicated to the Fight for Reproductive Justice – Mississippi in Action, et al. – in Support of Respondents at 34, Dobbs v. Jackson Women's Health Org., 142 S. Ct. 2228 (Sept. 20, 2021).

[446] The Turnaway Study is a comprehensive study that examines the effects of unwanted pregnancy on women's lives. The study explores the mental health, physical health, and socioeconomic consequences of obtaining an abortion compared to carrying an unwanted pregnancy to term. *See* DIANA GREENE FOSTER, THE TURNAWAY STUDY: TEN YEARS, A THOUSAND WOMEN, AND THE CONSEQUENCES OF HAVING—OR BEING DENIED—AN ABORTION (2020).

[447] Brief for Amici Curiae for Organizations Dedicated to the Fight for Reproductive Justice – Mississippi in Action, et al. – in Support of Respondents at 34, Dobbs v. Jackson Women's Health Org., 142 S. Ct. 2228 (Sept. 20, 2021).

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and is 300% more likely to be unemployed.[448] Moreover, people who are forced to carry unwanted pregnancies to term are more likely to stay in contact with violent intimate partners,[449] and are likely to suffer from physical, mental, and emotional trauma.[450] Forcing a person to keep an unwanted pregnancy also has negative consequences on their children, increasing the likelihood that they too will live below the poverty line, have poorer maternal bonding, and have lower child development scores.[451]

In short, limiting access to abortion care will endanger both the physical[452] and psychological health of Black women and people of color.[453] Restricting legal access to abortion also diverts the time, attention, and skills of healthcare providers away from addressing other

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[448] *Id.*

[449] Deborah J. Vagins, President and CEO of the National Network to End Domestic Violence, spoke of the effect of the *Dobbs* decision on domestic violence survivors, stating that abortion access is a matter of safety and that "[s]tate bans and restrictions will be devastating for low-income survivors, survivors of color, survivors with disabilities, and others who already face substantial barriers to accessing the healthcare they need. Without access to abortion care, domestic violence survivors are at risk of reproductive coercion." *See* Press Statements, National Network to End Domestic Violence, *National Network to End Domestic Violence Reacts to the U.S. Supreme Court Decision in Dobbs v. Jackson Women's Health Organization* (June 24, 2022), *available at* https://nnedv.org/latest_update/national-network-to-end-domestic-violence-reacts-to-the-u-s-supreme-court-decision-in-dobbs-v-jackson-womens-health-organization/.

[450] Brief for Amici Curiae for Organizations Dedicated to the Fight for Reproductive Justice – Mississippi in Action, et al. – in Support of Respondents at 34, Dobbs v. Jackson Women's Health Org., 142 S. Ct. 2228 (Sept. 20, 2021).

[451] *Id.* at 35.

[452] As described above, as of December 2022, 21 states had banned or severely limited abortion. These states account for nearly half of the country's Black population. These abortion bans and restrictions increase physical health risks for Black women, who are already more likely to die from childbirth-related complications. For example, in the United States, an average of 18 birthing people will die for every 100,000 live births. For Black women in Mississippi, that rate is 51.9 per 100,000 live births. Anne Branigin & Samantha Chery, *Women of Color Will be Most Impacted by the End of Roe, Experts Say*, WASH. POST, June 24, 2022, https://www.washingtonpost.com/nation/2022/06/24/women-of-color-end-of-roe/; Mariana Lenharo, *After* Roe v. Wade*: US Researchers Warn of What's to Come*, NATURE (June 24, 2022), https://www.nature.com/articles/d41586-022-01775-z.

[453] Anne Branigin & Samantha Chery, *Women of Color Will be Most Impacted by the End of Roe, Experts Say*, WASH. POST, June 24, 2022, https://www.washingtonpost.com/nation/2022/06/24/women-of-color-end-of-roe/.

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important healthcare concerns, such as reducing the unacceptably high rates of maternal mortality in the U.S., particularly among Black women.[454]

Abortion restrictions and bans will lead to negative consequences for Black women and pregnant people of color with unwanted pregnancies, particularly in affected jurisdictions, regardless of how they proceed with their pregnancies.[455] If they carry the unwanted pregnancy to term, they face increased health risks and economic burdens for themselves and their families. If they decide to self-manage their abortions, they may face criminalization, and may be fearful of seeking needed medical care because of the threat of criminal penalties. If they decide to travel to obtain facility-based abortions, they will incur increased costs and likely delayed care. One thing is for certain in this post-*Dobbs* world – Black women and people of color will carry the brunt of these increased burdens.

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[454] Linda Brubaker & Kirsten Bibbins-Domingo, *Health Care Access and Reproductive Rights*, JAMA (Nov. 1, 2022), https://jamanetwork.com/journals/jama/fullarticle/2797896.

[455] Brief for Amici Curiae for Organizations Dedicated to the Fight for Reproductive Justice – Mississippi in Action, et al. – in Support of Respondents at 37-38, Dobbs v. Jackson Women's Health Org., 142 S. Ct. 2228 (Sept. 20, 2021).

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SECTION 5 – Failings of Sex Education in Public Schools

Sex education is crucial for healthy sexual development, and access to information that is medically accurate, inclusive, and age and culturally appropriate is needed for people to make informed decisions about sexual behavior, relationships, and reproductive choices.[456] However, sex education in the United States varies considerably. With no federal mandates and widely varied state requirements, access to sex education that is both medically comprehensive and culturally appropriate is left largely to each state's individual discretion. Perhaps unsurprisingly, the states that have now banned access to abortion are also among those most likely to provide incomplete sex education, such as education focusing primarily or exclusively on abstinence. The results are predictable: Black youth and other youth of color are often less likely to receive comprehensive sex education, particularly on certain topics, which likely exacerbates the prevalent disparities in sexual health outcomes of different populations. This Section discusses those issues. First, a case will be made for the importance of comprehensive sex education. Next, racial disparities in sex education and sexual health outcomes will be discussed. Finally, the intersection between inadequate sex education and abortion bans will be considered.

I. Access to Comprehensive Sex Education

There is no federal policy mandating the provision of sex education in schools, but the U.S. Department of Health and Human Services' Healthy People 2030 Initiative does outline objectives for formal sex education for adolescents based on a minimal set of topics. These topics include delaying sex, using birth control, and preventing sexually transmitted infections (STIs), including human immunodeficiency virus (HIV).[457] Not all states require sex education, and

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[456] *US Adolescents' Receipt of Formal Sex Education*, GUTTMACHER INST. (Feb. 2022), https://www.guttmacher.org/fact-sheet/adolescents-teens-receipt-sex-education-united-states#; *see What Are the Goals of Sex Education?*, PLANNED PARENTHOOD, https://www.plannedparenthood.org/learn/for-educators/what-are-goals-sex-education-youth (last visited Nov. 15, 2022).

[457] *Increase the Proportion of Adolescents Who Get Formal Sex Education Before Age 18 years—FP-08*, OFFICE OF DISEASE PREVENTION & HEALTH PROMOTION, https://health.gov/healthypeople/

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required content varies widely for those that do.[458] Even within states, there can be variation at both the district and individual school levels.[459]

Despite strong evidence and support in favor of comprehensive sexual health education, national estimates show fewer students have received such education in recent years.[460] Research published by the Journal of Adolescent Health shows that when school-based programs incorporate elements of comprehensive sex education, students feel more informed; it helps prevent sexual abuse, dating violence, and bullying; and students make safer choices and have healthier outcomes such as fewer unintended pregnancies, a reduction in sexual health disparities for LGBTQIA+ young people, and more protection against STIs.[461] However, only 5% of U.S. students receive sex education that is truly comprehensive.[462] For example, the Centers for Disease Control and Prevention's (CDC) School Health Policies and Practices Study found that a median of only 17.6% of schools taught all 20 of the CDC's listed sexual health topics in grades

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objectives-and-data/browse-objectives/family-planning/increase-proportion-adolescents-who-get-formal-sex-education-age-18-years-fp-08 (last visited Nov. 15, 2022).

[458] *US Adolescents' Receipt of Formal Sex Education*, GUTTMACHER INST. (Feb. 2022), https://www.guttmacher.org/fact-sheet/adolescents-teens-receipt-sex-education-united-states#.

[459] *Id.*

[460] Laura D. Lindberg & Leslie M. Kantor, *Adolescents' Receipt of Sex Education in a Nationally Representative Sample, 2011-2019*, 70 J. ADOLESCENT HEALTH 290 (2022).

[461] Kelli Stidham Hall et al., *The State of Sex Education in the United States*, 58 J. ADOLESCENT HEALTH 595 (2016); THE FUTURE OF SEX EDUCATION, BUILDING A FOUNDATION FOR SEXUAL HEALTH IS A K- 12 ENDEAVOR: EVIDENCE UNDERPINNING THE NATIONAL SEXUALITY EDUCATION STANDARDS (2016), *available at* https://www.advocatesforyouth.org/wp-content/uploads/2019/09/Building-a-foundation-for-Sexual-Health.pdf.

[462] *Campaigns to Undermine Sexuality Education in the Public Schools*, ACLU, https://www.aclu.org/other/campaigns-undermine-sexuality-education-public-schools (last visited Nov. 15, 2022).

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6, 7, or 8.[463] In grades 9 through 12, the median was still only 42.8%.[464] In practice, this means that at least half of American adolescents receive inadequate sex education.

Individual states, districts, and school boards have wide discretion with respect to the implementation of federal policies and funds. Because of this discretion and the lack of consistent implementation processes, there is a highly disparate "patchwork" of sex education laws and practices across the U.S.[465] For example, if sex education is taught, 39 states require abstinence information be provided (29 states require that it be emphasized), while only 20 states require that contraceptive information be provided (approximately half as many states as require abstinence guidance).[466]

Regarding content, quality, and inclusivity, 17 states mandate that the education and curriculum be medically accurate, 26 states require that it be age appropriate, 10 states require that it not be biased against any sex, race, or ethnicity, 10 states require that it be inclusive of sexual orientation, and 4 states require that it not promote religion.[467] Alarmingly, 3 states *require* that only negative information be given on same sex sexual relationships and/or that there be a positive emphasis on heterosexuality.[468] Furthermore, 66.3% of high schools notify parents/guardians before students receive sex education, and 74.7% allow parents/guardians to

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[463] THE FUTURE OF SEX EDUCATION, NATIONAL SEX EDUCATION STANDARDS: CORE CONTENT AND SKILLS, K-12 7 (2nd ed. 2020), *available at* https://advocatesforyouth.org/wp-content/uploads/2020/03/NSES-2020-web.pdf.

[464] *Id.*

[465] Kelli Stidham Hall et al., *The State of Sex Education in the United States*, 58 J. ADOLESCENT HEALTH 595 (2016) (citing SIECUS, 2016 SEX ED STATE LEGISLATIVE YEAR-END REPORT: TOP TOPICS AND TAKEAWAYS (2016), *available at* https://siecus.org/wp-content/uploads/2018/07/2016-Sex-Ed-State-Legislative-Year-End-Report.pdf).

[466] *Sex and HIV Education*, GUTTMACHER INST. (as of Dec. 1, 2022), https://www.guttmacher.org/state-policy/explore/sex-and-hiv-education.

[467] *Id.*

[468] *Id.*

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exclude their children from it.[469] The lack of coordinated standards, curricula, appropriate resources, supportive environments, teacher training, and accountability results in considerable disparity in state practices and student access to accurate information.[470]

There are also widespread racial disparities in the receipt and timing of formal sex education.[471] For example, between 2015 and 2019, young male students of color were less likely than their White peers to have instruction on critical topics, including STIs, contraception, and where to get birth control, and the majority of Black male students did not have comprehensive sex education.[472] Similarly, Black female students were less likely than White female students to receive information on where to get birth control before their first sexual experience.[473]

Native youth also face unique challenges in accessing quality sex education that is culturally competent and responsive to the realities they face. For instance, compared with non-Native women, Native women in the United States are 2.5 times more likely to be raped, and 1 in 3 Native women will be raped in their lifetime.[474] The horrifying frequency of sexual violence perpetrated on Native women demonstrates that there is a critical need for increased access to

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469 CENTERS FOR DISEASE CONTROL & PREVENTION, RESULTS FROM THE SCHOOL HEALTH POLICIES AND PRACTICES STUDY 10 (2016), *available at* https://www.cdc.gov/healthyyouth/data/shpps/pdf/shpps-results_2016.pdf#page=20.

470 SIECUS, 2016 SEX ED STATE LEGISLATIVE YEAR-END REPORT: TOP TOPICS AND TAKEAWAYS (2016), *available at* https://siecus.org/wp-content/uploads/2018/07/2016-Sex-Ed-State-Legislative-Year-End-Report.pdf.

471 Lindberg & Kantor, *supra* note 460.

472 *Id.*

473 *Id.*

474 AMNESTY INTERNATIONAL, MAZE OF INJUSTICE: THE FAILURE TO PROTECT INDIGENOUS WOMEN FROM SEXUAL VIOLENCE IN THE USA (2007), *available at* https://www.amnestyusa.org/wp-content/uploads/2017/05/mazeofinjustice.pdf.

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culturally-responsive, trauma-informed sex education, particularly for Native youth.[475] Some states have begun to make an effort to address these issues through sex education,[476] but those efforts are varied and incomplete.

The resulting inequity in access to sex education leaves Black girls and youth of color more vulnerable and contributes to the racial and ethnic differences in the rates of unintended pregnancy and STIs.[477] These inequitable patterns reflect persistent residential segregation that separates our youth into school settings by race and ethnicity.[478] Establishing consistent, equity-focused sex education programs and policies could help eradicate these disturbing racial gaps that leave Black girls and youth of color at a higher risk of negative health outcomes.[479]

Unequal access to sex education is likely a contributing factor to negative health outcomes for Black women and people of color. Common sense suggests that lack of access to accurate and complete information about where and how to access contraception, for example, could lead to higher pregnancy rates. And, indeed, the pregnancy rate for Black youth aged 15 to 19 has been consistently 2.5 times greater than that of their White peers since 1991, while Hispanic youth aged 15 to 19 have a pregnancy rate that is about twice as high as their White peers.[480] Teen

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[475] *See* South Dakota State Profile, SIECUS, https://siecus.org/state_profile/south-dakota-state-profile-22/ (last updated May 5, 2022).

[476] *Id.*

[477] Lindberg & Kantor, *supra* note 460.

[478] *Id.*

[479] *Id.* These disparities are heightened in the context of LGBTQIA+ youth. *Id.*

[480] KATHRYN KOST ET AL., PREGNANCIES, BIRTHS AND ABORTIONS AMONG ADOLESCENTS AND YOUNG WOMEN IN THE UNITED STATES, 2013: NATIONAL AND STATE TRENDS BY AGE, RACE AND ETHNICITY (2017), *available at* https://www.guttmacher.org/sites/default/files/report_pdf/us-adolescent-pregnancy-trends-2013.pdf; *see also* IN OUR OWN VOICE: NATIONAL BLACK WOMEN'S REPRODUCTIVE JUSTICE AGENDA, BLACK YOUTH DESERVE COMPREHENSIVE APPROACHES TO SEXUAL HEALTH EDUCATION (2020), *available at* http://blackrj.org/wp-content/uploads/2020/04/6217-IOOV_SexEd.pdf.

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birth rates also differ substantially by race and ethnicity.[481] In 2020, American Indian/Alaska Native females aged 15 to 19 had the highest birth rate (25.7 births per 1,000). Birth rates were also high for Black youth (24.4), Hispanic youth (23.5), and Native Hawaiian/Other Pacific Islander youth (22.6), as compared with White youth (10.4).[482] Over the last 20 years, Black youth aged 15 to 19 have contracted STIs (including chlamydia, syphilis, and gonorrhea) at rates between 5 and 16 times higher than their White peers.[483] Black youth aged 15 to 19 are also diagnosed with HIV at higher rates than youth of other racial/ethnic backgrounds—Black youth are 16.8 times more likely than White youth to be diagnosed with HIV, and 4.9 times more likely than Latin youth.[484]

Those that oppose comprehensive sex education often cite concerns that teaching comprehensive sex education will increase sexual activity.[485] Data have consistently shown this to be false.[486] In fact, comprehensive sex education leads to young people delaying sex, having fewer unplanned pregnancies, having fewer sexual partners, and decreasing transmission of STIs and HIV.[487] As is often the case, the most vulnerable communities – including Black female youth,

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481 *Trends in Teen Pregnancy and Childbearing*, OFFICE OF POPULATION AFFAIRS, https://opa.hhs.gov/adolescent-health/reproductive-health-and-teen-pregnancy/trends-teen-pregnancy-and-childbearing (last visited Dec. 10, 2022).

482 *Id.*

483 IN OUR OWN VOICE: NATIONAL BLACK WOMEN'S REPRODUCTIVE JUSTICE AGENDA, BLACK YOUTH DESERVE COMPREHENSIVE APPROACHES TO SEXUAL HEALTH EDUCATION (2020), *available at* http://blackrj.org/wp-content/uploads/2020/04/6217-IOOV_SexEd.pdf.

484 *Id.*

485 Keli Goff, *Op-Ed: Better Sex Education in Schools Can Help Young People Affected by Abortion Bans*, L.A. TIMES, Aug. 12, 2022, https://www.latimes.com/opinion/story/2022-08-12/sex-education-abortion-bans.

486 *Id.*

487 Fiona M.D. Samuels, *Graphic: Many States that Restrict or Ban Abortion Don't Teach Kids about Sex and Pregnancy*, SCIENTIFIC AMERICAN (July 26, 2022), https://www.scientificamerican.com/article/graphic-many-states-that-restrict-or-ban-abortion-dont-teach-kids-about-sex-and-pregnancy/.

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youth of color, and LGBTQIA+ youth – are disproportionately affected by the lack of comprehensive sex education.

II. Review of Sex Education Legislation in "Ban States"

Now that more states have banned or severely restricted abortion, sex education has become more important than ever.[488] Unsurprisingly, however, there is large overlap between the states where abortion is most restricted and the states where sex education is least comprehensive.[489] Below is a chart summarizing the general requirements for sex education in states that had total or 6-week abortion bans as of the end of December 2022 ("Ban States").[490]

State	Mandated Sex Education	Sex Education Requirements (When Provided)				Parent Involvement		
		Medically Accurate	Age Appropriate	Culturally Appropriate & Unbiased	Cannot Promote Religion	Notice	Consent	Opt-Out
Alabama			X					X
Arkansas								
Georgia	X					X		X
Idaho								X
Indiana						X		X
Iowa	X	X	X	X		X		X
Kentucky	X							
Louisiana		X			X			X

[488] Fiona M.D. Samuels, *Graphic: Many States that Restrict or Ban Abortion Don't Teach Kids about Sex and Pregnancy*, SCIENTIFIC AMERICAN (July 26, 2022), https://www.scientificamerican.com/article/graphic-many-states-that-restrict-or-ban-abortion-dont-teach-kids-about-sex-and-pregnancy/.

[489] *Id.*

[490] *Sex and HIV Education*, GUTTMACHER INST. (as of Dec. 1, 2022), https://www.guttmacher.org/state-policy/explore/sex-and-hiv-education; SIECUS, SEX ED STATE LAW AND POLICY CHART: SIECUS STATE PROFILES: JULY 2022 14-16, 23-25 (2022), *available at* https://siecus.org/wp-content/uploads/2021/09/2022-Sex-Ed-State-Law-and-Policy-Chart.pdf.

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State	Mandated Sex Education	Sex Education Requirements (When Provided)				Parent Involvement		
		Medically Accurate	Age Appropriate	Culturally Appropriate & Unbiased	Cannot Promote Religion	Notice	Consent	Opt-Out
Mississippi	X		X			X	X	
Missouri		X	X			X		X
North Dakota	X							
Ohio	X							X
Oklahoma						X		X
South Carolina[491]	X		X			X		X
South Dakota								
Tennessee	X*	X	X	X		X	X	
Texas			X			X	X	
Utah	X	X				X	X	
West Virginia	X							X
Wisconsin						X		X
Wyoming								
TOTAL	**10**	**5**	**7**	**2**	**1**	**11**	**4**	**12**

* *Required in a county if the pregnancy rate is at least 19.5 per 1,000 young women aged 15 to 17.*

In sum, based on the data provided by the Guttmacher Institute and SIECUS, Ban States are slightly underrepresented in the states that mandate sex education, as compared with states

[491] S.C. CODE ANN. § 44-41-680. This statute was successfully challenged in *Planned Parenthood South Atlantic v. State*, in which the South Carolina Supreme Court held the heartbeat ban violated the right to privacy provided by the South Carolina Constitution. *See* Planned Parenthood S. Atl. v. State, 2023 S.C. LEXIS 3 (S.C. 2023). This development came too late to be included in full in this report's evaluation, which is current as of the end of December 2022, underscoring the rapidly shifting law in this area at present.

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that do not have total or 6-week abortion bans.[492] They are also underrepresented in the states that require medically accurate sex education, age appropriate sex education, culturally appropriate and unbiased sex education, and sex education that does not promote religion.[493] Conversely, Ban States are overrepresented in states that require parental consent.[494]

Research shows that comprehensive sex education is most effective and best serves our youth, while abstinence-only education has been proven to be largely ineffective in multiple studies.[495] Despite the evidence, sex education policy and funding tend to shift based on politics.[496] For example, federal funding for abstinence-only education increased under the Trump administration.[497] Abstinence-only education (or education emphasizing abstinence) is particularly common in Ban States, whereas contraception education is rarely required (see chart below).[498]

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[492] *Sex and HIV Education*, GUTTMACHER INST. (as of Dec. 1, 2022), https://www.guttmacher.org/state-policy/explore/sex-and-hiv-education; SIECUS, SEX ED STATE LAW AND POLICY CHART: SIECUS STATE PROFILES: JULY 2022 14-16, 23-25 (2022), *available at* https://siecus.org/wp-content/uploads/2021/09/2022-Sex-Ed-State-Law-and-Policy-Chart.pdf.

[493] *Sex and HIV Education*, GUTTMACHER INST. (as of Dec. 1, 2022), https://www.guttmacher.org/state-policy/explore/sex-and-hiv-education; SIECUS, SEX ED STATE LAW AND POLICY CHART: SIECUS STATE PROFILES: JULY 2022 14-16, 23-25 (2022), *available at* https://siecus.org/wp-content/uploads/2021/09/2022-Sex-Ed-State-Law-and-Policy-Chart.pdf.

[494] *Sex and HIV Education*, GUTTMACHER INST. (as of Dec. 1, 2022), https://www.guttmacher.org/state-policy/explore/sex-and-hiv-education; SIECUS, SEX ED STATE LAW AND POLICY CHART: SIECUS STATE PROFILES: JULY 2022 14-16, 23-25 (2022), *available at* https://siecus.org/wp-content/uploads/2021/09/2022-Sex-Ed-State-Law-and-Policy-Chart.pdf.

[495] Keli Goff, *Op-Ed: Better Sex Education in Schools Can Help Young People Affected by Abortion Bans*, L.A. TIMES, Aug. 12, 2022, https://www.latimes.com/opinion/story/2022-08-12/sex-education-abortion-bans.

[496] *Id.*

[497] *Id.*

[498] SIECUS, SEX ED STATE LAW AND POLICY CHART: SIECUS STATE PROFILES: JULY 2022 7, 17-19 (2022), *available at* https://siecus.org/wp-content/uploads/2021/09/2022-Sex-Ed-State-Law-and-Policy-Chart.pdf.

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State	Abstinence	Contraception (expansive, limited)
Alabama	Stress	Cover, limited
Arkansas	Stress	
Georgia	Stress	
Idaho	Stress	
Indiana	Stress	
Iowa		
Kentucky	Stress	
Louisiana	Stress	
Mississippi	Stress	
Missouri	Stress	Cover, expansive
North Dakota	Cover	
Ohio	Stress	
Oklahoma	Stress	
South Carolina	Stress	Cover, limited
South Dakota	Cover	
Tennessee	Stress	
Texas	Stress	Cover, limited
Utah	Stress	
West Virginia	Cover	Cover, limited
Wisconsin	Stress	
Wyoming		

As used above, "abstinence stressed" indicates that the state has policies requiring that sex education curriculum be abstinence-only or emphasize abstinence as the main way to avoid

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pregnancy and STIs.[499] "Abstinence covered" means the state has policies requiring that sex education curriculum include abstinence instruction in addition to providing instruction on other methods of contraception and pregnancy prevention.[500] "Limited coverage" of contraception includes teaching contraceptive methods such as condoms, and vaguely mentioning the concept of contraception but not going into detail. Some states that fall in the limited coverage category require emphasis on the failure rate of various forms of contraception rather than focusing on how they should be used.[501] "Expansive coverage" of contraception would include instruction on many (if not all) FDA-approved forms of contraception, including condoms and long-acting reversible contraception, and how the various forms are used.[502]

Of the 21 Ban States, 19 require that abstinence be covered or stressed, with 16 of those states requiring that it be stressed. Meanwhile only 1 Ban State (Missouri) requires expansive coverage of contraception, and just 3 other states require *any* coverage of contraception in their curriculums. These policies mean that, at best, Black female youth and youth of color who attend public school in Ban States are more likely than not to receive insufficient information about pregnancy prevention, STI protection, and contraception.[503] At worst, and perhaps most likely, they are at greater risk of receiving misleading information.[504]

III. Conclusion

All adolescents across the U.S. deserve sex education that is medically accurate, complete, inclusive, and culturally and age appropriate. And yet, Black youth are less likely than

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499 *Id.*

500 *Id.*

501 *Id.*

502 *Id.*

503 Brief of *Amici Curiae* Reproductive Justice Scholars Supporting Respondents at 18-19, Dobbs v. Jackson Women's Health Org., 142 S. Ct. 2228 (Sept. 20, 2021).

504 *See id.*

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White youth to receive adequate information on a range of core topics in sex education. The result is a sex education system that provides inadequate information to at least half of adolescents in the U.S., and that undoubtedly contributes to disparities in reproductive health outcomes. This problem is exacerbated when inadequate sex education intersects with a lack of access to sexual and reproductive healthcare, as demonstrated by the 21 states in the United States that as of December 2022 had banned all or most abortions.

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SECTION 6 – Enforcement Mechanisms that Uphold Structural Racism

As has been demonstrated throughout this report, abortion bans and restrictions are racist in both design and implementation. However, recently, anti-abortion laws have taken on another aspect of American racism, as they have increasingly incorporated private enforcement provisions harkening back to earlier eras of vigilante justice in the United States. It is not only outright bigotry that causes unequal enforcement of these laws – unconscious bias is more than sufficient to lead to inequity.

Texas SB 8 is a particularly egregious example—and one on which laws and proposals in other states have since been modeled. On May 19, 2021, Governor Abbott signed Texas SB 8, which generally prohibits abortion after approximately six weeks of pregnancy (roughly four months before viability).[505] Texas SB 8 deputizes private citizens to enforce the law, allowing "any person" other than government officials to bring a civil lawsuit against anyone who (1) provides an abortion in violation of Texas SB 8, (2) "aids or abets" such an abortion, or (3) intends to do these things.[506] These civil suits are permitted regardless of whether the person suing has any connection to the abortion patient. However, abortion patients may not be sued under Texas SB 8.[507] If a claimant in a Texas SB 8 case prevails, they are entitled to (1) "injunctive relief sufficient to prevent" future violations; (2) without any showing of harm, an award of "statutory damages" of at least $10,000 per abortion, with no apparent maximum amount; and (3) their costs and attorney's fees.[508] In effect, Texas SB 8 places a bounty on people who provide or aid abortions, inviting random strangers to sue them. Other states have followed Texas' lead in

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[505] Timothy Bella, *Texas Governor Signs Abortion Bill Banning Procedure as Early as Six Weeks into Pregnancy*, WASH. POST, May 19, 2021, https://www.washingtonpost.com/nation/2021/05/19/texas-abortion-law-abbott/.

[506] TEX. HEALTH & SAFETY CODE ANN. § 171.208.

[507] TEX. HEALTH & SAFETY CODE ANN. § 171.206(b)(1).

[508] TEX. HEALTH & SAFETY CODE ANN. § 171.208(b).

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passing abortion restrictions that are enforced by private individuals, including Idaho[509] and Oklahoma.[510] Some other states have introduced but not yet passed copycat legislation, including Alabama, [511] Arizona, [512] Arkansas, [513] Florida, [514] Louisiana, [515] Maryland, [516] Minnesota, [517] Missouri,[518] Ohio,[519] South Dakota,[520] and Tennessee.[521]

Allowing private citizens to enforce laws is not a novel concept. Rather, it is part of the American legacy of racist vigilantism, which includes the Fugitive Slave Acts, citizen enforcement of Jim Crow-era laws, and bounties offered for the scalps of Indigenous people. In Part I of this Section, we will briefly describe these policies in order to provide historical context for the newly-

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[509] IDAHO CODE ANN. § 18-8807.

[510] OKLA. STAT. tit. 63, §§ 1-745.38, 1.745-39.

[511] H.B. 23, 2022 Leg., Reg. Sess. (Ala. 2022); H.B. 295, 2022 Leg., Reg. Sess. (Ala. 2022).

[512] H.B. 2483, 55th Leg., 2nd Reg. Sess. (Ariz. 2022); S.B. 1339, 55th Leg., 2nd Reg. Sess. (Ariz. 2022).

[513] H.B. 1118, 93rd Gen. Assemb., Fiscal Sess. (Ark. 2022).

[514] H.B. 167, 2022 Leg., Reg. Sess. (Fla. 2022).

[515] H.B. 800, 2022 Leg., Reg. Sess. (La. 2022).

[516] H.B. 732, 2022 Leg., Reg. Sess. (Md. 2022).

[517] H.B. 2898, 92nd Leg., Reg. Sess. (Minn. 2022).

[518] H.B. 1987, 101st Gen. Assemb., 2nd Reg. Sess. (Mo. 2022); S.B. 778, 101st Gen. Assemb., 2nd Reg. Sess. (Mo. 2022).

[519] H.B. 480, 134th Gen. Assemb., Reg. Sess. (Ohio 2021).

[520] *2022 Bill Draft: Prohibiting Abortion After Detection of Fetal Heartbeat*, SOUTH DAKOTA GOVERNOR, https://governor.sd.gov/doc/ProhibitingAbortionAfterDetectionofFetalHeartbeat.pdf (last visited Oct. 13,2022). The South Dakota bill was a draft introduced by Governor Kristi Noem, but the South Dakota legislature declined to officially introduced the bill. Stephen Groves, *Gov. Noem's Abortion Ban Stifled by Republican Lawmakers*, AP, Feb. 2, 2022, https://apnews.com/article/kristi-noem-legislature-south-dakota-planned-parenthood-74baad0456950b0add5c824df5df8c52.

[521] H.B. 2779, 112th Gen. Assemb., Reg. Sess. (Tenn. 2021). The Texas SB 8-style provisions were not included in the original bill. Rather, they were added via a proposed amendment to the bill, which later failed in committee. Melissa Brown, *Tennessee Bill Would Ban Most Abortions, Allow Private Residents to Sue Providers*, TENNESSEAN, Mar. 8, 2022, https://www.tennessean.com/story/news/politics/2022/03/08/tennessee-abortion-bill-would-ban-most-abortions-allow-civil-penalties/9429403002/; *HB 2779*, TENN. GEN. ASSEMBLY, https://wapp.capitol.tn.gov/apps/BillInfo/Default.aspx?BillNumber=HB2779&ga=112 (last visited Oct. 13, 2022).

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enacted citizen-enforced abortion restrictions. In Part II of this Section, we will provide recent examples and data evidencing the systemic surveillance of and vigilantism against Black people and people of color. This vigilantism occurs in tandem with the over-policing of the Black community and communities of color, which we discuss in Part III of this Section.

I. Historical Context of Citizen-Enforced Abortion Restrictions

Citizen-enforced abortion restrictions, like Texas SB 8, are part of a broader trend among states to weaponize private causes of action to penalize and suppress disfavored activities and marginalized groups, including abortion, LGBTQIA+ rights, and the rights of educators and students to discuss race, sexual orientation and gender in the classroom.[522] In short, citizen enforcement laws empower individuals to surveil, sue, and punish politically-disfavored members of their communities.[523] While a modern trend, this type of "legal vigilantism" is not new. It is inspired by "the cruelest and most corrosive aspects of American history."[524] In order to provide historical context for the modern wave of citizen-enforced abortion restrictions, we will briefly describe the Fugitive Slave Acts, Jim Crow-era laws, and colonial policies offering bounties for the scalps of Indigenous people.

A. Fugitive Slave Acts

During the period of slavery, the U.S. federal government enacted two statutes that allowed for the seizure and return of "fugitive slaves" who fled to another state or federal territory. The first statute was enacted in 1793 and authorized local governments to seize and return escaped enslaved persons to their owners.[525] The statute also imposed penalties on anyone who

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[522] Jon D. Michaels & David L. Noll, *Vigilante Federalism*, 107 CORNELL L. REV. (forthcoming 2023), *available at* https://ssrn.com/abstract=3915944 (manuscript at 3).

[523] *Id.* (manuscript at 5).

[524] *Id.* (manuscript at 3-5).

[525] *Fugitive Slave Acts: United States [1793, 1850]*, BRITANNICA, https://www.britannica.com/event/Fugitive-Slave-Acts (last updated July 23, 2020).

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aided in the escape.[526] The 1793 statue enforced the Fugitive Slave Clause under Article IV, Section 2 of the U.S. Constitution, which states "[n]o Person held to Service or Labour in one State, under the Laws thereof, escaping into another, shall, in Consequence of any Law or Regulation therein, be discharged from such Service or Labour, but shall be delivered up on Claim of the Party to whom such Service or Labour may be due."[527]

The 1793 statute authorized slave owners to cross state lines to capture an escaped enslaved person, and bring them before any local magistrate or federal court to prove ownership.[528] Evidence of ownership was often a signed affidavit by the slave owner. If the court official was satisfied with the proof offered, the owner would be permitted to take custody of the escaped enslaved person and return them to the owner's home state.[529] The 1793 statute provided no right to a jury trial, no right to testify on their own behalf, and little protection from habeas corpus.[530] In reality, this law authorized kidnapping. Additionally, the law imposed a $500 civil penalty on those who helped conceal escaped enslaved persons. The statute, and its lack of judicial protections for the accused, was met with strong opposition from the northern states. Many northern states enacted "personal liberty laws" that gave recaptured enslaved persons a right to a jury trial, testimony, and habeas corpus, as well as imposed criminal penalties for kidnapping.[531]

Southern states were unsatisfied with the 1793 statute and the personal liberty laws. The second Fugitive Slave Act, passed in 1850, was enacted due to growing pressure from the south

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[526] JAMES M. MCPHERSON, BATTLE CRY OF FREEDOM: THE CIVIL WAR ERA 78 (1988).

[527] U.S. CONST. art. IV, § 2, cl. 3; *Fugitive Slave Acts: United States [1793, 1850]*, BRITANNICA, https://www.britannica.com/event/Fugitive-Slave-Acts (last updated July 23, 2020).

[528] MCPHERSON, *supra* note 526, at 78.

[529] *Fugitive Slave Acts: United States [1793, 1850]*, BRITANNICA, https://www.britannica.com/event/Fugitive-Slave-Acts (last updated July 23, 2020).

[530] MCPHERSON, *supra* note 526, at 78.

[531] *Id.* at 79.

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for more "effective" legislation.[532] The 1850 statute imposed both civil and criminal penalties on those who assisted enslaved persons. The penalty for individuals concealing and aiding escaped enslaved persons was increased to $1,000 and six months in jail, and there were heavy penalties imposed on federal marshals who refused to enforce the law.[533] This led federal marshals to deputize citizens on the spot (and forcibly compel them) to aid in seizing an escaped enslaved person.[534] Additionally, the law clarified that recaptured enslaved persons could not testify on their own behalf, were not permitted to have a jury trial, and there was no statute of limitations.[535] Finally, special commissioners (a new office created by the law) were given concurrent jurisdiction with the U.S. courts.[536] These harsh provisions disproportionately favored claimants, for example:

> [A] claimant could bring an alleged [escaped enslaved person] before a federal commissioner to prove ownership by an affidavit from a slave-state court or by the testimony of white witnesses. If the commissioner decided against the claimant [the commissioner] would receive a fee of five dollars; in favor, ten dollars. This provision, supposedly justified by the paper work needed to remand a[n escaped enslaved person] to the South, became notorious among abolitionists as a bribe to commissioners.[537]

Both Fugitive Slave Acts were not repealed by Congress until June 28, 1864.

B. Citizen Enforcement of Jim Crow-Era Laws

The Jim Crow "regime" has been expertly described as:

> . . . [L]aws that enforced American apartheid from the reconstruction era onward. Narrowly targeting Blacks, these laws were meant to deny free citizens their basic rights and opportunities simply based on skin color. At the state and local levels, Jim Crow laws and customs dictated everything from how and in what capacities formerly enslaved people could work, where they could live and travel, how much they could be paid, under what conditions they could vote, and daily interactions

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532 *Fugitive Slave Acts: United States [1793, 1850]*, BRITANNICA, https://www.britannica.com/event/Fugitive-Slave-Acts (last updated July 23, 2020).

533 *Id.*

534 MCPHERSON, *supra* note 526.

535 *Fugitive Slave Acts: United States [1793, 1850]*, BRITANNICA, https://www.britannica.com/event/Fugitive-Slave-Acts (last updated July 23, 2020).

536 *Id.*

537 MCPHERSON, *supra* note 526.

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> as common [as] handshaking and introductions. Failure to abide by some—such as the social rule that a Black man was to never touch a white woman, even for a simple handshake—**could lead to death from gruesome lynchings, the most violent form of Jim Crow**.[538]

Jim Crow saw twin evils of "excessive state power and the pattern of private violence, intimidation and lynching, of which there is painful record."[539] States attempted to privatize Jim Crow laws by delegating powers to political parties and political groups. For example, after a discriminatory state voting law was struck down by the Supreme Court, the state of Texas legislated that political parties (comprised of private individuals) would determine voter eligibility; however, this chicanery was also found to be unlawful.[540] Lynchings and other acts of violence to enforce the discrimination promulgated by Jim Crow were predominately carried out by mobs of Ku Klux Klan members whose acts were not circumscribed by state actors.[541]

The dangerous and deadly realities associated with Jim Crow resulted in the Great Migration of Black people to the North and the West.[542] However, migrating to such places did not mean that they were escaping segregation or discrimination, as they were often met with private enforcement of *de facto* segregation through another insidious force – corporate vigilantism "via housing patterns enforced by private covenants, bank lending, and job discrimination, including discriminatory labor union practices, many of which persist today."[543]

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[538] *Jim Crow Laws*, FAIR FIGHT INITIATIVE, https://www.fairfightinitiative.org/jim-crow-laws/ (last visited Sept. 26, 2022).

[539] Richard A. Epstein, *Race and the Police Power*: *1890 to 1937*, 46 WASH. & LEE L. REV. 741 (1989).

[540] Stefanie Lindquist, *Jim Crow Tactics Reborn in Texas Abortion Law, Deputizing Citizens to Enforce Legally Suspect Provisions*, THE CONVERSATION (Sept. 13, 2021), https://theconversation.com/jim-crow-tactics-reborn-in-texas-abortion-law-deputizing-citizens-to-enforce-legally-suspect-provisions-167621.

[541] Epstein, *supra* note 539, at 743.

[542] *Black Civil Rights: Jim Crow Era*, HOWARD UNIV. SCH. OF LAW, LAW LIBRARY, https://library.law.howard.edu/civilrightshistory/blackrights/jimcrow (last visited Sept. 26, 2022).

[543] *Id*.

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C. Bounties Offered for the Scalps of Indigenous People

"[T]raditional wisdom of American history asserts that the 'savage' Indians scalped 'civilized' whites in their resistance to the 'taming' of the continent."[544] In truth, there is a long history of governments—including European, Mexican, and American colonial governments—offering money to White people in exchange for the scalps of Indigenous people.

The earliest bounties were offered to encourage Indigenous people who had been deemed "friendly" to the interests of the European governments to kill those deemed hostile to those interests. The "proof" of such killings was initially heads rather than scalps. For example, in Connecticut in 1637, the English "paid their Mohegan allies for Pequot heads[,]" and in then-New Amsterdam in 1641, the Dutch "paid 10 fathoms of wampum for each Raritan head brought in."[545]

In 1694, during King William's War, the Massachusetts General Court offered bounties for the killing of Indigenous people with scalps functioning as proof. The bounties continued on a year-to-year basis through the mid-1700s and the Court offered "10 pounds for the scalps of women and small boys and 100 pounds for youths and adult males."[546] In 1723, the Massachusetts colony paid 100 pounds sterling for the scalps of men older than 12 and 50 pounds for those of women and children. In 1755, the bounty still existed, though then-Governor William Shirley had reduced it to 40 pounds for men and 20 pounds for women.[547] Those who scalped Indigenous people never scalped the French people who accompanied the Indigenous people on

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[544] James Axtell & William C. Sturtevant, *The Unkindest Cut, or Who Invented Scalping?*, 37 WM. & MARY Q. 451, 451 (1980).

[545] *Id.* at 470.

[546] G. E. Thomas, *Puritans, Indians, and the Concept of Race*, 48 NEW ENG. Q. 3 (1975).

[547] Lee Karalis, *They Paid for Scalps*, WASH. POST, https://www.washingtonpost.com/archive/opinions/2002/10/05/they-paid-for-scalps/b2ab3898-12e4-43c9-8147-949f2e91368a/ (last visited Oct. 11, 2022).

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their expeditions in New England, as "[s]kinning was reserved for animals and [Indigenous people]."[548]

Other examples abound. For instance, in his 1756 "Proclamation of War" against the Lenni Lenape people, Robert Hunter Morris (the Lieutenant Governor of the Pennsylvania Province) declared: "For the Scalp of every Male Indian enemy above the age of 12 years, produced as evidence of their being killed, the sum of 130 pieces of eight . . . for the scalp of every Indian woman produced as evidence of their being killed, the sum of 50 pieces of eight."[549] Proclamations in 1764 and 1780 also provided for scalp bounties.[550] Under two of those proclamations, the claims were paid out of the public treasury.[551] "Scalp bounties encouraged private warfare on the border, just as letters of marque encouraged private warfare on the seas, and warfare at private risk was cheap and effective."[552] And in 1763, an Act of the Maryland General Assembly provided that the scalps of "hostile Indians" were worth 50 pounds each (irrespective of the sex and age of the person killed).[553]

In the American Southwest and Northern Mexico regions, scalping was "a novel phenomenon" during the early nineteenth century.[554] Native American tribes like the Comanche and Apache, which originated in the West, did not originally scalp the enemies they killed.[555] "Only

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548 Thomas, *supra* note 546.

549 Karalis, *supra* note 547.

550 Henry J. Young, *A Note on Scalp Bounties in Pennsylvania*, 24 PA. HIST.: J. MID-ATLANTIC STUD. 207 (1957).

551 *Id.*

552 *Id.*

553 *Bounties & the R-Word*, COALITION OF NATIVES & ALLIES, https://www.coalitionofnativesandallies.org/bounties-and-the-r-word-1 (last visited Oct. 11, 2022).

554 Clay Andersen, *Bloody Receipts: The Defensive and Cultural Foundations for Scalp Hunting*, 25 J. BIG BEND STUDIES 73, 79 (2013).

555 *Id.*

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after eastern tribes were driven into the American Southwest did the western brethren adopt the practice."[556] According to historian James Axtell, "Europeans brought the economic validation for scalping via the scalp bounty system to the Americas."[557] The scalp bounty system was thus "a European tactic used with horrible efficiency," and it was the westward migration of both Europeans and Indigenous people that brought "the enterprise of scalping" to the western tribes.[558]

In 1820, Cornplanter (an Allegany Seneca chief) "grew despondent over the disintegration of his nation."[559] As he recounted, he was told by the Great Spirit in visions that he should "burn all his old military trophies"—which he did.[560] As Cornplanter explained, before White people arrived in the Americas, his people had "lived in peace and had no wars nor fighting," but after the arrival of the French and, later, the English, those two powers "began to fight among themselves" and each side endeavored to involve the Iroquois in that conflict.[561] According to Cornplanter, it was the French that "offered to furnish us with instruments of every kind and sharp knives to take the skins off their [enemies'] heads."[562]

II. Recent Examples & Data Evidencing the Systemic Surveillance of and Vigilantism Against Black People and People of Color

The systemic surveillance of Black people and communities of color is not a relic of the past, and Texas SB 8 and its progeny represent modern-day, state-sanctioned surveillance. These privately-enforced anti-abortion laws make "people of color more vulnerable in a legal

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556 *Id.*

557 *Id.* at 80.

558 *Id.*

559 Axtell & Sturtevant, *supra* note 544, at 451.

560 *Id.*

561 *Id.*

562 *Id.*

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system where they already face disproportionate punishment."[563] The disproportionate risk faced by Black women and people of color is magnified in the abortion context because abortion patients are disproportionately Black women and people of color. For example, in 2014, people of color comprised around 62% of U.S. abortion patients[564], whereas they only comprised around 23% of the population during that time.[565] Additionally, because abortion is deeply stigmatized in the U.S., Black women and pregnant people seeking to terminate their pregnancies face multiple systems of oppression, including racism, anti-abortion bias, and sexism.[566]

The concern that Black women and people of color will be disproportionately targeted under Texas SB 8 and other copycat legislation is supported by recent documented events, where White people observed Black people engaging in innocuous activity and reported them to the police, or took actions into their own hands. A few examples of the types of innocuous activities that have been reported include: Black children selling bottles of water on the sidewalk or having a lemonade stand;[567] two Black men having a meeting at a Starbucks;[568] a Black family having a

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[563] Candice Norwood, *Policing and Surveillance: How Texas' Abortion Law Could Add to Systemic Racism*, THE 19TH (Sept. 14, 2021), https://19thnews.org/2021/09/texas-abortion-law-people-of-color/.

[564] Jenna Jones et al., *Characteristics of U.S. Abortion Patients in 2014 and Changes Since 2008*, GUTTMACHER INST. (May 2016), https://www.guttmacher.org/report/characteristics-us-abortion-patients-2014.

[565] *Single-Race Population Estimates 2010-2020 by State and Single-Year Age Results (2014),* CDC WONDER, http://wonder.cdc.gov/single-race-single-year-v2020.html (last visited Nov. 4, 2022).

[566] *See* Brief of Experts, Researchers, and Advocates Opposing the Criminalization of People Who Have Abortions as Amici Curiae in Support of Respondents at 20-22, 34, Dobbs v. Jackson Women's Health Org., 142 S. Ct. 2228 (Sept. 17, 2021).

[567] *Id.*

[568] Alex Horton, *Starbucks CEO Apologizes After Employee Calls Police on Black Men Waiting at a Table*, WASH. POST, Apr. 15, 2018, https://www.washingtonpost.com/news/business/wp/2018/04/14/starbucks-apologizes-after-employee-calls-police-on-black-men-waiting-at-a-table/.

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cookout in the park;[569] and a Black man requesting that a dog be leashed in the park.[570] This surveillance, reporting, and vigilantism can and does lead to deadly consequences. For example, in the case of Ahmaud Arbery, a group of White men chased, cornered and murdered Mr. Arbery in cold blood while he was jogging on a Sunday afternoon because they claimed they thought he matched the description of someone who burglarized a home.[571]

This is true in other areas, too. For example, research indicates that killings resulting from "stand your ground" laws (which permit private individuals to use force when they "reasonably believe" they face an imminent threat) involving a White shooter and a Black victim were much more likely to be ruled justifiable in "stand your ground" states compared with cases where the roles were reversed.[572] In addition, data show that Black and Hispanic/Latin individuals are more likely to be reported to child protective services in connection with maltreatment investigations.[573] Open bigotry is not the only, or even the most important, issue at play, as unconscious bias compounds these issues.

III. Over-Policing of Communities of Color & Criminalization of Black Pregnancy Loss

The historic and modern-day vigilantism described above does not occur in a vacuum. Rather, it occurs in tandem with the over-policing of the Black community and communities of color. By banning abortion, states create an environment in which people can be criminally punished for terminating their pregnancies, or for mere suspicion of termination based on a

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[569] Yesha Callahan, *#CookingOutWhileBlack: White Woman Calls Cops on Black People Cooking Out in Oakland, Calif., Park*, THE ROOT (May 10, 2018), https://www.theroot.com/cookingoutwhileblack-white-woman-calls-cops-on-black-1825920347.

[570] Jonathan Franklin, *Bird-Watcher Wrongfully Accused in Central Park Video Gets a Bird-Watching TV Show*, NPR (May 19, 2022), https://www.npr.org/2022/05/19/1100203220/christian-cooper-bird-watcher-national-geographic-tv-show.

[571] Richard Fausset, *What We Know About the Shooting Death of Ahmaud Arbery*, N.Y. TIMES, Aug. 8, 2022, https://www.nytimes.com/article/ahmaud-arbery-shooting-georgia.html.

[572] *Id.*

[573] Norwood, *supra* note 563; Hyunil Kim et al., *Lifetime Prevalence of Investigating Child Maltreatment Among US Children*, 107 AM. J. PUB. HEALTH 274–280 (2017).

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pregnancy outcome.[574] This can lead to devastating and life-threatening consequences.[575] In this Part, we will provide a summary overview of the incarceration rates for people of color, the recent history of police killings of Black people, and the criminalization of pregnancy loss for Black women and pregnant people of color.

A. Incarceration Rates for Communities of Color

Black women and people of color living in states that ban or restrict abortion may face criminal investigation or arrest if they try to terminate a pregnancy, which could exacerbate already heightened mass incarceration of Black people and people of color in the U.S. Current reality and history have consistently shown that Black women and people of color are likely to be disproportionately targeted.[576] While the U.S. leads the world in mass incarceration, this epidemic has not impacted all communities equally.[577] Black individuals are nearly five times more likely than White individuals to be serving time in state prisons, while Latin individuals are 1.3 times as likely.[578] Native women are six times more likely than White women to be imprisoned.[579]

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[574] Brief of Experts, Researchers, and Advocates Opposing the Criminalization of People Who Have Abortions as Amici Curiae in Support of Respondents at 4, Dobbs v. Jackson Women's Health Org., 142 S. Ct. 2228 (Sept. 17, 2021).

[575] *Id.*

[576] Brief for Amici Curiae for Organizations Dedicated to the Fight for Reproductive Justice – Mississippi in Action, et al. – in Support of Respondents at 36, Dobbs v. Jackson Women's Health Org., 142 S. Ct. 2228 (Sept. 20, 2021).

[577] *Fact Sheet: Trends in U.S. Corrections*, THE SENTENCING PROJECT, https://www.sentencingproject.org/wp-content/uploads/2021/07/Trends-in-US-Corrections.pdf (last updated May 2021).

[578] Ashley Nellis, *The Color of Justice: Racial and Ethnic Disparity in State Prisons*, THE SENTENCING PROJECT (Oct. 13, 2021), https://www.sentencingproject.org/publications/color-of-justice-racial-and-ethnic-disparity-in-state-prisons/.

[579] *Native Lives Matter*, LAKOTA PEOPLE'S LAW PROJECT (Feb. 2015), https://s3-us-west-1.amazonaws.com/lakota-peoples-law/uploads/Native-Lives-Matter-PDF.pdf.

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Research has shown that incarceration negatively impacts the physical and mental health of those incarcerated, as well as their family members.[580] Exposing Black women and pregnant people of color to arrest and incarceration for obtaining abortions will further impact their families and communities – threatening to separate families and to jeopardize incarcerated individuals' benefits, child custody, and employment following their release.[581] The threat of prosecution may discourage pregnant people from seeking needed care, which could cause worse health outcomes and exacerbate existing racial healthcare inequities.[582] Even if not convicted, being charged with a crime can and does result in dire financial consequences, stigma, and negative health outcomes.[583]

B. Police Killings of Black People

Black communities not only face increased threat of incarceration, they also face increased threat of being killed by police. After the killing of Michael Brown, an unarmed Black man, by police in Ferguson, Missouri, *The Washington Post* created a searchable database of every fatal shooting by an on-duty officer in the United States since January 1, 2015.[584] The *Post*'s data are based on news reporting, social media posts, and police reports.[585] Its initial investigation revealed that the FBI undercounted such shootings by more than half.[586] As the

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[580] Brief for Amici Curiae for Organizations Dedicated to the Fight for Reproductive Justice – Mississippi in Action, et al. – in Support of Respondents at 36, Dobbs v. Jackson Women's Health Org., 142 S. Ct. 2228 (Sept. 20, 2021).

[581] *Id.* at 37.

[582] *Id.*

[583] *Id.*

[584] *Fatal Force*, WASH. POST, https://www.washingtonpost.com/graphics/investigations/police-shootings-database/ (last visited Sept. 21, 2022).

[585] *Id*.

[586] Wesley Lowery, *How Many Police Shootings A Year? No One Knows*, WASH. POST, Sept. 8, 2014, https://www.washingtonpost.com/news/post-nation/wp/2014/09/08/how-many-police-shootings-a-year-no-one-knows/.

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Post has reported, self-reporting by police departments is voluntary and many departments choose not to report such incidents—hence, the flawed FBI data.[587]

Albeit likely still incomplete, these public records nevertheless show that police have shot and killed nearly 1,000 people annually in the United States since the *Post* began tracking such killings in 2015.[588] That number has been consistent "[d]espite the unpredictable events that lead to fatal shootings," which the *Post* posits is consistent with probability theory, absent some "fundamental shift in police culture or extreme restrictions on gun ownership."[589] Every state in the U.S. has had fatal police shootings, though they occur more often in densely populated cities.[590] New Mexico, Alaska, and Oklahoma are the states with the highest rates of fatal police shootings.[591]

Although Black Americans represent less than 13% of the U.S. population, they are killed by police at more than twice the rate of White Americans.[592] Hispanic Americans are also killed by police at a rate that is disproportionate to the percentage of the population that is Hispanic.[593] Specifically, Black Americans are killed by police at a rate of 41 per million people, Hispanic Americans are killed at a rate of 29 per million people, and White Americans are killed at a rate of 16 per million people.[594]

An October 2020 study by researchers at Yale University and the University of Pennsylvania based on the *Post*'s data further concluded that there was no reduction in the racial

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587 *Fatal Force*, *supra* note 584.

588 *Id.*

589 *Id.*

590 *Id.*

591 *Id.*

592 *Id.*

593 *Id.*

594 *Id.*

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disparity in the victims of fatal police shootings over the prior five years despite both the increased use of body cameras and the increased media attention to police shootings during that time.[595] Additionally, according to that 2020 study, when limited to unarmed victims of police shootings, "Black people were killed at three times the rate (218 total killed), and Hispanics at 1.45 times the rate of white people (146 total killed)."[596]

As explained by one of the authors of the 2020 study, Dowin Boatright, assistant professor of emergency medicine at Yale, the public health impact of these killings is not just limited to the victims; it extends to the victims' communities.[597] Per Boatright, "[i]n areas where there are police killings, the Black population reports worse mental health."[598] Indeed, a 2018 University of Pennsylvania study concluded that "police killings could contribute 1.7 additional poor mental health days per Black person every year, or 55 million more poor mental health days for Black Americans annually."[599] Elle Lett, one of the authors of the 2020 study, said: "What has been done at the local level — such as body cameras and independent investigations — has been insufficient. We need to raise it to the state and national level, and to codify it into law."[600]

Racial disparities also persist with respect to police calls. In a study surveying more than two million 911 calls in two U.S. cities, Mark Hoekstra, an economist at Texas A&M University, concluded that White police officers dispatched to Black neighborhoods fired their guns five times

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[595] Brita Belli, *Racial Disparity in Police Shootings Unchanged Over 5 Years*, YALE NEWS, Oct. 27, 2020, https://news.yale.edu/2020/10/27/racial-disparity-police-shootings-unchanged-over-5-years; *see also* Elle Lett et al., *Racial Inequity in Fatal US Police Shootings, 2015-2020*, 75 J. EPIDEMIOLOGY & COMMUNITY HEALTH 394 (2021).

[596] Belli, *supra* note 595.

[597] *Id*.

[598] *Id*.

[599] *Id.*; *see also Police Killings of Unarmed Black Americans Affect Mental Health of Black Community*, PENN MED. NEWS, June 21, 2018, https://www.pennmedicine.org/news/news-releases/2018/june/police-killings-of-unarmed-black-americans-affect-mental-health-of-black-community).

[600] Belli, *supra* note 595.

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as often as Black officers who were dispatched to the same neighborhoods for similar reasons.[601] White officers were also more likely to use their guns in predominantly Black neighborhoods.[602] Conversely, discriminatory non-enforcement of the law—such as the failure to respond quickly to calls in low-income areas—remains another major policing problem.[603]

C. Criminalization of Pregnancy Loss for Black Women and Pregnant People of Color

The criminalization of pregnancy outcomes can lead to devastating and life-threatening consequences.[604] "It prevents people from seeking medical care when they need it, subjects them to cruel and humiliating investigations in the midst of medical emergencies, and consigns them to stigma and condemnation within their communities."[605] Even worse, the burdens of criminalization disproportionately fall on those who are marginalized, including Black women and people of color.[606] Indeed, the racist policing patterns discussed above also exist in the context

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[601] Mark Hoekstra & CarlyWill Sloan, *Does Race Matter for Police Use of Force? Evidence from 911 Calls*, (Nat'l Bureau of Econ. Research, Working Paper No. 26774, 2020), *available at* https://www.nber.org/system/files/working_papers/w26774/w26774.pdf; *see also* Lynne Peeples, *What the Data Say About Police Brutality and Racial Bias—and Which Reforms Might Work*, NATURE (May 26, 2021), https://www.nature.com/articles/d41586-020-01846-z.

[602] Hoekstra & Sloan, *supra* note 601.

[603] *See Fighting Police Abuse: A Community Action Manual*, ACLU (Aug. 1997), https://www.aclu.org/other/fighting-police-abuse-community-action-manual.

[604] Brief of Experts, Researchers, and Advocates Opposing the Criminalization of People Who Have Abortions as Amici Curiae in Support of Respondents at 34-35, Dobbs v. Jackson Women's Health Org., 142 S. Ct. 2228 (Sept. 17, 2021).

[605] *Id.*; *see also Opposition to the Criminalization of Self-Managed Abortion*, AM. COLL. OF OBSTETRICIANS & GYNECOLOGISTS (July 6, 2022), https://www.acog.org/clinical-information/policy-and-position-statements/position-statements/2022/opposition-to-the-criminalization-of-self-managed-abortion ("The American College of Obstetricians and Gynecologists (ACOG) opposes the prosecution of a pregnant person for conduct alleged to have harmed their fetus, including the criminalization of self-managed abortion. The threat of prosecution may result in negative health outcomes by deterring individuals from seeking needed care, including care related to complications after abortion."); *Self-Managed Abortion Statement*, PHYSICIANS FOR REPROD. HEALTH (Nov. 2018), https://prh.org/wp-content/uploads/2018/12/Self-Managed-Abortion-Position-Statement-2018.pdf ("No person should be subject to legal action for decisions they make about ending a pregnancy.").

[606] Brief of Experts, Researchers, and Advocates Opposing the Criminalization of People Who Have Abortions as Amici Curiae in Support of Respondents at 35, Dobbs v. Jackson Women's Health Org., 142 S. Ct. 2228 (Sept. 17, 2021).

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of pregnancy, abortion, and pregnancy loss. For example, a study by the National Advocates for Pregnant Women and Fordham University found that, of the women who were arrested for conduct during their pregnancy during the three decades spanning from 1937 through 2005, 52% were Black.[607] This, again, is striking given that only 13% of the U.S. population is Black.[608]

Racial discrimination is intersectional and leads to disproportionate criminalization when compounded with sexism and anti-abortion bias.[609] Thus, it is unsurprising that Black women and people of color are disproportionately criminalized for their pregnancy outcomes. A 2013 research article examined state actions taken against 413 pregnant women in 44 states, the District of Columbia, and some federal jurisdictions between 1973 and 2005, which were the result of reports made by healthcare providers, social workers (employed by hospitals and child protective services), hospitals, probation or parole officers, and significant others or family members.[610] Of the 368 women for whom race information was available, nearly 60% were people of color, with 52% being Black.[611] Notably, disparities related to Black women were more pronounced in the South—with nearly 75% of cases brought against Black women there.[612] For example, during this time period, Black people comprised approximately 15% of Florida's population, yet 75% of the state's cases were brought against pregnant Black women.[613] Likewise, during this time, Black people comprised 30% of South Carolina's population, yet 74% of the state's cases were

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607 *See* Lynn M. Paltrow & Jeanne Flavin, *Arrests of and Forced Interventions on Pregnant Women in the United States, 1973–2005: Implications for Women's Legal Status and Public Health*, 38 J. HEALTH POL., POL'Y & L. 299, 310-11 (2013).

608 *See Fatal Force*, *supra* note 584.

609 Brief of Experts, Researchers, and Advocates Opposing the Criminalization of People Who Have Abortions as Amici Curiae in Support of Respondents at 4, Dobbs v. Jackson Women's Health Org., 142 S. Ct. 2228 (Sept. 17, 2021).

610 Paltrow & Flavin, *supra* note 607, at 309-11.

611 *Id.*

612 *Id*. at 311.

613 *Id.*

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brought against Black pregnant women.[614] Further data breakouts indicate that during this time, healthcare providers were more likely to report Black pregnant women than White pregnant women. Of those reported by healthcare providers, 48% were Black, while only 27% were White.[615]

IV. Conclusion

Given this backdrop, it is predictable, and indeed expected, that police and private individuals deputized to enforce abortion restrictions will disproportionately target Black women and other people of color. Both outright bigotry and unconscious bias will undoubtedly play a role. Internalizing this increased surveillance and criminalization, Black women and pregnant people will likely be more fearful about obtaining abortions, as compared to White pregnant people. These heightened fears of criminalization or punishment under new abortion restrictions add to the daily burden already faced by people of color because of racism:

> Those concerns would contribute to a larger pattern of daily stress associated with racism and other forms of marginalization that many people of color experience. These stressors act as sources of "weathering" on the body and can lead to negative health outcomes for certain groups like higher rates of hypertension and heart disease, according to the work of researchers like University of Michigan professor Arline T. Geronimus.[616]

These fears may isolate pregnant people of color, who may be worried about involving others in their abortions out of fear for themselves or those assisting them. They may also lead pregnant people of color to avoid seeking medical treatment after terminating a pregnancy or cause them to carry unwanted pregnancies to term.

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614 *Id.*

615 *Id.* at 311-12.

616 Norwood, *supra* note 563.

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Appendix A

Survey of Laws Restricting Abortion in the 50 States and U.S. Territories, Including Associated Penalties and Punishment for Aiding & Abetting

For laws currently enacted as of December 15, 2022

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Under the Direction of: Martin Hewitt

Introduction

> *It is a promise of the Constitution that there is a realm of personal liberty which the government may not enter.*
> -Planned Parenthood v. Casey, 505 U.S. 833, at 847 (1992).
>
> *This right of privacy, whether it be founded in the Fourteenth Amendment's concept of personal liberty and restrictions upon state action, as we feel it is, or, as the District Court determined, in the Ninth Amendment's reservation of rights to the people, is broad enough to encompass a woman's decision whether or not to terminate her pregnancy. The detriment that the State would impose upon the pregnant woman by denying this choice altogether is apparent.*
> -Roe v. Wade, 410 U.S. 113, at 153 (1973).
>
> *We hold that Roe and Casey must be overruled. The Constitution makes no reference to abortion, and no such right is implicitly protected by any constitutional provision, including the one on which the defenders of Roe and Casey now chiefly rely—the Due Process Clause of the Fourteenth Amendment.*
> -Dobbs v. Jackson Women's Health Organization, No. 19-1392, slip op. at 9 (Sup. Ct. 2022).

For fifty years, *Roe v. Wade* and its progeny constitutionally guaranteed the right of pregnant persons to make personal decisions regarding the termination of a pregnancy. This basic right of bodily autonomy, though not enumerated directly in the Constitution, was protected by a right to privacy found in the Fourteenth Amendment. As Justice O'Connor stated for the majority in *Planned Parenthood v. Casey*: "These matters, involving the most intimate and personal choices a person may make in a lifetime, choices central to personal dignity and autonomy, are central to the liberty protected by the Fourteenth Amendment. At the heart of liberty is the right to define one's own concept of existence, of meaning, of the universe, and of the mystery of human life. Beliefs about these matters could not define the attributes of personhood were they formed under compulsion of the State." *Planned Parenthood v. Casey*, 505 U.S. 833, 851 (1992).

On June 24, 2022, the Supreme Court stripped away this right in *Dobbs v. Jackson Women's Health Organization*, holding that "the Constitution does not confer a right to an abortion" and that "the authority to regulate abortion must be returned to the people and

their elected representatives." *Dobbs v. Jackson Women's Health Organization*, 142 S. Ct. 2228, 2279 (2022). Several months removed from this holding, U.S. state and territory laws on a person's right to choose have already become increasingly complicated.

Some states, anticipating an eventual overturning of *Roe* and *Casey*, enacted "trigger laws" that would impose full bans on abortion in the event that those two cases were invalidated. Some of these trigger laws came into force the moment the decision in *Dobbs* was handed down. Other bans require certification from Governors, State Attorneys General, and other state authorities before they could be enforced. All in all, thirteen states enacted trigger bans that are now in various phases of enforceability. Still other states never repealed their pre-*Roe* abortion bans. These once "zombie" laws are now enforceable again in the wake of *Dobbs*.

Other states have enacted provisions to protect or enshrine the right to choose in either state law or by amending the state constitution. Eleven states provide for fairly easy access to abortion, with some restrictions, while twelve more states create explicit statutory protections related to reproductive health care choices. In 2022, three states amended their constitutions to directly protect abortion rights, while others are seeking to do so in the future. Some state supreme courts have held that their state constitutions confer greater protections than the federal Constitution when it comes to terminating a pregnancy, while others are still examining this issue.

Despite the constant criticism it endured, the legal framework crafted by *Roe* and *Casey* created a workable uniformity at the state level. States were allowed to greatly restrict and even ban abortion services after fetal viability, but they were also required to make the procedure available prior to that point. Now, that uniformity has been shattered as states pit themselves against one another in a battle for statutory supremacy.

'Inter-Jurisdictional Abortion Wars'

Several states in which abortions are still legal have already enacted laws and issued executive orders that would protect those who travel to seek a legal abortion by prohibiting extraditions, prohibiting information sharing, and even asserting choice-of-law requirements if any lawsuits are filed. States that have made abortions illegal have drawn corporations and private industry into the battle as well. For instance, South Carolina debated a bill that would have protected "whistleblowers" seeking to inform law enforcement of possible violations of that state's abortion ban. S. B. 1373, 124th Gen. Assemb., 2nd Reg. Sess. (S.C. 2022). And members of the Texas Freedom Caucus sent a letter to a prominent law firm accusing it of aiding and abetting abortions through its stated

policy of providing funds for its employees to procure abortions out of state. See Jacqueline Thomsen, *Attorney at Rival Firm Among Lawmakers Accusing Sidley Austin of Aiding Illegal Abortions*, REUTERS (Jul. 13, 2022), https://www.reuters.com/legal/legalindustry/attorney-rival-firm-among-lawmakers-accusing-sidley-austin-aiding-illegal-2022-07-13/

Whatever happens in the coming months and years, the Supreme Court has guaranteed with their decision in *Dobbs* that cases related to abortion rights will continue to require federal constitutional interpretation. As the dissent in *Dobbs* noted: "... the majority's ruling today invites a host of questions about interstate conflicts. ... Can a State bar women from traveling to another State to obtain an abortion? Can a State prohibit advertising out-of-state abortions or helping women get to out-of-state providers? Can a State interfere with the mailing of drugs used for medication abortions? The Constitution protects travel and speech and interstate commerce, so today's ruling will give rise to a host of new constitutional questions. Far from removing the Court from the abortion issue, the majority puts the Court at the center of the coming "interjurisdictional abortion wars."" *Dobbs*, 142 S. Ct. at 2337 (dissenting opinion of Breyer, J., Kagan, J., and Sotomayor, J.).

The debate over abortion rights continues, and no one can say for certain how the legal landscape will evolve. But for now, the legal predictability that *Roe* provided for pregnant persons, their families and even the states has been discarded in favor of statutory chaos.

Scope of This Survey

This survey summarizes the varied tapestry of State and U.S. territory laws restricting access to abortion, along with the penalties associated with performing, procuring, or aiding in the procedure, and any state constitutional provisions that may apply. It reflects the status of abortion laws as of December 15, 2022, and focuses on state laws that answer the following questions:

- What bans or restrictions govern the performance and procurement of an abortion?
- What criminal, civil and administrative penalties have been enacted to punish physicians, facilities and even women seeking abortions?
- Are there any statutes punishing third-parties for aiding and abetting the performance or procurement of an abortion?

- Does the state constitution specifically protect abortion, a right to privacy, or include a provision that could be construed to protect those rights? Does it specifically restrict abortion?
- What other considerations exist that could alter the laws related to abortions in the near future?

Despite the voluminous material summarized in this survey, some state laws regarding abortion or family planning services remained outside the scope. These include laws related to funding abortions and those addressing state government agency obligations, such as creating signage and disclosure materials for use by those performing abortions, or conducting studies, or publishing abortion statistics. We have also not summarized any laws related to family planning services intended to prevent or discourage a person from seeking an abortion, or related to in vitro fertilization.

In addition, this survey does not comprehensively cover state regulations related to abortions.

Finally, the survey does not address laws of a general nature that punish injuries to pregnant persons or fetuses, nor have we addressed general wrongful death or criminal statutes that could be implicated in the abortion context.

Language Used

This survey is meant to benefit everyone. We would therefore be remiss if we did not address the language used throughout the survey that is not sensitive to transgender/ non-binary individuals who are also affected by the decimation of reproductive rights in *Dobbs*.

One of the purposes of this survey is to provide a comprehensive and realistic snapshot of abortion laws across the country at the time *Roe* and *Casey* were overruled. To maintain authenticity, this survey incorporates the language used by state legislatures: “pregnant woman,” “pregnant mother,” “pregnant female,” and variations.

We recognize that this gendered language is not wholly inclusive of everyone affected by the *Dobbs* ruling. Our decision to use the original, gendered language is not an oversight; it was our attempt to provide an accurate picture of the current state of the law. Providing the original language is important to meet that goal.

Final Thoughts and Disclaimers

We have made no attempt to judge which state laws will be enforced now that *Roe* and *Casey* are overruled. In practice, this means that several states' summaries will include conflicting laws that may or may not be enforced by the state. To help guide further research into enforcement, we have spent time gathering news articles and other evidence of possible future actions in each state, but we are not responsible for the content of these news outlets, nor do we provide any interpretation of the facts these outlets report. All cited sources reflect the state of legal and executive actions as of December 15, 2022.

We recognize that the state of abortion access in the U.S. and its territories remains in flux and that no print survey can stay current for very long. We intend this survey to provide a starting point for learning about state laws related to abortion, and should not be considered a substitute for original research. If legal advice or an interpretation of state law is needed, please consult an attorney. The views expressed in this survey are those of the contributing authors and not necessarily those of Fried, Frank, Harris, Shriver & Jacobson, LLP or the Law Firm Anti-Racism Alliance.

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Alabama

Ala. Code § 13A-13-7

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Ala. Code § 26-23A-1 to § 26-23A-12

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Ala. Code § 26-23I-2

Ala. Admin. Code r. 420-5-1-.01 to r. 420-5-1-.04

Restrictions | Penalties | Aiding & Abetting | State Constitution | Future Considerations

NOTE: In light of the Supreme Court's decision in *Dobbs v. Jackson Women's Health Org.*, abortion is illegal in Alabama. In addition to a pre-*Roe* ban that was never repealed, Alabama enacted the Human Life Protection Act, which was declared enforceable on June 24, 2022. The Act includes a provision stating that Chapter 23H repeals all existing Alabama statutes and regulations that are "in conflict with or antagonistic to this chapter." Ala. Code § 26-23H-8. Since it is beyond the scope of this survey to determine which state laws Chapter 23H repeals, all Alabama's abortion statutes and regulations are summarized below, whether or not they are still good law.

Restrictions	

	Abortion Bans:
	• No person shall intentionally perform or attempt to perform an abortion. Ala. Code § 26-23H-4.
	  o **Exception** – physician determines that abortion is necessary to prevent a serious health risk to the pregnant woman. Ala. Code § 26-23H-4.
	• Except in case of medical emergency, physician's determination shall be confirmed in writing by a second physician licensed in Alabama. Ala. Code § 26-23H-4.
	• Any person who willfully provides an abortion, including a drug-induced abortion, on any pregnant woman shall be fined not less than $100 nor more than $1,000 and may also be imprisoned or sentenced to hard labor for not more than 1 year. Ala. Code § 13A-13-7.
	  o **Exception**: to preserve the life or health of the pregnant woman.
	
	Abortion Restrictions that may be repealed by Chapter 23H:
	• No person shall intentionally, knowingly, or recklessly perform or induce an abortion when unborn child is viable. Ala. Code § 26-22-3.
	  o **Exceptions:**
	  ▪ Abortion is performed by a physician, and that physician reasonably believes that it is necessary to (1) prevent the death of a pregnant woman, or (2) preserve the health of the pregnant woman.
	  ▪ Physician makes determination that child is not viable.
	• Abortions prohibited at 20+ weeks, except if abortion is necessary to avert patient's death or avert serious risk of substantial and irreversible physical impairment of major bodily function (not including psychological or emotional conditions). Ala. Code § 26-23B-5.
	  o If abortion is performed at 20+ weeks post-fertilization, the pregnancy must be terminated in manner that provides the best opportunity for the unborn child to survive, unless such method of termination poses greater risk of death or substantial irreversible physical impairment to pregnant woman. Ala. Code § 26-23B-5.
	• Dismemberment abortions are prohibited, except when necessary to prevent serious health risks to pregnant woman. Ala. Code § 26-23G-3.
	• Partial birth abortion is prohibited, unless abortion is necessary to save the mother's life. Ala. Code § 26-23-3.
	
	Drug-Induced Abortion Restrictions that may be repealed by Chapter 23H:
	• Only a physician may give, sell, dispense, administer, or otherwise prescribe an abortion-inducing drug. Ala. Code § 26-23E-7.
	• Prescribing physician must first examine the pregnant woman in person, and document the gestational age and intrauterine location of the pregnancy. Ala. Code § 26-23E-7.

Physician Requirements that may be repealed by Chapter 23H:

- Only a physician may perform an abortion. Ala. Code § 26-23E-4.
- Physician performing abortion must first determine likely post-fertilization age of fetus, or must rely on another physician's determination. Ala. Code § 26-23B-4.
- Nursing care recevied by an abortion patient must be given under supervision of a registered professional nurse licensed in Alabama. Ala. Code § 26-23E-5.
- If a child is born alive after an abortion, the attending physician shall act to preserve the life and health of the child as a reasonably diligent and conscientious physician would render to any other child born alive. Ala. Code § 26-23I-2.

Informed Consent Requirements that may be repealed by Chapter 23H:

- Except in case of medical emergency, physician must obtain voluntary and informed consent prior to performing abortion. Ala. Code § 26-23A-4.
- Physician must obtain written consent from a parent or legal guardian prior to performing an abortion for a minor. Ala. Code § 26-21-3.
- Minors who do not obtain consent from a parent/legal guardian may petition the juvenile court in the county in which she lives, or in which the abortion will be performed, for a waiver of the consent requirement. Ala. Code § 26-21-4.
- Minors under the age of 16 must be asked to state the name and age of the father of the unborn child. Ala. Code § 26-23E-10.
    - Minor should be encouraged to share the father's name.
    - If father is 2+ years older than pregnant minor, the facility must report the names of the pregnant minor and the father to local law enforcement and the county department of human resources.
    - If pregnant minor is younger than 14, her name must be reported to the Department of Human Resources.
- Emancipated minors – prior to performing abortion, physician must obtain a written form signed by the emancipated minor that states the minor's name, emancipation status, type of emancipation, and date of emancipation. Ala. Code § 26-21-3.

Reporting Requirements that may be repealed by Chapter 23H:

- The attending physician, or the person in charge of the facility in which an abortion was performed, shall report all induced terminations of pregnancy within 10 days after the month in which the procedure was performed. Ala. Code § 22-9A-13.

Facility Requirements that may be repealed by Chapter 23H:

- An abortion or reproductive health center must be classified as ambulatory health care occupancy, and must meet all standards in the NFPA 101 Life Safety Code. Ala. Code § 26-23E-9.
- No abortion clinic may be located near a school (K-8th grade). Ala. Code § 22-21-35.

	• Further requirements and regulations that supplement the statutory requirements can be found the Alabama Administrative Code. Ala. Admin. Code r. 420-5-1-.01 to r. 420-5-1-.04.

Penalties	**Immunities:**
	• No woman upon whom an abortion is performed or attempted to be performed shall be criminally or civilly liable. Ala. Code § 26-23H-5;
	• No physician confirming the serious health risk to the pregnant woman shall be criminally or civilly liable for the performance of/attempt to perform abortion. Ala. Code § 26-23H-5.
	
	Criminal Penalties:
	• Performing an abortion in violation of Chapter 23H is a Class A felony, punishable by imprisonment for life or from 10-99 years, or by fine of up to $60,000. Ala. Code § 26-23H-6; Ala. Code § 13A-5-6; Ala. Code § 13A-5-11.
	• Attempting to perform an abortion in violation of Chapter 23H is a Class C felony, punishable with imprisonment from 1 year and 1 day to 10 years, and a fine of up to $15,000. Ala. Code § 26-23H-6; Ala. Code § 13A-5-6; Ala. Code § 13A-5-12.
	
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	Immunities that may be repealed by Chapter 23H:
	• No woman shall be held criminally or civilly liable for the following:
	  o General abortion. Ala. Code § 26-23B-6.
	  o Dismemberment abortion. Ala. Code § 26-23G-3.
	  o Partial-birth abortion. Ala. Code § 26-23-6.
	• A physician who complies with parental consent requirements cannot be held liable to the minor upon whom an abortion was performed. Ala. Code § 26-21-7.
	
	Criminal Penalties that may be repealed by Chapter 23H:
	• Class A felony – punishable by imprisonment for life or from 10-99 years, or by fine of up to $60,000. Ala. Code § 13A-5-6; Ala. Code § 13A-5-11. **The following are class A felonies:**
	  o Performing an abortion after fetal viability, except in case of medical emergency. Ala. Code § 26-22-3.
	  o Failing to provide reasonably diligent and conscientious medical care to a child born-alive after an abortion. Ala. Code § 26-23I-2.
	• Class C Felony – punishable with imprisonment from 1 year and 1 day to 10 years, and a fine of up to $15,000. Ala. Code. § 13A-5-6; Ala. Code § 13A-5-12. **The following are class C felonies:**
	  o Intentionally, knowingly or recklessly performing an abortion after viability. Ala. Code § 26-23B-6.
	  o Intentionally, knowingly, or recklessly performing an abortion without proper informed consent, third or more offense. Ala. Code § 26-23A-9.

- Failure to follow Alabama's laws for performing abortion post-viability due to medical emergency. Ala. Code § 26-22-3.
- Performing an abortion if you are not a physician. Ala. Code § 26-23E-12.
- Prescribing or dispensing an abortion-inducing drug without examining the pregnant woman first. Ala. Code § 26-23E-12.
- Violating provisions of the Women's Health Safety Act related to who can perform an abortion and how, in the case of the administrator of an abortion or reproductive health center. Ala. Code § 26-23E-12.
- Violating provisions of the Women's Health Safety Act related to minors under the age of 14, in the case of the administrator of an abortion or reproductive health center. Ala. Code § 26-23E-12.

- Class A misdemeanor – maximum imprisonment of 1 year, maximum fine of $6,000, or both. Ala. Code § 26-23A-9. **The following is a class A misdemeanor:**
  - Intentionally, knowingly, or recklessly performing an abortion without proper informed consent, second offense. Ala. Code § 26-23A-9.
- Class B offense – maximum imprisonment of 6 months, maximum fine of $3,000, or both. Ala. Code § 26-23A-9. **The following is a class B misdemeanor:**
  - Intentionally, knowingly, or recklessly performing an abortion without proper informed consent, first offense. Ala. Code § 26-23A-9.
- Failure to receive parental consent for abortion performed on minor can result in imprisonment in county jail or hard labor for the county for a maximum of 1 year. Ala. Code § 13A-5-7.
  - Fines for violation cannot exceed $6,000. Ala. Code § 13A-5-12.
- Any person who (1) administers to pregnant woman any drug/substance, or uses any instrument or other means, to induce abortion; or (2) aid, abets, or prescribes for the same, will on conviction be fined from $100.00 to $1,000.00, and may also be imprisoned or sentenced to 12 months of hard labor for the county. Ala. Code § 13A-13-7.

Civil Actions & Penalties that may be repealed by Chapter 23H:

- Causes of action for injunctive relief may be maintained against individual who has performed or attempted to perform dismemberment abortion. Ala. Code § 26-23G-4.
- Causes of action for civil damages may be maintained against individual who performed dismemberment abortion. Ala. Code § 26-23G-5.
  - No damages may be awarded to a plaintiff if the pregnancy resulted from plaintiff's criminal conduct.
- Treating physicians may incur civil liability for performing abortion post viability. Ala. Code § 26-23B-7.
- Failure to properly receive consent for an abortion on minor may incur compensatory or punitive damages in civil action suit. Ala. Code § 26-21-6.1.
- Any person who can demonstrate personal injury (including physical injury, emotional distress, or mental anguish), where the injury has resulted

	from abortion/reproductive health center's failure to conform to the requirements of Chapter 23E, may maintain civil action for damages against abortion/reproductive health center, and against administrator of the facility. Ala. Code § 26-23E-13. • Adverse licensure action, including the revocation of medical license Ala. Code § 26-23E-13. • Upon application by the Department of Public Health, a circuit court or any judge thereof shall have jurisdiction for cause shown, to grant a temporary restraining order, a preliminary injunction, a permanent injunction, or any combination of those remedies, restraining and enjoining any person from violating the provisions of this chapter. Ala. Code § 26-23E-15. **Administrative Actions & Penalties that may be repealed by Chapter 23H:** • Violation of the informed consent provisions related to minors may form the basis for professional disciplinary actions under any applicable statute or regulation, and could result in the suspension or revocation of a license. Ala. Code § 26-21-6. • Violations of the Women's Health Safety Act (Ch. 26-23E) may be grounds for an adverse licensure action, up to an including license revocation, for both practitioners and facilities. Ala. Code § 26-23E-14.
Aiding & Abetting	**Third-Party Immunities that may be repealed by Chapter 23H:** • No nurse, technician, secretary, receptionist, non-physician employee/agent, pharmacist, or non-physician individual who fills a prescription or provides instruments or materials used in an abortion at the direction of or to a physician, shall be thereby liable for performing or attempting to perform a dismemberment abortion. Ala. Code § 26-23G-3.
State Constitution	Proposed amendment No. 17-188. Sanctity of Unborn Life • Subsection (a) provides that it is Alabama's public policy to "recognize and support the sanctity of unborn life and the rights of unborn children, including the right to life." • Subsection (c) provides that this constitution does not secure or protect the right to abortion, and does not require the funding of an abortion.
Future Considerations	Just after the Supreme Court overturned *Roe*, Alabama's Attorney General, Steve Marshall, filed an emergency motion to dissolve a preliminary injunction regarding the Alabama Human Life Protection Act, which was granted by the Court a few hours later. See WSFA News, "Court lifts injunction on state abortion law," (Jun. 24, 2022). There have been no further lawsuits filed in Alabama to challenge abortion laws in that state as of July 12, 2022. The Attorney General's office is also reviewing current Alabama law to see if language under § 13A-4-4 governing criminal conspiracy would cover those persons who assist a resident of Alabama in getting an abortion in another state.

	See AL.com, "Is it illegal to help an Alabamian travel to get an abortion? AG's office 'reviewing the matter'," (Jun. 29, 2022). • The language in the Alabama Code reads: "A conspiracy formed in this state to do an act beyond the state, which, if done in this state, would be a criminal offense, is indictable and punishable in this state in all respects as if such conspiracy had been to do such act in this state." Ala. Code § 13A-4-4. On July 10, 2022, news outlets reported that a California doctor plans to offer abortion services on a floating clinic that will operate in federal waters off the Gulf Coast. See AL.com, "Floating abortion clinic planned off Alabama coast in Gulf of Mexico," (Jul. 10, 2022).

Alaska

Alaska Stat. § 08-64-364

Alaska Stat. § 18.16.010 to § 18.16.090

Alaska Stat. § 18.50.245.

Alaska Admin. Code tit. 12, § 40.060 to § 40.140

Restrictions | Penalties | Aiding & Abetting | State Constitution | Future Considerations

Restrictions

Abortions are permitted at any time; there is no gestational age limit.

Abortion Restrictions:

- Only a licensed physician may perform an abortion and the abortion must be performed in a hospital or other facility approved for the purpose. Alaska Stat. § 18.16.010.
- The woman must be domiciled or physically present in the state for 30 days before the abortion. Alaska Stat. § 18.16.010.

Prohibitions:

- Partial-birth abortions may not be performed.
  - **Exception:** when doing so is necessary to save the life of a pregnant woman whose life is endangered by a physical disorder, illness, or injury and no other medical procedure would suffice. Alaska Stat. § 18.16.050

Drug-Induced Abortions:

- The requirements of § 18.16.010 apply to all drug-induced abortions. Alaska Stat. § 08.64.364.
- A physician may not prescribe, dispense or administer abortion-inducing drugs through the mail to a person with whom the physician does not have a prior doctor-patient relationship. Alaska Stat. § 08.64.364.

Informed Consent:

- Consent is informed and voluntary when the woman certifies in writing that she has been verbally informed of the name of the physician performing the abortion, the gestational estimation of the pregnancy and has been provided with materials informing them of the relevant internet information or

information about the nature and risks related to the decision to abort/not abort. Alaska Stat. § 18.16.060.
    - **Exceptions:** In the following cases, informed consent is not required: Alaska Stat. § 18.16.060.
        - When there is a medical emergency that complicates the medical condition of the woman that the immediate termination of the pregnancy is necessary to avert death or a delay in the abortion will lead to serious risk of substantial and irreversible impairment of a major bodily function
        - When the pregnancy is the result of sexual assault
        - When sexual abuse of a minor is involved, or
        - The pregnancy is the result of incest.
- If the patient is under 18, notice or consent must be given to the parent or guardian not less than 48 hours before the abortion is performed. Alaska Stat. § 18.16.020.
    - **Exceptions:**
        - When a court issues an order authorizing the minor to consent. Alaska Stat. § 18.16.020; Alaska Stat. § 18.16.030.
        - When the minor is a victim of abuse perpetrated by one or more of their parents or guardians. Alaska Stat. § 18.16.020.

Physician Requirements:

- The patient shall be examined by a physician licensed in this state, and a written record of the patient's physical and emotional health shall be prepared before performing an abortion. Alaska Admin. Code tit. 12, § 40.080.
- The physician shall make a determination of the gestational age of the fetus. Alaska Admin. Code tit. 12, § 40.090.
    - Fetuses are considered non-viable if it has not developed beyond 150 days after the first day of the last menstrual period. Alaska Admin. Code tit. 12, § 40.140.

Facility Requirements:

- The facility where the abortion is to be performed must be a hospital or facility approved by the Department of Health and Social Services for that purpose or in a hospital operated by the federal gov't. Alaska Stat. § 18.16.010.
- After fetal viability, an abortion may only be performed at a hospital with a neonatal intensive care unit. Alaska Admin. Code tit. 12, § 40.120.

Reporting Requirements:

- Physicians must report all abortions performed on a minor. Alaska Stat. 18.16.040.
- Any facility in which abortions are performed must submit a report within 30 days after the procedure. Alaska Stat. § 18.50.245.
- Physicians must report all abortions they perform outside of a hospital within 30 days of the procedure. Alaska Stat. § 18.50.245.

Penalties	**Immunities:** A woman upon whom a partial-birth abortion is performed may not be prosecuted under Alaska Stat. § 18.16.050 or under any other law if the prosecution is based on that section.
	
	Criminal Actions & Penalties:
	• Performance of an abortion in knowing violation of § 18.6.010 will result in imprisonment for no more than 5 years, or a fine of $1,000, or both. Alaska Stat. § 18.16.010(c).
	• Violation of § 18.16.050 (partial-birth abortion) is a Class C felony punishable by imprisonment up to 5 years and a fine of up to $50,000.
	
	Civil Actions & Penalties:
	• Parents or guardians of a minor may maintain a civil action for compensatory and punitive damages against a physician who violates consent requirements. Alaska Stat. § 18.16.010(e).
	  o Affirmative Defenses:
	  ▪ The minor provided false information to the physician.
	  ▪ A medical emergency existed that prevented obtaining consent.
	• Violation of informed consent requirements
	  o Liability of the physician or healthcare provider.

Aiding & Abetting	No Provision.
State Constitution	The constitution does not protect abortion rights directly, however the Alaska Supreme Court has ruled that the constitution's language regarding a right to privacy does encompass the right to have an abortion and to make medical decisions. See *Valley Hosp. Assn. v. Mat-Su Coalition for Choice*, 928 P. 2d 963 (Alaska 1997). • Art. I, § 1: This constitution is dedicated to the principles that all persons have a natural right to life, liberty, the pursuit of happiness, and the enjoyment of the rewards of their own industry; that all persons are equal and entitled to equal rights, opportunities, and protection under the law; and that all persons have corresponding obligations to the people and to the State. • Art. I, § 22: The right of the people to privacy is recognized and shall not be infringed. The legislature shall implement this section.
Future Considerations	Since abortion rights are protected under the state constitution, only a constitutional amendment could restrict abortion access in Alaska. There are two ways to amend the constitution. First, the legislature could do so with a two-thirds majority approval. Second, Alaskans could choose to hold a constitutional convention, an option that only comes around once a decade.

	In November 2022, Alaskans overwhelmingly voted against calling a convention. See Alaska Public Media, "Alaskans say no to constitutional convention," (Nov. 9, 2022). Governor Mike Dunleavy, who was re-elected in November 2022, supported the call for a constitutional convention to address abortion. He has also stated that he will submit a resolution for a proposed constitutional amendment to prohibit abortion that will likely be debated in the next legislative session beginning sometime in January 2023. See Press Release, "Governor Dunleavy Reacts to the U.S. Supreme Court Decision Overturning Roe v. Wade," (Jun. 24, 2022). Also, NOTE --- Alaska Stat. § 18.16.020 (consent for minors) and § 18.16.030 (judicial bypass for consent) were held unconstitutional by Planned Parenthood of *The Great Nw. v. State*, 375 P.3d 1122 (Alaska 2016) because the statute was not least restrictive alternative and violated fundamental right to privacy. Though they were held unconstitutional, these laws remain on the books.

Arizona

Ariz. Rev. Stat. § 13-3603 to § 13-3605

Ariz. Rev. Stat. § 36-449.01 to § 36-449.03

Ariz. Rev. Stat. § 36-2151 to § 36-2164

Ariz. Rev. Stat. § 36-2301 to § 36-2303

Ariz. Rev. Stat. § 36-2321 to § 36-2326

Ariz. Rev. Stat. § 36-3604

Ariz. Admin. Code § R9-10-119

Ariz. Admin. Code § R9-10-1501 to § R9-10-1515

Restrictions | Penalties | Aiding & Abetting | State Constitutions | Future Considerations

NOTE: In 1901, Arizona enacted a territorial ban on any abortion not necessary to save a pregnant woman's life that has never been repealed. Some political leaders want to begin enforcing this older law. See Future Considerations below. In addition to the pre-*Roe* ban, additional legislation to further restrict abortion will go into effect in September 2022. The legislation specifies that it does not "repeal, by implication or otherwise, section 13-3603, Arizona Revised Statutes, or any other applicable state law regulating or restricting abortion." The question of whether or not these conflicting abortion restrictions can coexist is the subject of *Planned Parenthood v. Brnovich*, No. 2 CA-CV 2022-0116 (Ariz. Ct. App. filed Sept. 27, 2022), oral arguments in which were held on November 30, 2022. The following summary of state law includes the legislation effective in September, the 1901 outright ban, and all other laws currently enacted in Arizona, regardless of whether or not they conflict with one another or are enforceable.

Restrictions

Pre-*Roe* Abortion Ban:

- A person cannot provide, supply, or administer to a woman or procure such woman to take any medicine, drugs or substance, or employ any instrument, with intent to procure the miscarriage of such woman, unless it is necessary to save her life. Ariz. Rev. Stat. § 13-3603.
    - There are no exceptions for rape, incest, or fetal abnormality. Ariz. Rev. Stat. § 13-3603.

Abortion Restrictions Effective September 24, 2022:

- Except in the case of a medical emergency, a physician may not perform an abortion if the probable gestational age of the fetus is greater than fifteen weeks. Ariz. Rev. Stat. § 36-2322.
    - There are no exceptions for rape, incest, or fetal abnormality. Ariz. Rev. Stat. § 36-2322.

Additional Abortion Restrictions that have not been repealed:

- Abortions cannot be performed after 20 weeks gestational age. Ariz. Rev. Stat. § 36-2159.
- Abortions cannot be performed after the fetus is "viable," defined as reaching a stage of fetal development where there is a reasonable probability of sustained survival outside the uterus, with or without artificial support. Ariz. Rev. Stat. § 36-2301.01.
- Abortions can be performed when, on the basis of a physician's good faith clinical judgment, a medical condition necessitates the immediate abortion of the pregnancy to prevent a woman's death or avoid serious risk of substantial and irreversible impairment of a major bodily function. Ariz. Rev. Stat. § 36-2151; Ariz. Rev. Stat. § 36-2301.01
- Surgical abortions may only be performed by a licensed physician. Ariz. Rev. Stat. § 36-2155.
- Partial-birth abortions are not allowed, except in the case of a medical emergency. Ariz. Rev. Stat. § 36-3603.01.
- Abortions based on the sex or race of the fetus are prohibited. Ariz. Rev. Stat. § 36-2301.02.
- Abortions sought solely because of a genetic abnormality are prohibited. Ariz. Rev. Stat. § 36-2301.02.

Drug-Induced Abortion Requirements that have not been repealed:

- An abortion inducing drug can only be provided by a qualified physician and cannot be provided via courier, delivery, or mail service. Ariz. Rev. Stat. § 36-2160.
- A health care provider cannot use telehealth to provide an abortion. Ariz. Rev. Stat. § 36-3604.
- If a pregnant woman has taken mifepristone as part of the two-part regimen to terminate her pregnancy, the abortion staff has additional informational requirements. Ariz. Rev. Stat. § 36-2153(B).

Physician Requirements that have not been repealed:

- If a fetus is delivered alive as the result of an abortion, the physician must do everything possible to maintain its life. Ariz. Rev. Stat. § 36-2301.
- Before an abortion can be performed or induced, a physician must determine the probable gestational age of the fetus. Ariz. Rev. Stat. § 36-2159.

- Physicians performing an abortion must complete and sign an affidavit certifying that the person is not aborting the fetus because of the fetus's sex, race, or genetic abnormality. Ariz. Rev. Stat. § 36-2157.
- For a surgical abortion, a physician with admitting privileges at a health care institution that is classified by the abortion clinic director as a hospital and that is within thirty miles of the abortion clinic must remain on the premises of the abortion clinic until all patients are stable or to facilitate the transfer of emergency cases. Ariz. Rev. Stat. § 36-449.03(G).

Informed Consent Requirements that have not been repealed:

- Voluntary and informed consent is required, except in the case of medical emergency. Ariz. Rev. Stat. § 36-2153; Ariz. Rev. Stat. § 36-2156; Ariz. Rev. Stat. § 36-2158.
- Abortions cannot be performed on an unemancipated minor without written consent from a parent/guardian, except in the case of a medical emergency, court authorization, or pregnancy as a result of incest. Ariz. Rev. Stat. § 36-2152.
- Except in the case of a medical emergency, consent to an abortion is voluntary and informed if, at least twenty-four hours before the abortion is performed or induced, the physician performs an ultrasound and informs the pregnant person of the medical risks, alternatives, probably gestational age, and the nature of the proposed procedure or treatment. Ariz. Rev. Stat. § 36-2153; Ariz. Rev. Stat. § 36-2156.
- If a pregnant person is seeking an abortion of a fetus diagnosed with a lethal or nonlethal fetal condition, the physician performing the abortion must inform the pregnant person of all hospice programs, any evidence-based information concerning the range of outcomes for individuals living with such condition, and support services, at least twenty-four hours before the abortion is performed. Ariz. Rev. Stat. § 36-2158.
- If a medical emergency compels an abortion, the physician must inform the patient of why it is needed to save her life or health. Ariz. Rev. Stat. § 36-2153(C).

Record/Reporting Requirements that have not been repealed:

- A hospital or facility where abortions are performed must submit a report of each abortion performed there to the department of health services. Ariz. Rev. Stat. § 36-2161; Ariz. Admin Code § R9-10-119.
- A health professional who provides medical care or treatment to a pregnant person who needs medical care because of a complication(s) resulting from having undergone an abortion or attempted abortion must file a report with the department of health services. Ariz. Rev. Stat. § 36-2162.
- A physician must report to the Department of Health the number of women to whom the physician has provided information regarding an ultrasound or auscultation of a fetal heartbeat. Ariz. Rev. Stat. § 36-2162.01.

Record/Reporting Requirements Effective September 24, 2022

- In every case in which a physician performs an abortion when the gestational age is greater than fifteen weeks, the physician must file and

sign a report within fifteen days after the abortion. Ariz. Rev. Stat. § 36-2322.

Facility Requirements that have not been repealed:

- An abortion clinic must post visible signs that state it is unlawful for any person to force a person to have an abortion. Ariz. Rev. Stat. § 36-2153(H).
- Abortion clinic directors must prescribe rules and standards as listed in the statute for the clinic's physical facilities, supplies and equipment, personnel, medical screening and evaluation of each abortion patient, the abortion procedure, the final disposition of bodily remains, and standards for follow-up visits. Ariz. Rev. Stat. § 36-449.03.

Penalties

Pre-*Roe* Ban Criminal Penalties:

- Any person who performs a medical or surgical abortion shall be punished by imprisonment in the state prison for not less than two years nor more than five years. Ariz. Rev. Stat. § 13-3603.

Criminal Penalties Effective September 24, 2022

- Except in the case of a medical emergency, any physician who performs an abortion where the gestational age of the fetus is over fifteen weeks commits a class 6 felony, punishable by up to two years imprisonment. Ariz. Rev. Stat. § 36-2324.

Civil Actions & Penalties Effective September 24, 2022:

- A physician who knowingly or intentionally fails to file with the department any report required by section 36-2322 or knowingly or intentionally delivers a report that contains a false statement is subject to a civil penalty of $10,000. Ariz. Rev. Stat. § 36-2325.

Administrative Actions & Penalties Effective September 24, 2022:

- Except in the case of a medical emergency, any physician who performs an abortion after fifteen weeks gestational age commits an act of unprofessional conduct and the physician's license shall be suspended or revoked. Ariz. Rev. Stat. § 36-2325.

Immunities that have not been repealed: A woman is generally not held liable for procuring an abortion. Ariz. Rev. Stat. § 13-3603.01; Ariz. Rev. Stat. § 13-3603.02; Ariz. Rev. Stat. § 36-2159;

Criminal Penalties that have not been repealed:

- Class 3 felonies are punishable by two and a half to seven years imprisonment. Ariz. Rev. Stat. § 13-702. **The following are class 3 felonies:**
  - Performing an abortion based on the sex or race of the fetus. Ariz. Rev. Stat. § 13-3603.02.
  - Using force or the threat of force to intentionally injure or intimidate any person for the purpose of coercing an abortion based on sex, race, or genetic abnormality. Ariz. Rev. Stat. § 13-3603.02.

    - Soliciting or accepting money to finance an abortion based on sex, race, or genetic abnormality. Ariz. Rev. Stat. § 13-3603.02.
- Any person who provides or uses any instrument with intent to procure a miscarriage, shall be punished by imprisonment for two to five years. Ariz. Rev. Stat. § 36-3603.
- A class 5 felony is punishable by a maximum of two years imprisonment. Ariz. Rev. Stat. § 13-702. **The following are class 5 felonies:**
    - Violate Chapter 23 of the Arizona Revised Statutes. Ariz. Rev. Stat. § 36-2303.
- A class 6 felony is punishable by up to one and a half years imprisonment. Ariz. Rev. Stat. § 13-702. **The following are class 6 felonies:**
    - Knowingly performing a partial-birth abortion. Ariz. Rev. Stat. § 36-3603.01.
    - Knowingly performing an abortion sought based on sex, race, or genetic abnormality. Ariz. Rev. Stat. § 13-3603.02.
- A class 1 misdemeanor is punishable by up to six months in prison and a fine of up to $2,500. Ariz. Rev. Stat. § 13-707. **The following are class 1 misdemeanors:**
    - Performing an abortion on a minor in violation of § 36-2152. Ariz. Rev. Stat. § 13-707; Ariz. Rev. Stat. § 13-802.
    - Performing an abortion on a viable fetus after 20 weeks. Ariz. Rev. Stat. § 36-2159(C).
    - Delivering a falsified required report. Ariz. Rev. Stat. § 36-2163(I).
- Any person who advertises abortion services, including for drug-induced abortions, is guilty of a misdemeanor. Ariz. Rev. Stat. § 13-3605.

Civil Actions & Penalties that have not been repealed:

- A woman, the father of the unborn child who is married to that woman, or the maternal grandparents if the woman is a minor, may bring a civil against a physician who performed an abortion in violation of § 13.3603.02 for monetary damages for all injuries, either emotional or physical. Ariz. Rev. Stat. § 13-3603.02.
- A minor's parent/guardian may bring a civil action against a person who violated § 36-2152. Ariz. Rev. Stat. § 36-2152.
- A physician who violates the informed consent requirement may be subject to a civil action, which can be initiated up to six years after the violation occurred. Ariz. Rev. Stat. § 36-2153.
- A person who performs an unlawful abortion on a viable fetus after 20 weeks is liable to civil claims. Ariz. Rev. Stat. § 36-2159(E)-(G).
- Any facility that willfully violates reporting requirements is subject to civil penalties. Ariz. Rev. Stat. § 36-2163(J).
- An abortion clinic that is not in substantial compliance with the article and the rules adopted pursuant to the article may be subject to a civil penalty pursuant to 36-431.01. Ariz. Rev. Stat. § 36-449.03.
- A physician is liable for civil damages for failing to provide the required information to a pregnant person who is procuring an abortion and whose fetus has a lethal or nonlethal fetal condition. Ariz. Rev. Stat. § 36-2158.
- A civil action may be brought by the woman, the father of the human fetus delivered alive, or the maternal grandparents if the woman is a minor, in the case where a fetus was delivered alive and then later died due to the

	physician's failure to use all available means to maintain the life of the human fetus. Ariz. Rev. Stat. § 36-2301. o **Exception**: no person whose criminal conduct caused the woman's pregnancy may maintain a cause of action under this section. **Administrative Actions & Penalties that have not been repealed:** • A physician who violates the informed consent requirements commits an act of unprofessional conduct and is subject to license suspension or revocation. Ariz. Rev. Stat. § 36-2156; Ariz. Rev. Stat. § 36-2158. • A physician who performs an unlawful abortion on a viable fetus after 20 weeks is subject to license suspension or revocation. Ariz. Rev. Stat. § 36-2159(D). • Violating the reporting requirements of §§ 36-2161 – 2163 may result in a license suspension or revocation. Ariz. Rev. Stat. § 36-2163(H). • Performing a partial-birth abortion could result in a license suspension or revocation. Ariz. Rev. Stat. § 36-3603.01. • An abortion clinic that is not in substantial compliance with the article and the rules adopted pursuant to the article may be subject to a license suspension or revocation. Ariz. Rev. Stat. § 36-449.03. • A physician who fails to provide the required information to a pregnant person who is seeking an abortion and the fetus has a lethal or nonlethal fetal condition is subject to a license suspension or revocation. Ariz. Rev. Stat. § 36-2158. • A health care provider who uses telehealth to provide an abortion commits an act of unprofessional conduct and is subject to license suspension or revocation. Ariz. Rev. Stat. § 36-3604.
Aiding & Abetting	**Third-Party Restrictions that have not been repealed:** • A person who intentionally causes, aids, or assists a minor in obtaining an abortion is guilty of a class 1 misdemeanor, punishable by up to six (6) months in prison and a fine of up to $2,500. Ariz. Rev. Stat. § 36-2152. • A person who does not report violations of the restrictions against performing abortions for race or sex selection, or because of genetic abnormality, shall be subject to a civil fine of not more than $10,000. Ariz. Rev. Stat. § 13-3603.02.
State Constitution	Article II, section 8 of the Arizona State Constitution provides a general right to privacy and states "No person shall be disturbed in his private affairs, or his home invaded, without authority of law." A.R.S. Const. Art. II, § 8.
Future Considerations	Attorney General Mark Brnovich tweeted on June 29, 2022 that the § 13-3603 abortion ban should be in effect with *Roe* overturned. He stated his plans to file in court to lift an injunction on the old law. On Oct. 26, 2022, Brnovich joined an agreement between attorneys for abortion rights advocates that he would not challenge the injunction until multiple lawsuits in the state have finished winding their way through the courts. See *Isaacson v. Arizona*, No. 2022-013091 (Ariz. Super. Ct. filed Oct. 25, 2022).

	Brnovich is term-limited and will no longer be Attorney General come January 2023. His likely successor, Democrat, Kris Mayes, has publicly stated that she will not enforce the pre-*Roe* law. See Yahoo!News, "Can Arizona's 1864 anti-abortion law coexist with newer statute? Justices grill attorneys," (Dec. 1, 2022). Previously, Republican Governor Doug Ducey had said that the 15-week ban took precedence over the pre-statehood law. See The Associated Press, "Arizona's Attorney General Says a pre-1901 Abortion Ban is Enforceable," (Jun. 30, 2022). On November 30, 2022, Arizona Court of Appeals judges heard oral arguments in *Planned Parenthood v. Brnovich*, No. 2 CA-CV 2022-0116 (Ariz. Ct. App. filed Sept. 27, 2022), a case examining whether or not the near-total pre-*Roe* abortion ban can coexist with a more recent 15-week restriction that took effect after the decision in *Dobbs* was handed down. State AG Mark Brnovich has argued that the laws can be harmonized as both could be enforced at a prosecutor's discretion. Confusion over the state of the law has caused abortion providers in Arizona to stop and start services. The Court has not indicated when to expect a ruling. See Bloomberg, "Two Arizona Abortion Laws Can 'Coexist,' Attorney General Argues," (Nov. 30, 2022). Arizona is one of several states that includes a "fetal personhood" provision in the Code. This provision is now at the heart of litigation related to abortions performed in the state. AP News, "Arizona says 'personhood' abortion law can't lead to charges," (Jul. 8, 2022). A recent effort to put a constitutional amendment on the ballot in November that would protect a right to an abortion in Arizona failed, though organizers say they will try again for 2024. AZ Central, "Abortion rights won't be on the Arizona ballot in November as signature drive comes up short," (Jul. 7, 2022).

Arkansas

Ark. Code § 5-61-101 to Ark. Code § 5-61-102

Ark. Code § 5-61-301 to Ark. Code § 5-61-303

Ark. Code § 5-61-401 to Ark. Code § 5-61-404

Ark. Code § 20-16-601 to Ark. Code § 20-16-817

Ark. Code § 20-16-1101 to Ark. Code § 20-16-1510

Ark. Code § 20-16-1701 to Ark. Code § 20-16-2107

Ark. Code. § 20-16-2301 to Ark. Code. § 20-16-2509

Ark. Code Ann. § 20-18-603

Ark. State Medical Board, Regulation 36

Restrictions | Penalties | Aiding & Abetting | State Constitution | Future Considerations

NOTE: With the release of the U.S. Supreme Court opinion in *Dobbs v. Jackson Women's Health Organization*, Arkansas has banned all abortions across the state with an exception for medical emergencies, but none for rape or incest. In addition to a pre-*Roe* ban that was never repealed, Arkansas has also recently enacted two separate bans with identical prohibitions, one of which was a trigger ban. Neither the pre-*Roe* ban, the recent ban, nor the trigger ban specifically repeal any of the other abortion-related statutes in Arkansas. The following summary of state law includes the outright bans, the trigger ban, and all other laws currently enacted in Arkansas, regardless of whether or not they conflict with one another or are enforceable.

Restrictions

Abortion Bans:

- It is unlawful for any person to produce an abortion by any means, or to give any abortion drugs to a pregnant woman, no exceptions. Ark. Code Ann. § 5-61-102.
- No abortion shall be performed, except to save the life of a pregnant woman in a medical emergency. Ark. Code Ann. § 5-61-304; Ark. Code Ann. § 5-61-404.
    - The ban does not cover contraceptive measures or drugs if they are administered before the time when a pregnancy could be determined through conventional medical testing.
    - There are no exceptions for rape, incest or fetal abnormality.

- A medical emergency is defined solely as a physical disorder, physical illness, physical injury or physical condition. Ark. Code Ann. § 5-61-303; Ark. Code Ann. § 5-61-403.

- It is not considered an abortion to save the life or preserve the health of the unborn child, to remove a dead unborn child caused by spontaneous abortion, or to remove an ectopic pregnancy. Ark. Code Ann. § 5-61-303; Ark. Code Ann. § 5-61-403.

Additional Abortion Restrictions that have not been repealed:

- An abortion may not be performed on a viable fetus, unless necessary to preserve the life or health of the woman, or if the pregnancy is the result of rape or incest perpetrated on a minor that has been reported to law enforcement. Ark. Code. Ann. § 20-16-705.
  - Viability means the stage of pregnancy when there is a reasonable likelihood of the sustained survival of the fetus outside of the mother's body, with or without artificial life support. Ark Code. Ann. § 20-16-702.
- Abortions performed on viable fetuses must involve the technique most likely to preserve the life and health of the fetus, unless such technique would present a greater risk to the life and health of the mother, and must also be attended by a second physician who would be available to care for a born-alive fetus. Ark Code. Ann. § 20-16-706; Ark Code. Ann. § 20-16-707.
- No partial-birth abortions may be performed unless it is to save the life of the mother endangered by a physical disorder, illness, or injury. Ark. Code Ann. § 20-16-1203.
- No abortions may be performed after the detection of a fetal heartbeat on a fetus that is 12 weeks gestational age or greater. Ark. Code Ann. § 20-16-1305.
  - **Exceptions**:
    - To save the life of the mother.
    - If the pregnancy was the results of rape or incest and the crime has been reported to law enforcement.
- No abortion may be performed when the gestational age of the fetus has been determined to be greater than 20 weeks. Ark. Code Ann. § 20-16-1405.
  - **Exception:** For a medical emergency, which does not include a condition based upon a claim that the woman intends self-harm that would result in her own death or substantial impairment of a major bodily function.
- Dismemberment abortions are prohibited, unless it is necessary to prevent a serious health risk to the pregnant woman. Ark. Code Ann. § 20-16-1803.
- Abortions for sex-selection are prohibited. Ark. Code Ann. § 20-16-1904.
- No abortion may be performed if the gestational age of the fetus has been determined to be 18 weeks or greater. Ark. Code Ann. § 20-16-2004.

- **Exceptions**: for a medical emergency, or in the case of rape or incest if the crime has been reported to law enforcement.

- No abortion may be performed if a fetus has been diagnosed with, or the mother believes for any reason that the fetus has Down syndrome. Ark. Code Ann. § 20-16-2103.
  - **Exception**: in the case of rape or incest.

Drug-Induced Abortion Requirements that have not been repealed:

- No abortion inducing drugs may be provided via the mail. Ark. Code. Ann. § 1504.
- Before providing a drug-induced abortion, a physician must examine the woman seeking an abortion in person, and must also schedule a follow-up visit. Ark. Code Ann. § 20-16-1504.
- When performing an abortion using mifepristone or another drug or chemical regimen, physicians must be in the room physically at the initial administration of the drug, and make reasonable efforts to ensure that patients return between 12 and 18 days after their visit so the physician can confirm the pregnancy has been terminated and asses the patient's medical condition. Ark. Code Ann. § 20-16-603.
- Voluntary, informed consent and a 72-hour waiting period is required. Ark. Code Ann. § 20-16-2503.

Physician Requirements that have not been repealed:

- Only physicians licensed to practice medicine in Arkansas, who are also board-certified or board-eligible in obstetrics or gynecology, may perform an abortion in the state. Ark. Code Ann. § 5-61-101(a); Ark. Code. Ann. § 20-16-606.
- Prior to receiving informed consent, a physician or qualified technician must perform an ultrasound on the pregnant woman, provide a simultaneous verbal explanation of the ultrasound, including a description of the fetus, and display the ultrasound images so the woman may choose to view them. The ultrasound must be retained in the woman's medical record. Ark. Code Ann. §§ 20-16-602.
  - **Exception:** In the case of a medical emergency that could involve the death or serious risk of substantial and irreversible physical impairment. Medical emergencies do not include psychological or emotional conditions. Ark. Code Ann. § 20-16-602.
- Physicians required to retain description of efforts made to comply with section on drug-induced abortion; including date, time, and name identification of the person making the efforts. Ark. Code Ann. § 20-16-603.
- When performing an abortion on a woman less than seventeen years of age, the physician must preserve fetal tissue and submit that tissue to the State Crime Laboratory. Ark. Code Ann. § 12-18-108.
- If an abortion results in a live birth, the physician must provide medical care and transfer the birth to an emergency care physician. Ark. Code Ann. § 20-16-604.

- When performing an abortion on a viable fetus, a physician must certify the available methods and techniques considered and the reasons for choosing the method that was used. Ark Code. Ann. § 20-16-706.
- When performing an abortion after 20 weeks gestational age, the physician must do the following:
    - Furnish statutorily required information on the pain-capability of the fetus and obtain a certification from the pregnant person that they received and were able to review the information. Ark. Code. Ann. §§ 20-16-1103; Ark. Code. Ann. §§ 20-16-1105.
        - Physicians must keep this information on file for three years after the abortion.
    - Inform the pregnant person whether anesthetic/analgesic would relieve the pain of the fetus. Ark. Code. Ann. § 20-16-1104.
    - Inform the pregnant person in cases of medical emergency why the abortion is necessary and why even a 24- hour delay could create serious risks. Ark. Code. Ann. § 20-16-1107.
- Before performing an abortion, a physician must first determine if there is a fetal heartbeat. Ark. Code Ann. § 20-16-1303.
- Before performing an abortion when there is a heartbeat in the case of rape/incest, a physician must first file documentation saying that the crime has been reported to law enforcement with the pregnant person's record. Ark. Code Ann. § 20-16-1305.
- Abortions may not be performed until the physician performing or inducing the abortion has determined the probable post-fertilization age of the fetus or relied on such a determination made by another physician Ark. Code. Ann. § 20-16-1404
- Before performing an abortion of a fetus that is more than 20 weeks gestational age because of rape/incest, a physician must first file documentation saying that the crime has been reported to law enforcement with the pregnant person's record. Ark. Code Ann. § 20-16-1405.
- When performing an abortion on a fetus more than 20 weeks old, physicians must use all means to give the fetus the best chance to survive. Ark Code. Ann. § 20-16-1405.
- In cases of medical emergency, the physician must inform the pregnant person why the abortion is necessary within the next 24 hours. Ark. Code. Ann. § 20-16-1706.
- Physician must verify that the pregnant person has received a resource assistance offer prior to performing an abortion, unless there is a medical emergency. Ark. Code. Ann. § 20-16-2403; Ark. Code Ann. § 20-16-2404.

Informed Consent Requirements that have not been repealed:

- Informed consent must be given orally and through the receipt of certain materials at least 72 hours before abortion is performed; a 72 hour reflection period is mandatory. Ark. Code Ann. § 20-16-1703.
    - **Exception**: for a medical emergency. Ark. Code Ann. § 20-16-1706.
- No person shall intentionally cause an unemancipated minor to obtain an abortion without parental consent. Ark. Code. Ann. § 12-18-210.

- Before performing an abortion on an unemancipated minor, a physician must have first obtained notarized, written consent and proof of identification and relationship from both the pregnant woman and one of her parents or guardians. Ark Code. Ann. §§ 20-16-804; Ark Code Ann. § 805; Ark. Code Ann. § 806.
    - **Exceptions:**
        - In the case of a medical emergency, except that in such instance, a physician must notify the minor's parents or guardians within twenty-four hours after the abortion procedure. Ark. Code. Ann. § 20-16-807.
        - A pregnant minor may petition a judge for a waiver of the intent requirement. Ark. Code Ann. § 20-16-809.
    - Consent is not required if guardian/custody order has expired or is no longer in effect. Ark. Code Ann. § 20-16-813.
- When a fetus has been diagnosed with a lethal anomaly, informed consent requires the doctor to inform the pregnant person 72 hours before the abortion that perinatal palliative care is available. Ark. Code Ann. § 20-16-2304.
- A 72 hour waiting period and informed voluntary consent is necessary for a drug-induced abortion. Ark. Code Ann. § 20-16-2503.

Record/Reporting Requirements that have not been repealed:

- Physicians must report all abortions to the Department of Health. Ark. Code Ann. § 20-16-1406.
- Physicians required to report abortions resulting in live births which take place in a hospital or another health care facility. Ark. Code Ann. § 20-16-604.
- Physicians and health care facilities must report any complications that happen during abortion to the department of health within three business days (for physicians) or 30 calendar days (for facilities). Ark. Code. Ann. § 20-16-605.
- Physicians must report the number of medically necessary abortions performed per year. Ark Code. Ann. § 20-16-608.
- If a physician is performing an abortion on a viable fetus resulting from the rape or incest of a minor, they must file documentation that the crime has been reported in the pregnant woman's medical record; and report the total number of similar abortions performed to the Department of Health. Ark Code. Ann. § 20-16-705.
- For each abortion, it is necessary to report whether parental consent was necessary, obtained, or waived by judicial waiver. Ark. Code Ann. § 20-16-814.
- Physicians must report on pain-capable abortions and disclosures. Ark. Code. Ann. § 20-16-1108.
- A physician must report all abortions where fetal heartbeats have been detected performed because of rape or incest. Ark. Code Ann. § 20-16-1305.
- A physician must report all abortions of fetuses greater than 20 weeks gestational age performed because of rape or incest**.** Ark. Code Ann. § 20-16-1405.

- Physician must report chemical abortions within 3 days to the FDA and the Arkansas state medical board. Ark. Code Ann. § 20-16-1505.
- A physician must report all abortions of fetuses greater than 18 weeks. Ark. Code Ann. § 20-16-2004.
- Physicians and facilities must report drug-induced abortions to the Department of Health. Ark. Code Ann. § 20-16-2504.
- Physicians and facilities must report all "induced terminations of pregnancy" to the Department of Health. Ark. Code Ann. § 20-18-603.

Facility Requirements that have not been repealed:

- Abortion clinics must enter into agreements with a licensed acute care hospital capable of treating patients who have had unforeseen consequences from an abortion procedure. Ark. Code. Ann. § 20-9-312.
- Clinics must post a sign informing women that it is against the law for an abortion to be coerced. Ark. Code Ann. § 20-16-1705.
    - Continued posting of the sign is a condition of licensure. Ark. Code Ann. § 20-16-1705.

Penalties

In general, Arkansas does not provide for criminal or civil penalties against a woman who is seeking an abortion.

Criminal Penalties that have not been repealed:

- Unclassified Felony; punishable by up to 10 years in prison and a $100,000 fine:
    - Performing an abortion without medical necessity. Ark. Code Ann. § 5-61-304; Ark. Code Ann. § 5-61-404.
        - Affirmative Defense: providing medical treatment that results in the accidental or unintentional injury or death to the unborn child.
- Class D felonies are punishable by a fine up to $10,000. Ark. Stat. Ann. § 5-4-201(a)(2). Class D felonies are punishable by up to 6 years in prison. Ark. Stat. Ann. § 5-4-401(a)(5). **The following are Class D felonies:**
    - To perform any abortion, including a drug-induced abortion. Ark. Code Ann. § 5-61-102.
    - Performing an abortion as an unlicensed physician, or a physician not specialized in the required field. Ark. Code Ann. § 5-61-101; Ark Code. Ann. § 20-16-606.
    - Experimenting scientifically on a born-alive infant. Ark. Code. Ann. § 20-16-604.
    - Performing a partial-birth abortion without medical necessity. Ark. Code. Ann. § 20-16-1203.
    - Performing an abortion upon a fetus greater than 20 weeks in gestational age. Ark. Code Ann. § 20-16-1407.
    - Performing a dismemberment abortion. Ark. Code Ann. § 20-16-1805.
    - Performing an abortion of a fetus of more than 18 weeks in gestational age Ark. Code. Ann. § 20-16-2004.
    - Performing an abortion if the fetus has been diagnosed with Down syndrome. Ark. Code. Ann. § 20-16-2104.

- Class A misdemeanors are punishable by a fine up to $2,500. Ark. Stat. Ann. § 5-4-201(b)(1). Class A misdemeanors are punishable by up to 1 year in prison. Ark. Stat. Ann. § 5-4-401(b)(1). **The following are Class A misdemeanors:**
    - Recklessly or carelessly violate any of the regulations around live birth. Ark. Code. Ann. § 20-16-604.
    - Abort a viable fetus. Ark Code. Ann. § 20-16-704; Ark Code. Ann. § 20-16-705.
    - Abort a viable fetus in the case of rape or incest on a minor without following the correct documentation protocols. Ark Code. Ann. § 20-16-704; Ark Code. Ann. § 20-16-705.
    - Use methods or techniques other than those most likely to preserve the life of a viable fetus, and fail to certify as to those methods and techniques. Ark Code. Ann. § 20-16-704; Ark Code. Ann. § 20-16-706.
    - Perform an abortion on a viable fetus without a second attending physician. Ark Code. Ann. § 20-16-704; Ark Code. Ann. § 20-16-707.
    - Perform an abortion in violation of the consent requirements for abortions on minors/incompetents. Ark. Code Ann. § 20-16-811.
    - Knowingly or recklessly perform an abortion in violation of the notification requirements of the pain-capable infant notification act. Ark. Code. Ann. § 20-16-1109.
    - Violate any of the provisions around chemical abortions. Ark. Code Ann. § 20-16-1506.
    - Violate the rules around informed consent. Ark. Code Ann. § 20-16-1709.
    - Perform an abortion based on sex-selection. Ark. Code Ann. § 20-16-1905.
    - Violate the waiting period/ informed consent requirements necessary for chemical abortion. Ark. Code Ann. § 20-16-2507.
- Falsification of report is a class C misdemeanor, which is punishable by a fine not exceeding $500, or not less than 3 years nor more than 10 years in prison. Ark. Code Ann. § 20-16-1406.
- Failure to follow the rules related to resource access assistance under § 20-16-2403 will result in a fine assessed against a physician or an abortion clinic of $5,000 for each violation. Ark. Code Ann. § 20-16-2409.

Civil Actions & Penalties that have not been repealed:

- A civil action may be brought by any person adversely affected against any other person who intentionally causes, aids or assists a minor to obtain an abortion without parental consent. Damages, including punitive damages, attorney's fees, and litigation costs may also be awarded. Ark. Code. Ann. § 12-18-210.
- A civil action or a general malpractice action may be brought by the pregnant woman, or the father or grandparents of an unborn child against any physician for any of the following acts:
    - Violations of laws and regulations related to born-alive infants. Ark. Code Ann. § 20-16-604.

- Violations of informed consent laws for both adult women and unemancipated minors. Ark. Code Ann. § 20-16-811; Ark. Code Ann. § 20-16-1710.
- Non-compliance with reporting requirements related to drug-induced abortions. Ark. Code Ann. § 20-16-1507.
- Violations of waiting period requirements related to drug-induced abortions. Ark. Code Ann. § 20-16-2508.
- For a failure to follow requirements regarding drug-induced abortions. Ark. Code Ann. § 20-16-603; Ark. Code Ann. § 20-16-1507; Ark. Code Ann. § 20-16-2508.
- For a failure to follow the information and disclosure requirements of the Unborn Child Pain Awareness and Prevention Act. Ark. Code Ann. § 20-16-1110.
- For the performance of a partial-birth abortion; money damages for all injuries, both psychological and physical, along with statutory damages may be awarded. Ark. Code. Ann. § 20-16-1205.
  - NOTE: the father may only bring an action in this instance if he is married to the mother at the time of the abortion.
- Violations of the informed consent rules. Ark. Code Ann. § 20-16-1710.
- Performance of an abortion because of Down syndrome. Ark. Code Ann. § 20-16-2105.

- A wrongful death action or an action for injunctive relief may be brought by any parent of the aborted infant, or by the parents of the pregnant woman if she is a minor, in the following circumstances:
  - Violations of the laws related to born-alive infants. Ark. Code Ann. § 20-16-604.
  - Violations of informed consent requirements for unemancipated minors. Ark. Code Ann. § 20-16-811.
  - Violations of rules related to drug-induced abortions. Ark. Code Ann. § 20-16-1507.
- A civil action may be brought by the parents of an unborn child for the performance of an abortion on a fetus greater than 20 weeks gestational age; damages may be awarded. In addition, an action for injunctive relief may be brought by the parents of the unborn child, any person who is a spouse, sibling, or guardian, the woman's provider, a prosecuting attorney, or the Attorney General. Ark. Code Ann. § 20-16-1408.
- An action for injunctive relief may be maintained by any citizen of the county in which the action occurred against any person who failed to follow requirements concerning drug-induced abortions. Ark. Code Ann. § 20-16-603.
- A civil action may be maintained by the Attorney General to recover a $500 penalty assessed against a physician or facility that violates the reporting requirements related to abortion complications. Ark. Code Ann. § 20-16-605.
- An action for injunctive relief may be brought in the following circumstances:
  - Against a physician who performs a dismemberment abortion. Ark. Code Ann. § 20-16-1804.

- Against a physician who performs an abortion for sex-selection. Ark. Code Ann. § 20-16-1906.
- Against a physician who performs an abortion on a fetus with a gestational age of 18 weeks or greater. Ark. Code Ann. § 20-16-2006.
- Performance of an abortion because of Down syndrome. Ark. Code Ann. § 20-16-2105.

- A civil action may be maintained by any person against a physician or an abortion clinic who has failed to follow the rules related to resources access assistance under § 20-16-2403. Ark. Code Ann. § 20-16-2409.

Administrative Actions & Penalties that have not been repealed:

- The Arkansas State Medical Board may revoke an existing license, impose penalties or refuse to issue a license to a physician who procures a wrongful and criminal abortion. Ark. Code Ann. § 17-95-409.
- A physician who fails to collect fetal tissue and submit it to the State Crime Lab under § 12-18-108 commits unprofessional conduct.
- Physicians who fail to comply with reporting requirements and waiting periods for drug-induced abortions will be subject to disciplinary action. Ark. Code Ann. § 20-16-1507; Ark. Code Ann. § 20-16-2508.
- Physicians who violate rules related to informed consent for adult women and unemancipated minors will be subject to disciplinary action. Ark. Code. Ann. § 20-16-811; Ark. Code Ann. § 20-16-1710.
- If an abortion facility or a physician violates ultrasound requirements they will be fined in escalating increments for the first three violations ($1,500, $3,000 and $5,000) and have their licenses suspended for 6 months if a fourth violation occurs within a 36-month period. Ark. Code Ann. § 20-16-602.
- A physician's license will be revoked in the following circumstances:
  - If they fail to follow the requirements around administering drug or chemical abortions. Ark. Code Ann. § 20-16-603.
  - Three separate violations of the reporting requirements related abortion complications.. Ark. Code Ann. § 20-16-605.
  - If they perform an abortion and are not correctly licensed. Ark Code. Ann. § 20-16-606.
  - If they perform an abortion on a fetus over 12 weeks of age where a heartbeat has been detected. Ark. Code Ann. § 20-16-1304.
  - Performance of an abortion for sex-selection. Ark. Code. Ann. § 20-16-1906.
  - Performance of an abortion because of Down syndrome. Ark. Code Ann. § 20-16-2105.
  - They do not inform the pregnant person 72 hours before the abortion that perinatal palliative care is available. Ark. Code Ann. § 20-16-2305.
- A physician's license may be suspended or revoked in the following circumstances:
  - They violate the regulations around born-alive infants. Ark. Code Ann. § 20-16-604.
  - They don't comply with consent requirements for abortions on minors/incompetents. Ark. Code Ann. § 20-16-811.

	o Performance of an abortion on a fetus with a gestational age of 18 weeks or greater. Ark. Code Ann. § 20-16-2006. • The Arkansas State Medical Board shall punish physicians who perform partial-birth abortions by subjecting them to escalating fines for the first three offenses ($25,000, $50,000, $100,000) and then a sum greater than $100,000 for each subsequent offense; the board may also suspend or revoke a physician's license for performing a partial-birth abortion. Ark. Code Ann. § 20-16-1206. o Affirmative Defense: medical necessity. Ark. Code Ann. 20-16-1206. • Filing late reports, or falsifying reports related to abortions on pain-capable fetuses constitutes unprofessional conduct, and a physician in violation of these rules will be fined $500. Ark. Code Ann. § 20-16-1406. • If an audit reveals that a clinic has not abided by the rules related to resource access assistance under § 20-16-2403 in 5% of cases, the Department of Health shall revoke the clinic's license. Ark. Code Ann. § 20-16-2409.
Aiding & Abetting	**Third-Parties:** • No person shall intentionally aid or assist a child to obtain abortion without parental consent as required by § 20-16-804 and § 20-16-805. Ark. Code. Ann. § 12-18-210. **Physicians:** • The Arkansas State Medical Board may revoke the license of a physician for aiding or abetting in procuring a wrongful or criminal abortion. Ark. Code Ann. § 17-95-409.
State Constitution	Amendment No. 68 to the State Constitution directly addresses abortion: • Amend. 68, § 2 declares that it is the policy of Arkansas to protect the life of every unborn child from conception until birth, to the extent permitted by the Federal Constitution.
Future Considerations	Hours after the decision in *Dobbs* was handed down, the Arkansas Attorney General certified the trigger law codified at Ark. Code Ann. § 5-61-301 to § 5-61-304. See Arkansas Public Radio, "Arkansas AG Rutledge certifies trigger law allowing enforcement of abortion ban," (Jun. 24, 2022), available at https://www.ualrpublicradio.org/local-regional-news/2022-06-24/attorney-general-rutledge-certifies-trigger-laws-allowing-enforcement-of-abortion-bans There have been no court cases filed to attempt to enjoin the certification at this time.

California

Cal. Bus. & Prof. Code § 2052

Cal. Bus. & Prof. Code § 2253

Cal. Bus. & Prof. Code § 2725.4

Cal. Bus. & Prof. Code § 3502.4

Cal. Health & Safety Code § 123418 to Cal. Health & Safety Code § 123473

Restrictions | Penalties | Aiding & Abetting | State Constitution | Future Considerations

Restrictions

Abortions may be performed:

- At any time before viability. Cal Health & Saf Code § 123464.
  - Viability is defined as the point in the pregnancy when there is a reasonable likelihood of the fetus' sustained survival outside the uterus without the application of extraordinary medical measures. Cal. Health & Saf. Code § 123464.
  - Doctors also consider a fetus to be viable once it weighs at least 500 grams. *Barragan v. Lopez*, (Cal. App. 2007) 156 Cal.App.4th 997.
- After viability when the procedure is necessary to protect the life of the mother. Cal Health & Saf Code § 123466.

Abortions are not permitted after viability if a physician determines that the continuation of the pregnancy will pose no risk to the life or health of the pregnant woman. Cal. Health & Saf. Code § 123468.

Additional Abortion Restrictions:

- Person performing the abortion must be a healthcare provider. Cal Health & Saf Code § 123468.
- Licensed nurses and physician assistants may perform abortions by medication or aspiration techniques during the first trimester. Cal. Bus. & Prof. Code § 2253; Cal. Bus. & Prof. Code § 2725.4; Cal. Bus. & Prof. Code § 3502.4.
- An infant born-alive during the course of an abortion has the same rights to medical treatment as an infant prematurely born spontaneously. Cal. Health & Saf. Code § 123435.

	Facility Requirements: • No facility shall require their employees to participate in an abortion procedure if such an employee has filed a written statement indicating religious, ethical or moral objections. Cal. Health & Saf. Code § 123420. • Licensed abortion facilities shall disseminate certain information to patients regarding public programs that provide free or low-cost family planning services. Cal. Health & Saf. Code § 123472. • Unlicensed abortion facilities shall provide notice to patients that they are unlicensed. Cal. Health & Saf. Code § 123472.
Penalties	**Immunities:** State may not interfere with a woman's right to an abortion prior to viability of the fetus or when medically necessary. Cal Health & Saf Code § 123466. **Civil Actions & Penalties:** • A physician who performs abortions without a valid medical license is guilty of a public offense punishable by a fine not exceeding $10,000, imprisonment not exceeding one year, or both. Cal. Bus. & Prof. Code § 2253; Cal. Bus. & Prof. Code § 2052; Cal. Pen. Code § 1170(h). • A civil action may be brought by the Attorney General, or a city or county attorney against an abortion clinic that has violated the notice requirements under Cal. Health & Saf. Code § 123472; such clinic shall be liable for a civil penalty of $500 for the first offense and $1,000 for each subsequent offense. Cal Health & Saf Code § 123473. **Administrative Actions & Penalties:** • Failure to comply with the Reproductive Privacy Act (Cal. Health & Saf. Code § 123460 to § 123468) constitutes unprofessional conduct. Cal. Bus. & Prof. Code § 2253.
Aiding & Abetting	**Third-Parties:** • Any person who aids or abets a physician to perform an abortion without a valid medical license commits a public offense punishable by a fine not exceeding $10,000, imprisonment not exceeding one year, or both. Cal. Bus. & Prof. Code § 2052; Cal. Pen. Code § 1170(h).
State Constitution	The California Constitution was amended during the November 2022 election to provide for abortion rights in a new section: • Art. I, § 1.1: The state shall not deny or interfere with an individual's reproductive freedom in their most intimate decisions, which includes their fundamental right to choose to have an abortion and their fundamental right to choose or refuse contraceptives. This section is intended to further the constitutional right to privacy guaranteed by Section 1, and the constitutional right to not be denied equal protection guaranteed by Section 7. Nothing herein narrows or limits the right to privacy or equal protection.

	See Politico.com, "California voters guarantee abortion rights in state constitution," (Nov. 9, 2022).
Future Considerations	California has become one of the first states to adopt legislation designed to prohibit other states that have banned abortion from punishing their residents who seek abortions in California and any California residents, such as providers or organizations, that aid or abet in the procurement of an abortion. See Office of the Governor, "In Response to Supreme Court Decision, Governor Newsom Signs Legislation to Protect Women and Providers in California from Abortion Bans by Other States," (Jun 24, 2022). California has joined a Multi-State Commitment to Reproductive Freedom along with Oregon and Washington State that will defend access to reproductive healthcare, including abortion and contraceptives, all along the West Coast.

Colorado

Colo. Rev. Stat. § 25-6-401 to § 25-6-406

Colo. Rev. Stat. § 13-22-701 to § 13-22-708

Colo. Code Regs. § 1006-1

Restrictions | Penalties | Aiding & Abetting | State Constitution | Future Considerations

Restrictions

Abortions are permitted without any gestational age restrictions.

Consent requirements:

- Except for a medical emergency or a pregnancy resulting from abuse, no abortion shall be performed upon an unemancipated minor until at least 48 hours after written notice of the pending abortion has been delivered to a parent's house by the physician, sheriff, a non-related person over the age of eighteen, a clergy member, or certified mail. Colo. Rev. Stat. § 13-22-704.
    - **Exceptions**: Colo. Rev. Stat. § 13-22-705.
        - The minor has been the victim of abuse or neglect at the hands of the person who must be notified.
        - Medical emergency.
- Minors may petition the court to bypass the notice requirements. Colo. Rev. Stat. § 13-22-707.

Reporting Requirements:

- All abortions ("induced terminations of pregnancy") must be reported by either the physician who performed the procedure or the institution in which it was performed to the State Registrar of Vital Statistics within 5 days of performing the procedure. Colo. Rev. Stat. § 25-2-102; Colo. Rev. Stat. § 25-2-104; Colo. Code Regs. § 1006-1(10).

Penalties

Civil Actions & Penalties:

- Any person who performs an abortion on a minor in violation of parental notification requirements shall be liable for damages proximately caused by their actions. Colo. Rev. Stat. § 13-22-706.

Aiding & Abetting	**Third-Parties:** • Any person who counsels or encourages or conspires to induce a minor to provide false information to a physician in order to obtain an abortion commits a class 5 felony and shall be punished with a fine of no less than $1,000 and no more than $100,000, or imprisonment for between 1 and 3 years, or both, and mandatory parole for 2 years. Colo. Rev. Stat. § 13-22-706; Colo. Rev. Stat. § 18-1.3-401.
State Constitution	No provision.
Future Considerations	On April 4, 2022, the Colorado legislature enacted the Reproductive Health Equity Act, which affirms that pregnant people in Colorado have the fundamental right to continue a pregnancy and give birth or have an abortion. The Act also prohibits a public entity from denying or restricting that right. Colo. Rev. Stat. § 25-6-403.

Connecticut

Conn. Gen. Stat. § 19a-600 to § 19a-602

Conn. Agencies Regs. § 19-13-D54

Conn. Agencies Regs. § 19a-116-1

Restrictions | Penalties | Aiding & Abetting | State Constitution | Future Considerations

Restrictions

Abortions are permitted:

- Any time before fetal viability. Conn. Gen. Stat. § 19a-602.
  - The decision to terminate a pregnancy before viability is solely the right of the pregnant person. Conn. Gen. Stat. § 19a-602.
- Abortions after the second trimester may only be performed in licensed hospitals with obstetrics and gynecology and anesthesiology departments. Conn. Regs. § 19-13-D54.
- Abortions during the third trimester may be performed only when necessary to preserve the life or health of the expectant mother. Conn. Regs. § 19-13-D54.

Abortions are not permitted after viability except when necessary to preserve the life or health of the mother. Conn. Gen. Stat. § 19a-602.

Physician Requirements:

- Abortions may be performed by physicians and surgeons licensed in Connecticut. Conn. Regs. § 19-13-D54(a).
- Advanced practice registered nurses, nurse-midwives and physician assistants may prescribe and administer mifepristone and perform aspiration abortions in licensed clinics. Conn. Gen. Stat. § 19a-602.
- If an infant is born alive during an abortion, the physician shall employ all measures used to support life. Conn. Regs. § 19-13-D54.

Reporting Requirements: All induced abortions must be reported within seven days by the performing physician to the state commissioner of public health. Conn. Regs. § 19-13-D54(b).

Informed Consent Requirements:

- Prior to performing an abortion, a counselor shall provide informational disclosures and obtain informed consent from the person seeking to have the abortion. Conn. Regs. § 19a-116-1.

	• Prior to the performance of an abortion upon a minor, a physician or counselor shall provide pregnancy information and counseling. Conn. Gen. Stat. § 19a-601. o **Exception**: a medical emergency exists that so complicates the pregnancy or health, safety or well-being of the minor as to require an immediate abortion. **Facility Requirements:** • All outpatient clinics providing abortion services shall develop standards of care to govern the procedure that includes a mechanism for continuing review. Conn. Regs. § 19-13-D54. • All abortion clinics must implement quality assurance and risk management programs to provide annual reviews related to abortion care. Conn. Regs. § 19a-116-1.
Penalties	No Provision.
Aiding & Abetting	No Provision.
State Constitution	No Provision.
Future Considerations	In May 2022, the Governor signed a new law to protect patients and abortion providers in Connecticut from out-of-state attempts to punish people seeking abortions, and also to expand the type of practitioners eligible to perform abortions. Pub. Act 22-19. Specifically, the new law will: • Provide for a cause of action to allow a person who has had a judgment entered against them related to reproductive health care services that are legal in Connecticut, but restricted in the state in which the judgment was issued, recover damages from the party that brought the action or has sought to enforce it. • Prohibit public actors in Connecticut from assisting with any interstate proceeding that attempts to impose civil or criminal liabilities on people from states where abortion has been outlawed that seek reproductive healthcare services in Connecticut or providers of reproductive health care services. • Prohibit judges from issuing summons for criminal violations of the anti-abortion laws of other states, where the conduct prohibited by the other state is lawful in Connecticut.

Delaware

Del. Code tit. 16, § 3133

Del. Code tit. 24, § 1780 to Del. Code tit. 24, § 1789B

Del. Code tit. 24, § 1790 to Del. Code tit. 24, § 1795

Restrictions | Penalties | Aiding & Abetting | State Constitution | Future Considerations

Restrictions

Abortions may be performed any time before viability. Del. Code Ann. tit. 24, § 1790.

- Viability defined: Del. Code Ann. tit. 24, § 1702(18).

Prohibitions:

- Physician cannot perform or assist in the performance of an abortion after viability. Del. Code Ann. tit. 24, § 1790.
  - **Exception:** Unless, in the good faith medical judgment of the physician, abortion is necessary to protect the woman's life or health or in the event that it is reasonably unlikely that the fetus would survive outside the uterus without extraordinary medical measures.
- No person shall coerce a minor to undergo an abortion. Del. Code Ann. tit. 24, § 1786.

Drug-induced Abortion Requirements: A physician assistant or an advanced practice registered nurse may prescribe medication for the termination of pregnancy. Del. Code Ann. tit. 24, § 1790.

Physician Requirements: A physician must provide due and diligent medical care to an infant born-alive during an abortion. Del. Code Ann. tit. 24, § 1795.

Informed Consent Requirements:

- Physician or medically authorized person cannot perform abortion on unemancipated minor without providing the appropriate notice at least 24 hours before the procedure. Del. Code Ann. tit. 24, § 1783.
  - **Exceptions** available for physicians who have given notice or have proof that notice has been given by another person or in the case of a medical emergency. Del. Code Ann. tit. 24, § 1783; Del. Code Ann. tit. 24, § 1787.

	o Minor may petition the Family Court for a waiver of the notice requirement. Del. Code Ann. tit. 24, § 1784; Del. Code Ann. tit. 24, § 1785. **Reporting Requirements:** • Each induced termination of pregnancy is to be reported to the Delaware Health Statistics Center. Del. Code Ann. tit. 16, § 3133.
Penalties	**Criminal Penalties:** • A Class A misdemeanor in Delaware is punishable by up to a year of incarceration, a fine of up to $2,300, restitution, or other conditions as the court deems appropriate. Del. Code Ann. tit. 11, § 4206. **The following is a Class A misdemeanor:** o Intentional performance of an abortion on an unemancipated minor in violation of the notice requirements of the Parental Notice of Abortion Act. Del. Code Ann. tit. 24, § 1789. o Failure to exercise due and diligent medical care for an infant born-alive after an abortion. Del. Code Ann. tit. 24, § 1795. • Unlawful termination of pregnancy without the consent of the pregnant woman is considered a "serious physical injury" under the Delaware Criminal Code. Del. Codd Ann. tit. 11, § 222(30). **Civil Actions & Penalties:** • An action may be maintained against a physician who fails to provide notice to the parents of an unemancipated minor under the Parental Notice of Abortion Act; failure to give parental notice is prima facie evidence of interference with family relations in civil actions. Del. Code Ann. tit. 24, § 1789B.
Aiding & Abetting	**Third-Parties:** • Unless the abortion has been authorized pursuant to § 1790, no person shall: o Sell or give any drug or other instrument for the purpose of causing an abortion. o Give information for the purpose of causing an abortion. o Knowingly assist or cause by any means the obtaining or performing of an abortion. Del. Code Ann. tit. 24, § 1792.
State Constitution	No Provision.

Future Considerations	On June 29, 2022, Gov. Carney signed into law increased abortion protections. H.B. 455, 151st Gen. Assemb., Reg. Sess. (Del. 2022). Specifically, the new law provides the following: • Physicians and other health care providers who perform lawful abortions or provide lawful reproductive health services do not engage in unprofessional conduct and cannot be disciplined for such services, even if they are considered illegal in another state or performed on a resident of another state in which they are considered illegal. • Healthcare providers in Delaware are granted protection from civil actions in other states that have banned abortions. • Non-fugitive extradition is limited to acts that are punishable under Delaware law. In addition, the bill expands the type of provider who can perform an abortion before viability from just physicians to physician assistants who are training with a physician, and a certified nurse midwife or nurse practitioner.

District of Columbia

D.C. Code Ann. § 2-1402.92 (West)

D.C. Code Ann. § 2-1401.06 (West)

D.C. Code Ann. § 7-231.05 to D.C. Code Ann. § 7-231.06 (West)

D.C. Code Ann. § 7-231.15 (West)

D.C. Code Ann. § 21-2047.01 (West)

D.C. Mun. Regs tit. 17, § 5808.5

Restrictions | Penalties | Aiding & Abetting | Future Considerations

Restrictions	**Abortions may be performed** in the district at any time; there are no gestational age restrictions. • The District will not deny, interfere with, or restrict the right of an individual to choose to have an abortion. D.C. Code Ann. § 2-1401.06. **Abortions may not be performed** by a nurse-midwife. D.C. Mun. Regs. Tit. 17, §5808.5. **Informed Consent Requirements:** • Temporary, limited, and general guardians of incapacitated individuals do not have the power to consent to abortion. D.C. Code Ann. § 21-2047.01. **Reporting Requirements:** • A licensed health care provider shall keep records of all induced terminations of pregnancy. D.C. Code Ann. § 7-231.05. • An individual in charge of a provider's office, clinic or facility that provides abortion services shall report on all abortions that occurred at that office, clinic or facility during the previous month no later than the tenth day of each month. D.C. Code Ann. § 7-231.06. • All facilities or physicians who provide abortion services shall report all abortions they perform to the Registrar within 5 days. D.C. Code Ann. § 7-231.15.
Penalties	**Administrative Actions & Penalties:** • It is unlawful to discriminate against a health care provider based on the professional's participation in an abortion or sterilization procedure or training. D.C. Code Ann. § 2-1402.92.

Aiding & Abetting	The District will not penalize an individual for seeking, inducing, or attempting to induce their own abortion. D.C. Code Ann. § 2-1401.06.
Future Considerations	The District of Columbia is not a state and, therefore, does not possess the kind of sovereign territorial integrity that allows it to have complete control over its own governance. Congress has the power, under the Home Rule Act of 1973, to invalidate any law adopted by the D.C. Council. Congress routinely uses the Home Rule Act to invalidate appropriations laws to fund abortions, and also laws related to gun prohibitions as well. Some Republicans in Congress have already suggested that they will move to restrict abortions in the District should they regain the majority. See Politico Magazine, "Republicans are Sending Abortions Back to the States. But D.C. Isn't a State," (Jun. 28, 2022).

Florida

Fla. Stat. § 390.011 to Fla. Stat. § 390.025

Fla. Stat. § 782.34

Fla. Stat. § 797.03

Fla. Stat. § 8.800 to Fla. Stat. § 8.840

Fla. Stat. § 458.331

Fla. Admin. Code Ann. R. 59A-9.022.

Restrictions | Penalties | Aiding & Abetting | State Constitution | Future Considerations

NOTE: In April 2022, Florida passed a bill banning abortion after fifteen weeks that went into effect on July 1, 2022. The fifteen-week ban is currently being challenged under the Florida constitution, which has some protections for privacy understood to apply to abortion, but the law remains in effect while the litigation is pending. The Republicans gained a supermajority in the Florida legislature during the November 2022 elections, and is likely to try for further abortion restrictions in the new year. See Future Considerations below. The following summary of state law includes all laws currently enacted in Florida, regardless of whether or not they conflict with one another or are enforceable.

Restrictions

Abortions are not Permitted:

- Abortions may not be performed after fifteen weeks of the commencement of pregnancy. Fla. Stat. § 390.0111(1).
- If the gestational age is more than fifteen weeks, an abortion may take place (1) if two physicians certify in writing that an abortion is necessary to avert death or a serious risk of substantial and irreversible physical impairment of a major bodily function of a pregnant person (other than a psychological condition); or (2) if two physicians certify that the fetus has a fatal fetal abnormality and the fetus has not reached viability. Fla. Stat. § 390.0111(1).
- Abortions may not be performed after viability unless, in the physician's reasonable medical judgment, termination of the pregnancy is necessary to save a pregnant person's life or avert serious risk of imminent substantial and irreversible physical impairment of a major bodily function. The

physician must certify in writing that there is a medical emergency Fla. Stat. § 390.01112.

- Abortions may not be performed in the third trimester unless two physicians certify in writing that in their judgement the termination of the pregnancy is necessary to save their patient's life or avert serious risk of substantial and irreversible physical impairment of a major bodily function of the patient other than a psychological condition. Fla. Stat. § 390.0111(1).

Prohibitions:

- Partial-birth abortions are prohibited unless necessary to save the life of a pregnant woman. Fla. Stat. § 390.0111(5).

Physicians Requirements:

- Abortions should be performed by a physician. Fla. Stat. § 390.0111(2).
- Physicians or the director of medical facilities where abortion is performed must report abortions they perform to the state monthly. Fla. Stat. § 390.0112.
- Physicians must attempt to preserve the life and health of a fetus aborted in the third trimester. Fla. Stat. § 390.0111(4).

Informed Consent Requirements:

- Except in the case of a medical emergency, patients must provide voluntary and informed consent from for an abortion before the procedure except in the case of a medical emergency. A physician must provide a woman with information about the risks of an abortion and an opportunity to view an ultrasound of the fetus 24-hours before the operation. Fla. Stat. § 390.0111(3).
- Physicians must give actual notice in person or by telephone to the parents or guardians of a minor at least 48-hours before performing an abortion. A physician must obtain written consent from a parent or legal guardian of a minor before performing an abortion on the minor. A minor may petition a circuit court where she resides for a waiver of the parent notification and consent requirement. Fla. Stat. § 390.01114.

Facility Requirements:

- Abortions must be performed by a licensed physician in a licensed hospital, abortion clinic, or a physician's office. Fla. Stat. § 797.03.
- An abortion referral or counseling agency must furnish a person seeking an abortion with a full and detailed explanation of abortion, including the effect of abortion and alternatives to abortion. If the person seeking an abortion is a minor, a good faith effort must be made by the agency to furnish such information to the parents or guardian of the patient. Fla. Stat. §390.025(2).
- Any facility that provides a second trimester abortion must meet certain minimum standards of construction, including specific requirements for consultation rooms, dressing rooms, and emergency exits. Fla. Admin. Code Ann. R. 59A-9.022.

	Reporting Requirements: • The director of any medical facility where abortions are performed must report a variety of information to the state about the abortions they perform. Fla. Stat. § 390.0112.
Penalties	**Immunities:** Women upon whom a partial-birth abortion is performed may not be prosecuted for her abortion. Fla. Stat. § 390.0111(5). **Criminal Penalties:** • Any person who willfully performs or actively participates in an abortion in violation of any of the requirements of Fla. Stat. § 390.0111 or Fla. Stat. § 390.0112 commits a felony of the third degree punishable by a term of imprisonment not exceeding 5 years. If the patient dies, any person who participated in her abortion commits a felony of the second degree punishable by a term of imprisonment not exceeding 15 years. Fla. Stat. § 390.0111(10). • An abortion referral or counselling agency that fails to provide complete information about abortions to patients commits a misdemeanor of the first degree which is punishable b a definitive term of imprisonment not exceeding 1 year. Fla. Stat. §390.025(2). • Any person who assists in performing an abortion during viability or during the third trimester commits a misdemeanor of the second degree. Fla. Stat. § 797.03. A misdemeanor of the second degree is punishable with a fine of $500. Fla. Stat. § 775.083. • Partial-birth abortions are a felony of the second degree. Fla. Stat. § 782.34. **Administrative Actions & Penalties:** • A physician who fails to receive informed consent from an abortion patient may face disciplinary action. Fla. Stat. § 390.0111(3)(c). • A clinic that fails to follow provisions of Florida's abortion law may receive a fine of no more that $1,000 for each violation. Fla. Stat. § 390.018. • Unlawfully terminating a pregnancy is grounds for denial of a license or disciplinary action. Fla. Stat. § 458.331; Fla. Stat. § 459.015; Fla. Stat. § 456.072.
Aiding & Abetting	No provision
State Constitution	Article I, section 23 of the Florida state constitution provides a right to privacy and states "every natural person has the right to be let alone and free from governmental intrusion into the person's private life." Fla. Const. Art. I, § 23.

Future Considerations	On June 1, 2022, a lawsuit was filed challenging Florida's fifteen-week abortion ban as unconstitutional under the Florida constitution. See *Planned Parenthood of Southwest and Central Florida v. State of Florida*, No. 2022 CA 912 (Fla. Cir. Ct. filed Jun 1, 2022). The judge overseeing the lawsuit issued a temporary injunction on the fifteen-week abortion ban after he found that it was more likely than not that the bill violated the Florida constitution. The State's attorney general appealed the ruling, so the stay has been automatically lifted and the law has taken effect. Florida is one of eleven states whose state constitutions protect abortion rights independently of the U.S. Constitution. In 1989, the Florida Supreme Court interpreted the privacy provision to protect some abortion rights. Because of changes to the make-up of the Florida Supreme Court, commentators are unsure how the Florida Supreme Court will evaluate the fifteen-week ban law. *See, e.g.*, Politico.com, "Florida's firewall against abortion restrictions is in peril" (May 22, 2022); Tallahassee Democrat, "Florida has a unique right protecting abortion. Its framers designed it that way," (Jun. 8, 2022). A group of Rabbis in Florida is challenging the State's fifteen-week ban as a violation of the First Amendment of the United States Constitution because Judaism views abortion as morally acceptable and required in some circumstances such as when a mother's life is endangered. See Time Magazine, "Does Religious Freedom Protect a Right to an Abortion,"(Jul. 7, 2022). Further abortion restrictions, such as a 12-week ban with exceptions for rape and incest, have been discussed since the Republicans gained a supermajority in the Florida Legislature following the November 2022 midterm elections. See Politico.com, "Florida Republicans eye further abortion restrictions after big gains in the Legislature," (Nov. 11. 2022).

Georgia

Ga. Code Ann. § 15-11-680 to § 15-11-688

Ga. Code Ann, § 16-12-140 to § 16-12-144

Ga. Code Ann.§ 31-9A-1 to § 31-9A-8

Ga. Code Ann. § 31-9B-1 to § 31-9B-3

Ga. Code Ann. § 31-10-18 to § 31-10-19

Ga. Code Ann. § 43-34-110

Restrictions | Penalties | Aiding & Abetting | State Constitution | Future Considerations

NOTE: In 2019, Georgia adopted the Living Infants Fairness and Equality ("LIFE") Act, which would prevent abortions after the detection of a fetal heartbeat; however, the Act was ruled unconstitutional in 2020 by *SisterSong Women of Color Reproductive Justice Collective v. Kemp*, 472 F.Supp.3d 1297 (2020). Once the *Dobbs* decision was handed down, the Eleventh Circuit Court of Appeals reversed the district court order and made the LIFE Act enforceable. Plaintiffs sued again, this time alleging State Constitutional violations. On November 15, 2022, the Superior Court, Fulton County agreed with the plaintiffs and declared the LIFE Act void *ab initio*, void from the beginning, and therefore unenforceable. That ruling has been appealed, and the State Supreme Court has reinstated the LIFE Act bans while litigation continues. See Future Considerations below. The following summary of state law includes the provisions of the LIFE Act and all other laws related to abortion currently enacted in Georgia, regardless of whether or not they conflict with one another or are enforceable.

Restrictions

Abortion Ban (currently enforceable as of Nov. 23, 2022):

- Abortion is prohibited if an unborn child has a detectable human heartbeat. Ga. Code Ann. §16-12-141(b).
  - **Exceptions:** Ga. Code Ann. §16-12-141(b).
    - Physician determines, in reasonable medical judgment, that a medical emergency exists;
    - The probable gestational age of the unborn child is 20 weeks or less, and the pregnancy is a result of rape or incest in which an official police report has been filed; or
    - Physician determines, in reasonable medical judgment, that the pregnancy is medically futile.

Additional Abortion Restrictions:

- Abortion may be performed after the first trimester – abortions must be performed in a licensed hospital, licensed ambulatory surgical center, or licensed abortion facility. Ga. Code Ann. §16-12-141.

Prohibitions:

- Abortion may not be performed after 20-weeks post-fertilization, unless the abortion is necessary to preserve the patient's life or physical health, or the fetus' life.
    - Abortion may be permissible after 20 weeks if the pregnancy is medically futile.
- Abortion may not be performed after second trimester, unless attending physician and two consulting physicians certify in writing that it is necessary to preserve the patient's life or health. Ga. Code Ann. § 16-12-141.
- No partial-birth abortions may be performed unless necessary to save the life of the mother. Ga. Code Ann. § 16-12-144.

Physician Requirements:

- Only a licensed physician may perform an abortion. Ga. Code § 16-12-141.
    - Physician assistants shall not perform an abortion. Ga. Code § 43-34-110.
- Physician must receive patient's consent at least 24 hours before performing an abortion. Ga. Code Ann. § 31-9A-3.
- Physician must, prior to performing or attempting to perform abortion, determine the presence of a detectable human heartbeat of the unborn child. Ga. Code § 31-9B-2.
    - **Exceptions:**
        - Medical emergency; or
        - Pregnancy diagnosed as medically futile.

Informed Consent Requirements:

- Voluntary and informed consent required. Ga. Code Ann. § 31-9A-3.
- Attending physician, referring physician, or qualified agent must tell patient either by telephone or in person the following:
    - Medical risks of the procedure;
    - Probable gestational age of fetus;
    - Information related to carrying the pregnancy to term, including medical risks and the availability of medical assistance; and
    - her right to review state-provided printed materials. Ga. Code Ann. § 31-9A-3.
- No physician/person shall perform abortion on unemancipated minor, unless:
    - Unemancipated minor is accompanied by parent/guardian;
    - Physician or qualified agent gives at least 24 hours' actual notice of pending abortion, in person or by telephone, to parent/guardian of unemancipated minor; or

	o Physician or qualified agent gives written notice of pending abortion to parent/guardian of unemancipated minor. Ga. Code Ann. § 15-11-682. **Record/Reporting Requirements:** • Physician who performs/attempts to perform abortion shall report to the department: o If a detectable human heartbeat exists, the probable gestational age, and method and basis of determination; o If a detectable human heartbeat exists, the basis of the determination that the pregnant woman had a medically futile pregnancy, that a medical emergency existed, or that the pregnancy was a result of rape or incest; and o The method used for the abortion. Ga. Code Ann. § 31-9B-3. • Each induced termination of pregnancy occurring in the state must be reported directly to the department within 10 days by the person in charge of the institution or clinic, or designated representative. Ga. Code Ann. § 31-10-19. • A report of spontaneous fetal death for each spontaneous fetal death occurring in the state shall be filed with the local registrar of the county in which the delivery occurred within 72 hours after such delivery. Ga. Code Ann. § 31-10-18. • Each direct client service provider shall maintain accurate records and report data to the agency annually on forms and in the manner required by the department. Ga. Code Ann. § 31-2A-37. • The Department of Public Health shall prepare a reporting form for physicians performing abortions in a health facility licensed as an abortion facility by the Department of Community Health, and including various requirements. Ga. Code Ann. § 31-9A-6.
Penalties	**Criminal Penalties:** • A person commits criminal abortion when, in violation of Code Section 16-12-141, they administer any medicine, drugs, or other substance to a woman, or when they use any instrument or other means upon a woman with intent to produce a miscarriage or abortion. Ga. Code Ann. § 16-12-140. o Punishment for criminal abortion – imprisonment for 1-10 years. Ga. Code Ann. § 16-12-140. • A person who knowingly performs a partial-birth abortion that is not necessary to save a pregnant person's life commits a crime punishable by a fine of up to $5,000, imprisonment for up to 5 years, or both. Ga. Code Ann. § 16-12-144(b). • Any person who fails to fulfill reporting requirements under the LIFE Act is guilty of a misdemeanor. Ga. Code Ann. § 16-12-143. **Civil Actions & Penalties:** • Any woman upon whom an abortion is performed in violation of Georgia abortion law can recover civil damages from the person who performed the abortion, as available under tort. Ga. Code Ann. § 16-12-141(g).

	Administrative Actions & Penalties: • Physician who knowingly performs an abortion must submit to the Department of Public Health a copy of the form described in subsection (c) of this Code section. Ga. Code Ann. § 31-9A-6. o Reports submitted more than 30 days following the due date are subject to $500.00 late fee for that period, and the same fee for each additional 30-day period or portion of a 30-day period in which they remain overdue. Ga. Code Ann. § 31-9A-6. • Physician who submits an incomplete report or fails to submit a report for more than 1 year following the due date may, in an action brought by the Department of Public Health, be directed to submit a complete report, or be subject to sanctions for civil contempt. Ga. Code Ann. § 31-9A-6. • Physician's failure to conform to § 31-9B-2 constitutes unprofessional conduct for purposes of Code Section 43-34-8 relating to medical licensing sanctions. Ga. Code Ann. § 31-9B-2.
Aiding & Abetting	No provision.
State Constitution	There is no provision in the state constitution directly addressing abortion rights, or a right to privacy. • Art. I, § I, Para. I: No person shall be deprived of life, liberty, or property except by due process of law. • Art. I, § I, Para. II: Protection to person and property is the paramount duty of government and shall be impartial and complete. No person shall be denied the equal protection of the laws. • Art. I, § I, Para. VII: All citizens of the United States, resident in this state, are hereby declared citizens of this state; and it shall be the duty of the General Assembly to enact such laws as will protect them in the full enjoyment of the rights, privileges, and immunities due to such citizenship. • Art. I, § I, Para. XXIX: The enumeration of rights herein contained as a part of this Constitution shall not be construed to deny to the people any inherent rights which they may have hitherto enjoyed.
Future Considerations	Litigation regarding the LIFE Act continues in Georgia. Most recently, the Georgia Supreme Court has stayed a lower court order ruling that the six-week ban in the LIFE Act was void *ab initio* and, therefore, completely unenforceable. While the stay is in effect, the LIFE Act may be enforced. See *State of Georgia v. Sistersong Women of Color Reproductive Justice Collective*, No. S23M0358 (Ga. Nov. 23,2022). See also, NPR, "Georgia's highest court reinstates ban on abortions after 6 weeks," (Nov. 23, 2022).

Guam

Guam Code Ann. § 31.20 to § 31.22

Guam Code Ann. § 3218

Guam Code Ann. § 3218.1

Guam Code Ann. § 4A101 to § 4A111

Guam Code Ann. § 91A101 to § 91A111

Restrictions | Penalties | Aiding & Abetting | Constitution | Future Considerations

Restrictions

Abortions may be performed:

- Only by a licensed physician in an "adequately equipped medical clinic or in a hospital." Guam Code Ann. § 31.20
- Within 13 weeks of the commencement of a pregnancy. Guam Code Ann. § 31.20(b)(3)(A).
- Within 26 weeks of the commencement of a pregnancy if the physician has "reasonably determined using all available means" that: Guam Code Ann. § 31.20(b)(3)(B).
    - The child would be born with a grave defect, or,
    - The pregnancy was the result of rape or incest.
- At any time after the commencement of a pregnancy if the doctor reasonably determines using all available means that there is a substantial risk that continuance of the pregnancy would endanger the life of the mother or would gravely impair the physical or mental health of the mother. Guam Code Ann. § 31.20(b)(3)(C).

Prohibitions: Partial birth abortions are prohibited, except when "necessary to save the life of a mother whose life is endangered by a physical disorder, physical illness, or physical injury, including a life-endangering physical condition caused by or arising from the pregnancy itself." Guam Code Ann. § 91A104.

Informed Consent Requirements:

- Except in the case of a medical emergency, no abortion shall be performed without informed consent provided at least 24 hours before the abortion. Guam Code Ann. § 3218.1(b).

- Except in the case of a medical emergency, consent of at least one parent/guardian must be obtained for abortions performed on a minor or incompetent person. Guam Code Ann. § 4A101 to § 4A111.

Reporting Requirements: All abortions performed shall be reported to the Office of Vital Statistics of the Department of Public Health and Social Services by the attending physician within seven (7) days of the procedure. Guam Code Ann. § 3218.

Penalties

Criminal Penalties:

- It is a third degree felony, punishable by a fine of $10,000 to $100,000, or imprisonment of one (1) to ten (10) years, or both, to:
  - Perform an abortion in circumstances other than those permitted by § 31.20. Guam Code Ann. § 31.21.
  - Perform an abortion on a minor or an incompetent person without obtaining required consent. Guam Code Ann. § 4A109.
  - Perform a partial-birth abortion. Guam Code Ann. § 91A106.
- Any person who fails to report an abortion within seven days of performing the procedure is guilty of a misdemeanor. Guam Code Ann. § 3218; Guam Code Ann. § 55.65.
- Any person who intentionally, knowingly or recklessly performs an abortion without informed consent and in the absence of a medical emergency commits a misdemeanor. Guam Code Ann. § 3218.1(f).

Civil Actions & Penalties:

- Performing an abortion without informed consent will provide a basis for recovery for wrongful death, whether or not the fetus was born alive or was viable at the time of abortion. Guam Code Ann. § 3218.1(g).
- A civil action may be maintained in cases where an abortion was performed on a minor or incompetent person without informed consent. Guam Code Ann. § 4A109.
- In the case of a partial-birth abortion, a civil action may be brought by the father of the aborted fetus, if married to the woman at the time of the procedure, or by the maternal grandparents if the woman was a minor. Damages and reasonable attorney's fees will be available to the prevailing plaintiff. Guam Code Ann. § 91A107.
  - Exception: the pregnancy was the result of the plaintiff's criminal conduct or the plaintiff consented to the abortion.

Administrative Actions & Penalties:

- Performing an abortion without informed consent can form the basis of a disciplinary action. Guam Code Ann. § 3218.1(g).
- Any physician who performs a partial-birth abortion will have their license revoked. Guam Code Ann. § 91A108(c).
- Any ambulatory healthcare facility in which a partial-birth abortion has been performed will have their license revoked and will lose all local funding and be required to reimburse the government for funds from the year in which the partial-birth abortion was performed. Guam Code Ann. § 91A111.

Aiding & Abetting	No Provision.
Territory Constitution	Guam has not adopted a constitution at this time. It is governed by the Guam Organic Act of 1950. This law makes no mention of abortion or a right to privacy.
Future Considerations	Although Guam did not have a trigger ban on the books, the general trend in the Territory is towards a willingness to further restrict or ban abortions now that *Roe* has been overturned. Guam's abortion laws as stated in §§ 31.20 - 31.22 of the Code were originally enacted in 1978. A more restrictive set of abortion laws that made all abortions illegal was later enacted in the 1990s, but overturned by the Ninth Circuit in *Guam Society of Obstetricians & Gynecologists, et al. v. Ada, Governor of Guam, et al.*, 962 F.2d 1366 (9th Cir. 1992). In July 2022, Guam's Attorney General issued an opinion at the request of territory Senators stating that the 1990 law invalidated by the Ninth Circuit had been rendered void. It violated the U.S. Constitution and the Organic Act of Guam, which meant that the legislature never had the power to pass the law in the first place. With this memorandum, abortion services, including telemedicine continue on Guam. See ABC News, "Telemedicine abortion continues on Guam after Roe overturned," (Jul. 13, 2022). Regardless, there is still a push among many of Guam's conservative lawmakers to further restrict abortion access. In May 2022, the Guam Legislature held hearings on a bill modeled after the Texas heartbeat law that leaves enforcement up to private citizens through civil actions rather than the state. See NBC News, "In remote U.S. territories, abortion hurdles mount without Roe," (May 27, 2022). Most recently, a mandate that doctors must conduct pre-abortion counseling in person has made it impossible to practice via telehealth. Abortion providers have challenged this law in court as unconstitutional. See Bloomberg.com, "Abortion Providers Continue Fight Against Guam's Counseling Rule," (Oct. 20, 2022).

Hawaii

Haw. Rev. Stat. Ann. § 338-8 to § 338-9

Haw. Rev. Stat. Ann. § 442-9

Haw. Rev. Stat. Ann. § 453-8

Haw. Rev. Stat. Ann. § 453-16

Haw. Rev. Stat. Ann. § 455-11

Haw. Rev. Stat. Ann. § 457-8.7

Restrictions | Penalties | Aiding & Abetting | State Constitution

Restrictions

Abortions are permitted:

- At any time before viability. Haw. Rev. Stat. Ann. § 453-16.

Physician Requirements:

- An abortion is lawful when performed by a licensed physician or surgeon or by a licensed osteopathic doctor in a licensed hospital, clinic or the provider's office. Haw. Rev. Stat. Ann. § 453-16.
- An advanced practice registered nurse may perform a medical or aspiration abortion during the first trimester of pregnancy. Haw. Rev. Stat. Ann. § 457-8.7.

Reporting Requirements:

- Physicians' offices and facilities must report each abortion performed within one month of the procedure. Haw. Rev. Stat. Ann. § 338-8; Haw. Rev. Stat. Ann. § 338-9.

Penalties

Criminal Penalties:

- Penalty for violating § 453-16(a) is a fine of not more than $1,000 or imprisonment not more than five years, or both. Haw. Rev. Stat. Ann. § 453-16.
- Penalty for violating § 457-8.7 is a fine of not more than $1,000 or imprisonment not more than five years, or both. Haw. Rev. Stat. Ann. § 457-8.7.

	Administrative Actions & Penalties: • A chiropractic license may be revoked for performing a criminal abortion. Haw. Rev. Stat. Ann. § 442-9. • A medical license may be revoked for performing, procuring, or aiding and abetting in a criminal abortion. Haw. Rev. Stat. Ann. § 453-8. • A license for a naturopathic practitioner may be revoked for procuring, or aiding and abetting in procuring a criminal abortion. Haw. Rev. Stat. Ann. § 455-11.
Aiding & Abetting	No Provision.
State Constitution	The state constitution includes the following rights: • Art. I, § 5: No person shall be deprived of life, liberty or property without due process of law, nor be denied the equal protection of the laws, nor be denied the enjoyment of the person's civil rights or be discriminated against in the exercise thereof because of race, religion, sex or ancestry. • Art. I, § 6: The right of the people to privacy is recognized and shall not be infringed without the showing of a compelling state interest. The legislature shall take affirmative steps to implement this right.

Idaho

Idaho Code Ann. § 18-501 to § 18-510

Idaho Code Ann. § 18-601 to § 18-623

Idaho Code Ann. § 18-8801 to § 18-8088

Restrictions | Penalties | Aiding & Abetting | State Constitution | Future Considerations

NOTE: In 2020, Idaho passed a trigger law to ban nearly all abortions that took full effect in August 2022. Multiple lawsuits have been filed to challenge the ban, but the Idaho courts have not placed a temporary stay on the ban while litigation is pending. In addition to the near-total ban, Idaho also has several other conflicting abortion restrictions in their statutes. The following summary of Idaho law includes all laws related to abortion currently enacted in the state, regardless of whether or not they conflict with one another or are enforceable.

Restrictions

Abortion Bans:

- The State of Idaho does not recognize a right to abortion before a fetal heartbeat is detected. Idaho Code Ann. § 18-8804(2).
- A person may not perform an abortion on a pregnant woman when a fetal heartbeat has been detected. Idaho Code Ann. § 18-8804(1).
  - **Exceptions**:
    - Medical emergency, or
    - In the case of rape or in the case of incest.
- Every person who performs or attempts to perform an abortion regardless of fetal age commits the crime of criminal abortion. Idaho Code Ann. § 18-622(2).
  - **Exception:** The abortion was performed or attempted by a physician and:
    - The abortion was necessary to prevent the death of the pregnant woman. Idaho Code Ann. § 18-622(3)(a)(ii).
      - However - no abortion shall be deemed necessary to prevent the death of the pregnant woman because the physician believes that the woman may or will take action to harm herself; Idaho Code Ann. § 18-622(3)(a)(ii).
    - The abortion was performed in a manner to provide the best opportunity for the unborn child to survive, unless,

termination of the pregnancy in that manner would have posed a greater risk of the death of the pregnant woman. Idaho Code Ann. § 18-622(3)(a)(iii).

- **Exception:** The abortion was performed or attempted by a physician and:
  - The pregnancy was the result of rape or incest that has been reported to law enforcement and a copy of that report has been provided to the physician. Idaho Code Ann. § 18-622(3)(b)(ii); Idaho Code Ann. § 18-622(3)(b)(iii).
  - The abortion was performed in a manner to provide the best opportunity for the unborn child to survive, unless, termination of the pregnancy in that manner would have posed a greater risk of the death of the pregnant woman. Idaho Code Ann. § 18-622(3)(b)(iv).

NOTE: The Idaho Legislature has indicated that if a court rules that both of the above statutes are enforceable, § 18-622 shall supersede § 18-8805. Idaho Code Ann. § 18-8805(4).

Additional Abortion Restrictions that have not been repealed:

- Only physicians can perform abortions. Idaho Code Ann. § 18-608A.
- Abortions may only be performed in a hospital or a properly staffed and equipped physician's office. Idaho Code Ann. § 18-608.
- Abortions may not be performed after 20-weeks post-fertilization. Idaho Code Ann. § 18-505.
  - **Exceptions**:
    - To avert the woman's death or to avert serious risk of substantial and irreversible physical impairment of a major bodily function, not including psychological or emotional conditions; or
    - To preserve the life of an unborn child.
  - **No Exception if**: There is a claim or diagnosis that the woman will engage in conduct that she intends to result in her death or in substantial and irreversible physical impairment of a major bodily function.
- Abortions are permitted in the third trimester when a consulting physician corroborates the judgment of the attending physician that the abortion is necessary for the preservation of the life of the pregnant woman and, the fetus would not survive after birth. Idaho Code Ann. § 18-608.

Prohibitions: Partial-birth abortions are prohibited unless necessary to save the life of the woman. Idaho Code Ann. § 18-613.

Drug-Induced Abortion Requirements that have not been repealed:

- Physicians may not prescribe abortifacients unless they have been able to ascertain the duration of the pregnancy, among other things, and also have

	the ability to provide surgical intervention if necessary. Idaho Code Ann. § 18-617(2). • Physicians must make reasonable efforts to ensure the patient returns for a follow-up visit. Idaho Code Ann. § 18-617(3). **Physician Requirements that have not been repealed:** • Before performing or inducing an abortion, a physician must determine the probable post-fertilization age of the fetus or rely upon such a determination made by another physician. Idaho Code Ann. § 18-504. • Any abortion performed upon a pregnant person who is in the second or third trimester must be performed in a hospital. Idaho Code Ann. § 18-608. • Physicians and other registered health care providers may not willfully advertise abortion services. Idaho Code Ann. § 18-603. **Informed Consent Requirements that have not been repealed:** • Informed consent is required and consists of the physician (1) providing state-developed materials to the patient; (2) informing the patient of the availability of ultrasound imaging and heartbeat monitoring of the fetus; and (3) providing the patient with assistance in locating a health care provider to consult regarding a chemical abortion before taking the abortifacient. Idaho Code Ann. § 18-609. • Except in the case of medical emergency, an abortion cannot be performed within 24 hours of the physician satisfying the provisions of §18-609(3)(a)–(c). Idaho Code Ann. § 18-609(4). • Except in the case of a medical emergency, a pregnancy resulting from rape, or pregnancy as a result of contact with a family member or person who lives in the same household, no abortion can be performed on an unemancipated minor without written consent from one parent, guardian, or conservator. Idaho Code Ann. § 18-609(A). **Record/Reporting Requirements that have not been repealed**: • Physicians who perform abortions must report them to the Department of Health and Welfare. Idaho Code Ann. § 18-506. • All abortions performed on a minor must be reported to the Bureau of Vital Statistics. Idaho Code Ann. § 18-609G.
Penalties	**Criminal Penalties:** • Criminal abortion shall be a felony punishable by a sentence of imprisonment of no less than two (2) years and no more than (5) years in prison. Idaho Code Ann. § 18-622(2); Idaho Code Ann. § 18-8805(2). **Civil Actions & Penalties:** • Any female upon whom an abortion has been attempted or performed, the father of the preborn child, a grandparent of the preborn child, a sibling of the preborn child, or an aunt or uncle of the preborn child may maintain an action for:

- All damages from the medical professionals who knowingly or recklessly attempted, performed, or induced the abortion in violation of this chapter;
- Notwithstanding any other provision of law, statutory damages in an amount not less than twenty thousand dollars ($20,000) from the medical professionals who knowingly or recklessly attempted, performed, or induced an abortion in violation of this chapter; and
- Costs and attorney's fees.

Idaho Code Ann. § 18-8807(1)(a)-(c).

Administrative Actions & Penalties:

- The professional license of any health care professional who performs or induces an abortion or who assists in performing or inducing an abortion in violation of this chapter shall be suspended by the appropriate licensing board for a minimum of six (6) months upon a first offense and shall be permanently revoked upon a subsequent offense. Idaho Code Ann. § 18-8805(3); Idaho Code Ann. § 18-622(2).

Criminal Penalties that have not been repealed:

- Except in cases where a different punishment is prescribed by this code, every offense declared to be a felony is punishable by imprisonment in the state prison not exceeding five (5) years, or by fine not exceeding fifty thousand dollars ($50,000), or by both such fine and imprisonment. Idaho Code Ann. § 18-112. **The following are considered felonies**:
  - Intentionally or recklessly performing or attempting to perform an abortion on a fetus greater than 20-weeks post-fertilization age. Idaho Code Ann. §§ 18-507.
    - No penalty shall be assessed under this section against the woman upon whom the abortion is performed or attempted to be performed.
  - Knowingly supplying or administering an abortion-inducing drug without a license. Idaho Code Ann. § 18-605.
  - Inflicting physical injury to coerce or cause a pregnant woman to have an abortion. Idaho Code Ann. § 18-615.
- Any person, who is not a physician or selling upon a prescription or order of a physician, who sells anything specifically designed to terminate a pregnancy commits a misdemeanor. Idaho Code Ann. § 18-607.
- Threatening or conspiring to have a pregnant person to have an abortion constitutes a misdemeanor punishable by not more than six (6) months in jail, or a fine of not more than one thousand dollars ($1,000), or both. Idaho Code Ann. § 18-615.

Civil Actions & Penalties that have not been repealed:

- Any physician who fails to submit a report by the end of thirty (30) days following the due date shall be subject to a late fee of five hundred dollars ($500) for each additional thirty (30) day period the report is overdue. Idaho Code Ann. § 18-506.

	• Actions for injunctive relief and damages may be maintained against a physician by the woman upon whom the abortion was performed, the parents and siblings of that woman, the father of the unborn child, the guardians of a minor, or a prosecuting attorney or attorney general. Idaho Code Ann. § 18-508.
	
	Administrative Actions & Penalties that have not been repealed:
	• Performing abortions in violation of Idaho law will result in the following penalties assessed by the Medical Board: Idaho Code Ann. § 18-605.
	  o First violation: Professional discipline and $1000 penalty.
	  o Second violation: License suspended for 6 months and a penalty of not less than $2500.
	  o Subsequent violations: License revocation and a penalty of not less than $5000.
	• Failure to comply with reporting requirements will result in professional discipline and a penalty of $100 for each month or portion that the violation continues. Idaho Code Ann. § 18-609G.

Aiding & Abetting	**Third-Party Requirements that have not been repealed:** • Formerly, it was felony (fined up to $5,000 and/or prison for 1-5 years) for aiding and abetting but it has since been held unconstitutional. Idaho Code Ann. § 18-606; o (held unconstitutional by *McCormack v. Hiedeman*, 900 F. Supp. 2d 1128 (D. Idaho 2013), *aff'd sub nom. McCormack v. Herzog*, 788 F.3d 1017 (9th Cir. 2015)). The laws held unconstitutional will certainly be readdressed for enforcement as the Court relied on *Roe* and *Casey* to strike down the law.
State Constitution	Idaho statutory code denies the right to abortion. The State constitution makes no reference to rights to bodily autonomy or abortion. • Art I § 2: Political Power Inherent In The People. All political power is inherent in the people. Government is instituted for their equal protection and benefit, and they have the right to alter, reform or abolish the same whenever they may deem it necessary; and no special privileges or immunities shall ever be granted that may not be altered, revoked, or repealed by the legislature. • Art I § 21: Declaration of Rights. Reserved rights not impaired. This enumeration of rights shall not be construed to impair or deny other rights retained by the people.
Future Considerations	Multiple lawsuits have been filed over Idaho's abortion restrictions and litigation remains ongoing. Most recently, the Idaho Supreme Court heard oral arguments over the constitutionality of Idaho's various abortion bans. The case is *Planned Parenthood Great Northwest, Hawaii, Alaska, Indiana, Kentucky v. Idaho*, No. 49899-2022 (Idaho filed Jun. 27, 2022). See also Idaho Statesman, "Attorneys

	debate abortion rights, state's new laws in front of Idaho Supreme Court," (Oct. 6, 2022). Meanwhile, the Federal Government has also filed a lawsuit against Idaho's "near-absolute" abortion ban, claiming that it violates requirements that patients at hospitals receiving federal Medicare funds have access to emergency medical care in certain circumstances under the Emergency Medical Treatment and Labor Act. The case is *US v. Idaho*, No. 22-cv-329 (Dist. Idaho Aug. 2, 2022). See also Department of Justice Press Release, "Justice Department Sues Idaho to Protect Reproductive Rights: Complaint Alleges Idaho Law Violates the Emergency Medical Treatment and Labor Act," (Aug. 2, 2022).

Illinois

2019 Ill. Laws, Pub. Act 101-13 (S.B. 25)

225 Ill. Comp. Stat. § 90/17

740 Ill. Comp. Stat. 180/2.2

745 Ill. Comp. Stat. § 70/1 to § 70/14

775 Ill. Comp. Stat. § 55/1-1 to § 55/1-97

Restrictions | Penalties | Aiding & Abetting | State Constitution | Future Considerations

Restrictions	Every individual person has a fundamental right to make autonomous decisions about their own health care, whether that is to continue the pregnancy or to have an abortion. 775 Ill. Comp. Stat. § 55/1-5; 775 Ill. Comp. Stat. § 55/1-15. **Abortions are permitted**: • At any time before viability. 775 Ill. Comp. Stat. § 55/1-25(a). o Viability is defined as likelihood to survive outside the womb without extraordinary medical measures. 775 Ill. Comp. Stat. § 55/1-10. **Abortions are prohibited** after viability unless necessary to protect the life or health of the patient. 775 Ill. Comp. Stat. § 55/1-25. **Reporting Requirements**: • Health care professionals must send a report for each abortion performed to the Department of Health no later than 10 days after the end of the following month in which the abortion is performed. 775 Ill. Comp. Stat. § 55/1-25(b).
Penalties	**Civil Actions & Penalties:** • Persons may bring civil actions against the State in cases where the State interferes with an individual's exercise of the fundamental right to get an abortion. 775 Ill. Comp. Stat. § 55/1-20. • There shall be no cause of action against a physician or facility for wrongful death caused by an abortion where the abortion was permitted by law and the required consent was obtained. 740 Ill. Comp. Stat. 180/2.2.

	• A cause of action for wrongful death may be maintained against a physician or facility when an infant is born-alive during an abortion and then subsequently dies. 740 Ill. Comp. Stat. 180/2.2.
Aiding & Abetting	**Third-Parties:** • Physical therapists can have their licenses revoked or be forced to pay a fine not to exceed $5,000 if they willfully assist in the violation of any State law related to abortion. 225 Ill. Comp. Stat. § 90/17. o NOTE: this provision is effective until January 1, 2026.
State Constitution	The Reproductive Health Act confers broad reproductive rights on Illinois citizens. In addition, these provisions of the state constitution may also apply: • Preamble: We, the People of the State of Illinois — grateful to Almighty God for the civil, political and religious liberty which He has permitted us to enjoy and seeking His blessing upon our endeavors — in order to provide for the health, safety and welfare of the people; maintain a representative and orderly government; eliminate poverty and inequality; assure legal, social and economic justice; provide opportunity for the fullest development of the individual; insure domestic tranquility; provide for the common defense; and secure the blessings of freedom and liberty to ourselves and our posterity — do ordain and establish this Constitution for the State of Illinois. • Art I, § 6: The people shall have the right to be secure in their persons, houses, papers and other possessions against unreasonable searches, seizures, invasions of privacy or interceptions of communications by eavesdropping devices or other means. • Art I, § 18: The equal protection of the laws shall not be denied or abridged on account of sex by the State or its units of local government and school districts. • Art VII, § 6: The Reproductive Health Act refers to this section that provides the General Assembly with the power to force municipalities with a population greater than 25,000 people (known as “home rule units”) to follow the law and not attempt to pass their own rules that confer less rights than those enacted by the General Assembly.
Future Considerations	In 2019, Illinois acted to repeal most of their abortion restrictions and enacted the Reproductive Health Act (775 Ill. Comp. Stat. § 55/1-1 to § 55/1-97). The Act provides broad abortion rights were reaffirmed in 2020 by the Youth Health and Safety Act (20 Ill. Comp. Stat. § 4111/5).

Indiana

Ind. Code tit. 16, Art. 18, General Definitions

Ind. Code § 16-21-2-2.5 to § 16-21-2-2.6

Ind. Code § 16-34-1-1 to § 16-34-1-11

Ind. Code § 16-34-2-0.5 to § 16-34-2-12

Ind. Code § 16-34-4-1 to § 16-34-4-9

Ind. Code § 16-34-6-1 to § 16-34-6-6

Ind. Code § 25-22.5-8-6

Restrictions | Penalties | Aiding & Abetting | State Constitution | Future Considerations

NOTE: After *Dobbs* was released, the Indiana legislature reconvened for a special legislative session in July that culminated with the enactment of increased abortion restrictions that came into effect on September 15, 2022. See S.B. 1, 122nd Gen. Assemb., 1st Spec. Sess. (2022). This law was enjoined by *Planned Parenthood Northwest, Hawai'i, Alaska, Indiana, Kentucky, Inc. v. Medical Licensing Bd. of Ind.*, No. 53C06-2208-PL-001756 (Ind. Cir. Ct Sept. 22, 2022). The Indiana Supreme Court declined to lift that injunction while it proceeds to hear a state constitutional challenge to the law. *Medical Licensing Bd. of Ind. v. Planned Parenthood Great Northwest, Hawaii, Alaska, Indiana, Kentucky, Inc.*, No. 22A-PL-2260 (Ind. Oct. 12, 2022). The following summary of state law includes all laws currently enacted in Indiana, regardless of whether or not they conflict with one another or are enforceable in the future.

Restrictions	**Abortion Restrictions effective September 15, 2022 (currently enjoined):**
	• Abortions may be performed:
	  o Only by physicians in a hospital or a hospital-owned (51%) ambulatory outpatient surgical center. Ind. Code § 16-34-2-1.
	  o Prior to the earlier of viability or 20 weeks postfertilization, but only if the abortion is necessary to prevent any serious health risk to the pregnant woman, or to save her life, or if the fetus is diagnosed with a lethal fetal anamoly. Ind. Code § 16-34-2-1(a)(1); Ind. Code § 16-18-2-327.9.
	  o Prior to 10 weeks postfertlization if the pregnancy was the result of rape or incest. Ind. Code § 16-34-2-1(a)(2).

- Any time after 20 weeks postfertilization if necessary to prevent serious health risk or death to the pregnant woman. Ind. Code § 16-34-2-1(a)(3); Ind. Code § 16-18-2-327.9.

- Abortion shall in all instances be a criminal act, except when performed under the above exceptions. Ind. Code § 16-34-2-1.

Consent Requirements effective September 15, 2022 (currently enjoined):

- Consent requirements do not apply to a minor who is pregnant as the result of rape or incest by the parent or legal guardian. Ind. Code § 16-34-2-4(a).

Abortions may be performed (in force as of Dec. 5, 2022):

- Only by physicians in a hospital or ambulatory outpatient surgical center. Ind. Code § 16-34-2-1.
- At any time during the first trimester of pregnancy, as long as the abortion is performed by a physician and the woman, or a parent or guarding in the case of a minor, has submitted her written consent. Ind. Code. § 16-34-2-1.
- Once the woman seeking an abortion has filed her consent with her physician, or, in the case of a minor, the parents or guardians have filed their consent. Ind. Code § 16-34-2-1(a)(1).
  - **Exception**: If in the judgment of the physician the abortion is necessary to preserve the life of the woman, her consent is not required.
- After viability or at 20 weeks postfertilization, whichever is earlier, if the abortion is necessary to preserve the life or health of the patient and is performed in a hospital with premature birth intensive care units and a second physician is in attendance. Ind. Code. § 16-34-2-1(a)(2).
- Abortion shall in all instances be a criminal act, except when performed under the above exceptions. Ind. Code § 16-34-2-1.

Prohibitions:

- A person may not knowingly or intentionally perform a partial birth abortion unless a physician reasonably believes that:
  - performing the partial birth abortion is necessary to save the mother's life; and
  - no other medical procedure is sufficient to save the mother's life. Ind. Code. § 16-34-2-1(b).
- Telehealth may not be used to provide an abortion, including the writing or filling of a prescription for any purpose intended to result in abortion. Ind. Code § 16-34-1-11.
- A person may not knowingly or intentionally perform a dismemberment abortion unless reasonable medical judgment dictates that performing the dismemberment abortion is necessary:
  - to prevent any serious health risk to the mother; or
  - to save the mother's life. Ind. Code. § 16-34-2-1(c).
- It is illegal to perform an abortion because of sex, because of Down

Syndrome or another disability, or because of race.
Ind. Code § 16-34-4; Ind. Code § 16-34-5; Ind. Code § 16-34-6; Ind. Code § 16-34-7; Ind. Code § 16-34-8.

Drug-Induced Abortion Requirements:

- No abortion-inducing drugs may be dispensed or prescribed after 8 weeks postfertilization age. Ind. Code § 16-34-2-1.
- Physicians must examine patients in person before prescribing or dispensing an abortion-inducing drug, and must dispense abortion-inducing drugs in person, with the patient consuming the drug in their presence. Ind. Code § 16-34-2-1.
- When prescribing abortion-inducing drugs, a physician shall provide the patient with a copy of the manufacturer's instruction sheets, require that the woman sign the manufacturer's patient agreement form, and retain a copy of the signed form in the patient's file. Ind. Code § 16-34-2-1.
- Physicians must also provide, orally and in writing, a statement that it may be possible to avoid, cease, or reverse the intended effects of a chemical abortion using mifepristone if the second pill has not been taken. Ind. Code § 16-34-2-1.
    - **Note:** A U.S. district court issued an injunction prohibiting enforcement of provisions of 2021 Ind. Act Pub. Laws 218 requiring physicians to use specific language to notify patients that it may be possible to reverse the effects of abortion-inducing drugs before taking the second pill. *All-Options, Inc. v. Ind. Att'y Gen.*, No. 21-1231 (S.D. Ind., June 30, 2021).

Physician Requirements:

- Prior to performing an abortion, the attending physician must determine the probable gestational age of the fetus and the viability of the fetus. Ind. Code § 16-34-2-2.
- The determination by a physician that a medical emergency necessitates an abortion shall not include a patient's claim or diagnosis that the patient would engage in self-harm. Ind. Code § 16-34-2-0.5.
- Physician cannot provide an abortion to a patient within 18 hours of them receiving the required information and materials to satisfy informed consent. Ind. Code § 16-34-2-1.1
- Physicians must determine and certify the postfertilization age of the fetus and if it is viable; and perform and allow patients to witness fetal ultrasound imaging and fetal heart tone auscultation, unless they certify on a state-developed form that they don't want to view the image or hear the heart tone. Ind. Code § 16-34-2-1.1, I.C. § 16-34-2-2
- In the case of a medical emergency compelling the performance of an abortion, the physician must inform the patient of why it is needed to preserve her life or physical health. Ind. Code § 16-34-2-1.2
- Any physician performing abortions must have admitting privileges at a hospital in the county in which the abortion will be performed. Ind. Code § 16-34-2-4.5.
- Any pregnant woman seeking an abortion must be informed both orally and in writing that no one can coerce the pregnant woman to have an

abortion. If an abortion clinic employee suspects someone is being coerced the clinic must report it to law enforcement, who must then investigate. Ind .Code § 16-34-6-6.

Consent Requirements:

- Voluntary and informed consent required, which includes the physician, a referring physician, a physician assistant, an advanced practice registered nurse or a certified nurse midwife providing the patient with a state-developed informed consent brochure and certain required information. Ind. Code § 16-34-2-1.1, Ind. Code § 16-34-2-1.5.
- Physicians may not perform abortions on unemancipated minors unless:
  - the physician obtains the notarized written consent of at least one parent, legal guardian or custodian of the minor, government-issued proof of identification of the person providing consent and some evidence that would provide a basis for a reasonably prudent person to believe the person is the minor's parent, guardian or custodian;
  - the juvenile court waives the consent requirement; or
  - a medical emergency compels an abortion to prevent the minor's death or substantial and irreversible physical harm. Ind. Code § 16-34-2-4
- If the consent requirement is waived, the minor's parent, guardian, or custodian must receive notice of the minor's intent to obtain an abortion before it takes place unless the juvenile court finds that notification would not be in the minor's best interests. Ind. Code § 16-34-2-4(d)
  - Note: The U.S. Court of Appeals for the Seventh Circuit affirmed a federal district court injunction prohibiting enforcement of this provision. *Planned Parenthood of Ind. & Ky. v. Box*, No. 17-2428 (7th Cir., Mar. 12, 2021).
- States or agencies with wardship or guardianship of unemancipated minors may not consent to abortions unless necessary to prevent the minor's death or substantial and irreversible physical harm. Ind. Code § 16-34-1-10.

Reporting Requirements:

- Physicians must report all abortion complications to the state department. Ind. Code § 16-34-2-4.7.
- Physicians must report all abortions to the state department within 30 days after the performance of the procedure. Ind. Code § 16-34-2-5.

Penalties

Administrative Actions & Penalties effective September 15, 2022 (currently enjoined):

- The Medical Board shall revoke a phyisican's license for performing an abortion in violation of § 16-34-2-1. Ind. Code § 25-22.5-8-6.

Criminal Penalties:

- The following are Level 5 felonies, punishable by imprisonment for a fixed term of between one (1) and six (6) years, with the advisory sentence being three (3) years. In addition, the person may be fined not more than ten thousand dollars ($10,000). Ind. Code § 35-50-2-6:
    - A person who knowingly or intentionally performs an abortion not covered by any exception. Ind. Code § 16-34-2-1.
    - Knowingly or intentionally performing a partial-birth abortion that isn't necessary to save the woman's life, Ind. Code § 16-34-2-1(b)
- A person who knowingly or intentionally coerces a pregnant woman to have an abortion commits a Level 6 felony, punishable upon conviction of a fixed term between six (6) months and two and one half (2 1/2) years in prison and a fine of up to $10,000. Ind. Code § 16-34-6-5
- A physician who performs an abortion intentionally or knowingly in violation of informed consent provisions on partial birth or minor abortions commits a Class A misdemeanor, punishable by imprisonment for a fixed term of not more than one (1) year; in addition, he may be fined not more than five thousand dollars ($5,000). Ind. Code § 35-50-3-2
- A physician who fails to report all abortions they perform and all abortion complications commits a Class B misdemeanor. Ind. Code § 16-34-2.4.7; Ind. Code § 16-34-2-5.
- A person who knowingly or intentionally performs an abortion in violation of informed consent provisions of this chapter commits a Class A infraction, punishable by a judgment of up to ten thousand dollars ($10,000). Ind. Code § 34-28-5-4
- A person who operates an unlicensed abortion clinic commits a Class A misdemeanor, punishable by imprisonment for a fixed term of not more than one (1) year; in addition, he may be fined not more than five thousand dollars ($5,000). . Ind. Code § 16-21-2-2.5.

Civil Penalties:

- A person who knowingly or intentionally aid or assist an unemancipated pregnant minor in obtaining an abortion without proper consent is civilly liable to the unemancipated pregnant minor and the parent or legal guardian or custodian of the unemancipated pregnant minor.
- A court may award damages to the unemancipated pregnant minor or the parent or legal guardian or custodian of the unemancipated pregnant minor who is adversely affected by a violation of this section, including the following damages:
    - Compensation for physical or emotional injury, without the need of being physically present at the act or event.
    - Attorney's fees.
    - Court costs.
    - Punitive damages. Ind. Code § 16-34-2-4.2(d)
- A civil action for damages, including psychological injuries, may be maintained against a physician who performs a dismemberment abortion. U.
- Civil liability for wrongful death is to be levied if a physician performs a sex/disability/race-selective abortion. Ind. Code §§ 16-34-4-9.

	Administrative Actions & Penalties: • Except for in the case of a medical emergency, a physician who does not determine fetal age or viability before performing an abortion will be subject to disciplinary action. Ind. Code § 16-34-2-2. • A physician who performs an abortion based on sex selection, Down syndrome, disability or race selection shall be subject to disciplinary sanctions. Ind. Code § 16-34-4-9. • A physician may have their license revoked if they are found to have violated reporting requirements or to have performed an abortion in violation of the requirements of Chapter 16-34-2. Ind. Code § 25-22.5-8-6.
Aiding & Abetting	**Third Party**: • A person may not knowingly or intentionally aid or assist an unemancipated pregnant minor in obtaining an abortion without the consent required by section 4 of this chapter. Ind. Code § 16-34-2-4.2.
State Constitution	There are no provisions directly related to abortion or a right to privacy. • Art. I, § 1: WE DECLARE, that all people are created equal; that they are endowed by their CREATOR with certain inalienable rights; that among these are life, liberty, and the pursuit of happiness; that all power is inherent in the people; and that all free governments are, and of right ought to be, founded on their authority, and instituted for their peace, safety, and well-being. … • Art. I, § 3: No law shall, in any case whatever, control the free exercise and enjoyment of religious opinions, or interfere with the rights of conscience. • Art. I, § 23: The General Assembly shall not grant to any citizen, or class of citizens, privileges or immunities which, upon the same terms, shall not equally belong to all citizens.
Future Considerations	Several laws that had been previously enjoined were reinstated by a state court judge. See WishTV.com, "Court reinstates several Indiana abortion restrictions," (Jul. 12, 2022). The Indiana Supreme Court will hear arguments in January 2023 as to whether or not newly enacted abortion restrictions violate provisions of the State Constitution. See Politico, "Indiana Supreme Court allows abortions to continue pending January hearing," (Oct. 12, 2022).

Iowa

Iowa Code § 146.1 to § 146D.1

Iowa Code § 707.7 to § 708A

Iowa Code § 135L.1 to § 135L.3

Iowa Admin. Code r. 653-13.10

Iowa Admin Code r. 653-100.5(144)

Restrictions | Penalties | Aiding & Abetting | State Constitution | Future Considerations

Restrictions

Abortion Restrictions:

- Abortions are prohibited after the post-fertilization age of the fetus is 20-weeks or more. Iowa Code § 146B.2.
  - **Exceptions**:
    - Medical emergency or
    - The abortion is necessary to preserve the life of the fetus.
- A physician cannot perform an abortion when it has been determined that the fetus has a detectable fetal heartbeat, unless, in the physician's reasonable medical judgment, a medical emergency exists or when the abortion is medically necessary. Iowa Code § 146C.3
  - This law has been enjoined by *Planned Parenthood v. Reynolds*, No. 05771_EQCE083784 (Ia. Dist. Ct. filed Jan. 22, 2019).

Prohibitions:

- A person shall not knowingly perform or attempt to perform a partial-birth abortion unless it is necessary to save the life of the mother who is endangered by a physical disorder, physical illness, or physical injury. Iowa Code § 707.8A.

Drug-Induced Abortion Requirements:

- When inducing an abortion with an abortion-inducing drug, a physician must be physically present with the pregnant woman at the time the abortion-inducing drug is provided. Iowa Admin. Code r. 653-13.10.
- A physician must schedule a follow-up appointment with the pregnant woman 12 to 18 days after the pregnant woman's use of an abortion-inducing drug. Iowa Admin. Code r. 653-13.10.

Physician Requirements:

- Only physicians may perform abortions. Iowa Code § 707.7.
- Physicians may not perform an abortion until the physician determines if there is a detectable fetal heartbeat. Iowa Code § 146C.3
- Physicians may not perform abortions unless they or another physician verified that the gestational age of the fetus is less than 20 weeks. Iowa Code § 146.B2.
    - **Exceptions**:
        - Medical emergency, or
        - The abortion is necessary to preserve the life of the child.

Informed Consent Requirements:

- Except in the case of a medical emergency, a physician performing an abortion must certify in writing, at least twenty-four hours before performing the abortion, that the pregnant woman:
    - Underwent and could choose to view and/or hear an ultrasound that displayed the approximate age of the fetus;
    - Was provided with information regarding alternatives to abortion and any relevant risk factors related to the abortion relevant to that individual. Iowa Code § 146A.1.
- Except in the case of a court order, child abuse, or a medical emergency, a licensed physician shall not perform an abortion on a pregnant minor until at least forty-eight hours' prior notification is provided to a parent of the pregnant minor. Iowa Code § 135L.3.

Record/Reporting Requirements:

- A physician must report to the department that there was a determination of post-fertilization age of the fetus. If there was not such a determination or if it was more than twenty weeks and an abortion was still performed, then a physician must report the basis of the medical emergency or the basis for saving the life of the fetus and the method used for the abortion. Iowa Code § 146.B2.
- A health care provider who diagnoses a spontaneous termination of pregnancy or who induces the termination of a pregnancy shall file with the department a Statistical Report of Termination of Pregnancy form for each termination. Iowa Admin. Code r. 653-100.5(144).
- A physician must retain in the pregnant woman's medical record documentation that testing for a fetal heartbeat was done, the results of the fetal heartbeat test, and the pregnant woman's signed form acknowledging the pregnant woman received the required information under the section. Iowa Code § 146C.3

Penalties

Immunities: A pregnant woman cannot be charged with a crime for her acts or omissions under Iowa Code § 707.8.

Criminal Penalties:

- Class "B" felonies are punishable by imprisonment for not more than twenty-five (25) years. Iowa Code § 902.9. **The following are class "B" felonies:**
  - Terminating a pregnancy without the consent of the pregnant woman during the commission of a forcible felony. Iowa Code § 707.8.
  - Intentionally killing a viable fetus that was aborted alive. Iowa Code § 707.9.
- Class C felonies are punishable by imprisonment for more than ten (10) years and a fine of at least $1,000 but not more than $10,000. Iowa Code § 902.9. **The following are class "C" felonies:**
  - Terminating a pregnancy after the second trimester, with the knowledge and voluntary consent of the pregnant woman, where the abortion results in the death of the fetus (feticide). Iowa Code § 707.7.
  - Terminating a pregnancy, with the knowledge and voluntary consent of the pregnant woman, and when the woman is not a physician. Iowa Code § 707.7.
  - Performing a partial-birth abortion without the presence of a qualified exception. Iowa Code § 707.8A
  - Terminating a pregnancy without the consent of the pregnant woman during the commission of a felony or felonious assault. Iowa Code § 707.8.
  - Intentionally terminating a pregnancy without the knowledge or consent of the pregnant woman. Iowa Code § 707.8.
  - Terminating a pregnancy by obtaining consent through force or intimidation. Iowa Code § 707.8.
- Class "D" felonies are punishable by confinement for no more than five (5) years and a fine of at least $750 but more than $7,500. Iowa Code § 902.9. **The following are class "D" felonies:**
  - Terminating a pregnancy after the second trimester, with the knowledge and voluntary consent of the pregnant woman, where the abortion does not result in the death of the fetus (attempted feticide). Iowa Code § 707.7.
  - Unintentionally terminating a pregnancy while drag racing. Iowa Code § 707.8.
- Aggravated misdemeanors are punishable by not more than two years imprisonment and a fine between $625 and $6,250. Iowa Code § 903.1. **The following is an aggravated misdemeanor**:
  - Unintentionally terminating a pregnancy without the knowledge or voluntary consent of the pregnant woman by committing an act likely to cause termination of or serious injury to a human pregnancy. Iowa Code § 707.8.
- Serious misdemeanors are punishable with imprisonment of up to one year in county jail, or a fine between $315 and $1875. Iowa Code § 903.1. **The following are serious misdemeanors:**
  - Failing to perform an abortion with the skill, care, and diligence available to preserve the life and health of a viable fetus is guilty of a serious misdemeanor. Iowa Code § 707.10.

	o Knowingly performing an abortion on an unemancipated minor in violation of the consent requirements of Iowa Code § 135L.3. **Civil Actions & Penalties:** • A civil action may be brought against a physician who performs a partial-birth abortion. The mother on whom the procedure was performed, the father of the fetus, or, if the mother is under 18 or unmarried, a maternal grandparent can sue for appropriate relief unless the pregnancy resulted from the plaintiff's criminal conduct or the plaintiff consented to the partial birth abortion. Iowa Code § 707.8A. • A pregnant woman upon who an abortion was performed or attempted which is in violation of any part of the law chapter may sue the physician for actual damages. Iowa Code § 146B.3. • An action for injunctive relief to prevent a physician from performing abortions may be maintained against a physician who has intentionally violated the chapter. The action may be brought by: o The pregnant woman; o The parent or guardian of a pregnant woman who is under the age of 18; o One of the pregnant woman's current or formerly licensed health care providers; o A county attorney in the appropriate jurisdiction; or o The attorney general. Iowa Code § 146B.3. • A plaintiff who prevails can be awarded reasonable attorney's fees. Iowa Code § 146B.3. • If a defendant prevails and the court finds that the suit was frivolous and in bad faith, then the defendant may be awarded reasonable attorney's fees. Iowa Code § 146B.3. **Administrative Actions & Penalties:** • Any physician who fails to meet the reporting requirements is subject to a late fee of $500 for each additional thirty-day period that the work is overdue. If it has been over a year, the physician can be compelled by a court under Chapter 148. Iowa Code § 146B.2. o If the physician recklessly or intentionally falsified a report, then they can be subject to a civil penalty of $100. Iowa Code § 146B.2. • Failure of a physician to comply with any provision of § 146B.2 is grounds for license discipline under Chapter 148, except if the violation was (1) the late filing of a report; or (2) to submit a complete report in compliance with court order. Iowa Code § 146B.3.
Aiding & Abetting	No provision.
State Constitution	There is no state constitutional right to an abortion. In June of 2022, the Iowa Supreme Court reversed a lower court's decision to block Iowa's 24-hour waiting period and reversed the 2018 ruling that had

	declared a constitutional right to abortion in the state constitution. The Iowa Supreme Court held that the state constitution did not provide fundamental protection for abortion in the Due Process Clause and lowered the standard of review for abortion cases. *Planned Parenthood of the Heartland, Inc. v. Reynolds*, 2022 Iowa Sup. LEXIS 80. Article 1, section 1 of the Iowa Constitution states "all men and women are, by nature, free and equal, and have certain inalienable rights – among which are those of enjoying and defending life and liberty, acquiring, possessing, and protecting property, and pursuing and obtaining safety and happiness." Iowa. Const., Art. I § 1.
Future Considerations	Iowa Code § 146C.3, or the "Heartbeat Law," prevents abortions after the finding of a detectible fetal heartbeat with an exception for medical emergencies but none for rape or incest. While the law has not been repealed, the law was previously found unconstitutional pursuant to the state constitution, *Roe*, and *Casey* and has been permanently blocked from going into effect. *Planned Parenthood v. Reynolds*, No. 05771_EQCE083784 (Ia. Dist. Ct. filed Jan. 22, 2019). After *Dobbs*, Gov. Reynolds filed a lawsuit to get an Iowa court to reconsider whether or not the Heartbeat Law should remained blocked in light of the changed legal landscape. Most recently, an Iowa district court heard oral arguments in the case and intends to put out a ruling in the next couple of months. *Planned Parenthood of the Heartlands, Inc., v. Reynolds*, No. EQCE 083074 (Ia. Dist. Ct. filed Aug. 11, 2022). See also Bloomberg.com, "Iowa Heartbeat Abortion Ban Heads to Trial Court Showdown," (Oct. 27, 2022); Iowa Capital Dispatch, "Judge questions her own authority to reinstate Iowa abortion ban," (Oct. 28, 2022). Iowa legislators, in the meantime, have said they will wait on a resolution in the court case before attempting any legislation to further restrict abortion. See Des Moines Register, "Will Iowa abortion laws change after the midterm elections? Here's what to know," (Nov. 14, 2022).

Kansas

Kan. Stat. Ann. § 65-4a01 to Kan. Stat. Ann. § 65-4a12

Kan. Stat. Ann. § 65-6701 to Kan. Stat. Ann. § 65-6749

Kan. Stat. Ann. § 65-443 to Kan. Stat. Ann. § 65-445

Kan. Stat. Ann. § 65-6524

Kan. Stat. Ann. § 65-6804

Kan Stat. Ann. § 6602 and §6611

Restrictions | Penalties | Aiding & Abetting | State Constitution | Future Considerations

NOTE: The right to an abortion in Kansas is currently protected by the Kansas Supreme Court's ruling in *Hodes & Nauser, MDS, P.A. v. Schmidt,* which held that the Kansas Bill of Rights protects access to abortion services. In August 2022, Kansas residents rejected a constitutional amendment to prohibit a right to an abortion in the state. The following summary of state law includes facility and physician licensing requirements stayed by *Hodes* (Kan. Stat. Ann.§ 65-4a01 to Kan. Stat. Ann. § 65-4a12) and other laws currently enacted in Kansas, regardless of whether they conflict with one another or are enforceable.

Restrictions

Abortions are not permitted:

- When the fetus is viable, and its gestational age is 22 or more weeks. Kan. Stat. Ann. § 65-6703.
  - **Exception:**
    - When necessary to preserve the life of the pregnant woman.
    - When a continuation of the pregnancy would cause irreversible bodily damage to the pregnant woman.
- Before a determination of the gestational age of the fetus has been made or attempted. Kan. Stat. Ann. § 65-6703; Kan. Stat. Ann § 65-6724.

Prohibitions:

- Abortions on "pain-capable" fetuses are prohibited. Kan. Stat. Ann. § 65-6724.
  - **Exceptions**:
    - When necessary to preserve the life of the pregnant woman, or

        - To prevent substantial and irreversible physical impairment.
- Abortions based on sex selection are prohibited. Kan. Stat. Ann. § 65-6726.
- Partial-birth abortions are prohibited. Kan. Stat. Ann. § 65-6721.
    - **Exception:**
        - When necessary to save the life of the pregnant woman.
- Dismemberment abortions are prohibited. Kan. Stat. Ann. § 65-6743.
    - **Exception:**
        - When necessary to preserve the life of the pregnant woman.
        - When continuing the pregnancy would cause irreversible damage to the pregnant woman.

Drug-induced Abortion Requirements/Prohibitions:

- When mifepristone or any abortion inducing drug is used to induce an abortion, it must be administered in the physical presence of the physician who provided the drug. Kan. Stat. Ann. § 65-4a10.
    - **Exception:**
        - Medical Emergency.
        - In the case of an abortion performed in a hospital to induce labor.
- All reasonable efforts must be made that the pregnant woman returns twelve to eighteen days after the administration of the abortion-inducing drug to ensure that the pregnancy has been terminated. Kan. Stat. Ann. § 65-4a10.

Physician Requirements:

- Only a physician licensed in the state of Kansas may perform an abortion. Kan. Stat. Ann. § 65-4a10; Kan. Stat. Ann. § 65-4a08.
- If the gestational age of the fetus is determined to be 22 or more weeks, the physician must check for viability prior to performing or inducing an abortion. Kan. Stat. Ann. § 65-6703.
- If a physician determines that the gestational age of the fetus is less than 22 weeks, he must document as part of the medical records of the pregnant person the basis for his determination. Kan. Stat. Ann. § 65-6703.
- In order for a physician to perform or induce an abortion in a facility, the physician must have clinical privileges at a hospital located within thirty miles of the facility. Kan. Stat. Ann. § 65-4a08.
- If a physician is performing an abortion on a pain-capable fetus, he must give the pregnant person a written determination prior to the abortion. Kan. Stat. Ann § 65-6724.
    - **Exception:**
        - Medical Emergency. Kan. Stat. Ann § 65-6723.

Consent Requirements:

- No abortion shall be performed or induced without the voluntary and informed consent of the person upon whom the abortion is to be

performed or induced. Kan. Stat. Ann. § 65-6709; Kan. Stat. Ann. § 65-6703.
    - **Exception:**
        - The requirements for voluntary and informed consent are waived in the case of a medical emergency. Kan. Stat. Ann. § 65-6709; Kan. Stat. Ann. § 65-6703.
- Abortion on unemancipated minors can be done only after the notarized written consent of the unemancipated minor and both parents or the legal guardian of the minor has been procured. Kan. Stat. Ann. § 65-6705.
    - Minor may petition a court for waiver of the consent requirement.

Facility Requirements:

- Facilities in which abortions are performed must:
    - Publish an easily identifiable link on the homepage of their websites (if the facility has a website) that directly links to the department of health and environment's website. Kan. Stat. Ann. § 65-6709.
    - Post a sign in a location visible to patients informing them of the information outlined in the statute. Kan. Stat. Ann. § 65-6709.
- Facilities where abortions are performed must be licensed. Kan. Stat. Ann. § 65-4a02; Kan. Stat. Ann. § 65-4a03; Kan. Stat. Ann. § 65-4a06; Kan. Stat. Ann § 4a08.
- Abortions performed after 22 weeks gestational age are to be performed in a hospital or ambulatory surgical center. Kan. Stat. Ann. § 65-4a07.
    - **Exception:**
        - Medical Emergency.
    - All other abortions may be performed in a facility licensed to do so.

Record/Reporting Requirements:

- Every medical care facility must keep written records of all pregnancies which are lawfully terminated within that facility. Kan. Stat. Ann. § 65-445.
- Every medical care facility and doctor shall annually submit a written report to the secretary of health and environment. Kan. Stat. Ann. § 65-445.
- Every person licensed to practice medicine and surgery shall keep a record of all pregnancies which are lawfully terminated by such person in a location other than a medical care facility. Kan. Stat. Ann. § 65-445; Kan. Stat. Ann. § 65-6703
- A physician must note the efforts made to comply with all drug-induced abortion requirements in the patient's medical record. Kan. Stat. Ann. § 65-4a10.
- A physician must report the gestational age and the medical basis and the reasons for such determinations in the pregnant woman's medical records. Kan. Stat. Ann § 65-6724.
- If a physician determines that a partial birth abortion is necessary and performs a partial birth abortion, the physician must report the medical basis for the determination in writing to the medical care facility where the abortion is performed for inclusion in the report of the medical care

facility to the secretary of health and environment. Kan. Stat. Ann § 65-6721

Penalties

Immunities: In general, pregnant women are not held liable or prosecuted for violations of Kansas abortion statutes.

Criminal Penalties:

- Class A misdemeanors are punishable by a prison sentence of up to one year and/or a fine of up to $2,500. Kan. Stat. Ann. § 21-6602; Kan. Stat. Ann. § 21-6611. **The following are Class A misdemeanors:**
  - Performing or inducing an abortion in violation of the gestational age and viability related statutory requirements, on the first offense. Kan. Stat. Ann. § 65-6703
  - Performing an abortion on an unemancipated minor in violation of statutory requirements**.** Kan. Stat. Ann. § 65-6705.
  - Performing an abortion in violation of the pain-capable fetus provisions, on the first offense. Kan. Stat. Ann § 65-6724.
  - Performing an abortion in violation of the sex-selection provision, on the first offense. Kan. Stat. Ann. § 65-6726.
  - Performing an abortion in Kansas and/or operating a facility in Kansas without lawful license and/or without clinical privileges at a hospital located within thirty miles of the facility. Kan. Stat. Ann. § 65-4a08.
- Level 10 felonies are punishable by imprisonment up to a year, based on the offender's felony record (or lack thereof), and/or fines of up to $100,000. Kan. Stat. Ann. § 21-6804; Kan. Stat. Ann § 21-6611. **The following are Level 10 felonies:**
  - Performing or inducing an abortion in violation of the gestational age and viability related statutory requirements, on the second offense. Kan. Stat. Ann. § 65-6703.
  - Performing an abortion in violation of the sex-selection provision, on the second or subsequent offense. Kan. Stat. Ann. § 65-6726.
- A Level 8 felony is punishable by imprisonment up to two years, depending on the offender's felony record (or lack thereof), and/or fines of up to $100,000. Kan. Stat. Ann. § 21-6804; Kan. Stat. Ann § 21-6611. **The following are Level 8 felonies:**
  - Violations of Section 65-6721, which regulates partial birth abortions. Kan. Stat. Ann § 65-6721.

Civil Actions & Penalties:

- Standing to sue is given to select persons, including the pregnant woman, but only if she did not cause the pregnancy through criminal conduct. Kan. Stat. Ann. § 65-6703 Kan. Stat. Ann. § 65-6724; Kan. Stat. Ann. § 65-6721; Kan. Stat. Ann. § 65-6726; Kan. Stat. Ann. § 65-6745.

Administrative Actions & Penalties:

- A physician is guilty of unprofessional conduct and subject to disciplinary charges in the following circumstances:

	o Performing, procuring or aiding and abetting in the performance of a criminal abortion. Kan. Stat. Ann. § 65-2837. o Failing to provide informed consent and printed materials under the act. Kan. Stat. Ann. § 65-6712 o Violating the drug-induced abortion provisions or failing to make reasonable efforts to ensure the patient returns for follow-up care after a drug-induced abortion. Kan. Stat. Ann. § 65-4a10. o Operating a facility without a valid license. Kan. Stat. Ann. § 65-4a08 o Performing or inducing an abortion in a facility when a physician does not have clinical privileges at a hospital located within thirty miles of the facility. Kan. Stat. Ann. § 65-4a08
Aiding & Abetting	**Third Party Immunities:** • Health care practitioners and pharmacists acting under direction of a phyisican will not be held liable for performing or attempting to perform a dismemberment abortion. Kan. Stat. Ann. § 65-6743.
State Constitution	In 2019, the Kansas Supreme Court ruled that a right to bodily autonomy is embedded in §1 of the Bill of Rights of the Kansas Constitution, and that this right allows a woman to make certain decisions for herself, including whether to continue a pregnancy. *Hodes & Nauser, MDS, P.A. v. Schmidt*, 440 P.3d 461 (Kan. 2019). §1 of the Bill of Rights of the Kansas Constitution states the following: • "All men are possessed of equal and inalienable natural rights, among which are life, liberty, and the pursuit of happiness." Kan. Const. B. of R. §1.
Future Considerations	In 2019, the Kansas Supreme Court held that a woman's right to choose whether to continue her pregnancy was constitutionally protected by the Kansas Bill of Rights, and the state was prohibited from encroaching on that right unless furthering a compelling state interest through narrowly tailored means. *Hodes & Nauser M.Ds, P.A. v. Schmidt*, 309 Kan. 610, 613-14 (2019); as a result, Kan. Stat. § 65-4a01 to Kan. Stat. § 65-4a12 were held unconstitutional by *Hodes & Nauser v. Norman*, 480 P.3d 211, (Kan. Ct. App. 2021). Kansans voted in August 2022 to reject the "Value Them Both" amendment, which would have amended the state constitution to specifically allow the legislature to regulate abortion. See NPR, "Voters in Kansas decide to keep abortion legal in the state, rejecting an amendment," (Aug. 3, 2022) and AP, "Kansas recount confirms results in favor of abortion rights," (Aug. 24, 2022).

Kentucky

Ky. Rev. Stat. § 15.241

Ky. Rev. Stat. § 213.101

Ky. Rev. Stat. § 216B.0431 to § 216B.0435

Ky. Rev. Stat. § 216B.990

Ky. Rev. Stat. § 311.595

Ky. Rev. Stat. § 311.710 to § 311.830

H.B. 3, 2022 Reg. Sess. (Ky. 2022) (to be codified in various chapters of Title XVIII)

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NOTE: Kentucky enacted a trigger law in 2019 that banned all abortions across the state once the U.S. Supreme Court overruled *Roe v. Wade*. The ban includes an exception when the life of the pregnant woman is in danger, but none for rape or incest. Also in 2019, Kentucky enacted a ban on abortions after detection of a fetal heartbeat. Finally, the Humanity in Healthcare Act of 2022 (H.B. 3) would prohibit abortions after 15 weeks, and would also prohibit the dispensing of abortion-inducing drugs. These laws were all recently allowed to go into effect, however no provisions in the trigger ban invalidate or override previous laws. The following summary of state law includes the trigger ban and all other laws currently enacted in Kentucky, regardless of whether or not they conflict with one another or are enforceable.

Restrictions

Abortion Ban:

- No person may knowingly perform an abortion, including a drug-induced abortion, on a pregnant woman. Ky. Rev. Stat. Ann. § 311.772.
  - **Exception:** To prevent the death or substantial risk of death due to a physical condition, or to prevent the serious, permanent impairment of a life-sustaining organ of a pregnant woman.
  - No exceptions for rape or incest.

Additional Abortion Restrictions that have not been repealed:

- No abortion may be performed before determining if a fetal heartbeat exists, except for a medical emergency. Ky. Rev. Stat. § 311.7705(1-2).

- No abortion may be performed after a determination of viability, except when necessary to preserve the life and health of the pregnant person. Ky. Rev. Stat. § 311.780.
- No abortion may be performed when the probable gestational age is at least 15 weeks. Ky. Rev. Stat. § 311.782(1).
- No abortion may be performed after a fetal heartbeat is detected, with narrow exceptions to save the life of the pregnant woman or prevent substantial and irreversible injury to her. Ky. Rev. Stat. Ann. § 311.7706.
- No abortion may be performed after the first trimester except by a licensed physician in a licensed hospital. Ky. Rev. Stat. § 311.760.
- Abortions based on sex selection; race, color, or national origin; or a diagnosis of Down Syndrome or any other disability, not including lethal fetal anomalies, are prohibited, except for medical emergencies. Ky. Rev. Stat. § 311.731(2).
- Telehealth abortions are prohibited; physician must be physically present in the same room. Ky. Rev. Stat. Ann. § 311.728.
- No abortions shall be performed on a minor, unless
    - Physician obtains consent of minor and one parent; and
    - Notice is given within reasonable time to the other parent.
    - Or if the minor is emancipated or petitions with the court to obtain an order granting consent to the abortion. Ky. Rev. Stat. Ann. § 311.732.
- No partial-birth abortions. Ky. Rev. Stat. Ann. § 311.765.
- No saline method of abortion after the first trimester. Ky. Rev. Stat. Ann. § 311.770.
- No person shall intentionally perform or induce an abortion on a pregnant woman when the probably gestational age of the unborn child is 11 weeks or greater, except in the case of a medical emergency. Ky. Rev. Stat. Ann. § 311.787.
- Before an abortion may be performed, the pregnant woman must have a private medical consultation during which physician reasonably believes that the abortion is necessary, and the physician describes the basis for their medical judgment that the abortion is necessary. Ky. Rev. Stat. Ann. § 311.723; Ky. Rev. Stat. Ann. § 311.760.

Drug-Induced Abortion Requirements that have not been repealed:

- Only a physician may provide a pregnant person with an abortion-inducing drug. H.B. 3, 2022 Reg. Sess., § 6 (Ky. 2022).
- No abortion-inducing drugs may be sent through the mail. H.B. 3, 2022 Reg. Sess., § 6 (Ky. 2022).
- The physician must examine the pregnant patient and schedule a follow-up visit prior to dispensing any abortion-inducing drugs. H.B. 3, 2022 Reg. Sess., § 7 (Ky. 2022).

Informed Consent Requirements that have not been repealed:

- Informed consent of the patient is required, except for medical emergencies. Ky. Rev. Stat. § 311.7735; Ky. Rev. Stat. Ann. § 311.725.

- Informed consent must be obtained from the patient at least 24-hours prior to dispensing any abortion-inducing drugs. H.B. 3, 2022 Reg. Sess., § 8 (Ky. 2022).
    - **Exception**: death or substantial and irreversible physical impairment of a major bodily function of the patient, but not including psychological or emotional conditions.

Physician Requirements that have not been repealed:

- Only qualified physicians may provide abortions. Ky. Rev. Stat. § 311.7733; Ky. Rev. Stat. § 311.750; Ky. Rev. Stat. Ann. § 311.750; H.B. 3, 2022 Reg. Sess. (Ky. 2022).
- Physician must perform and explain obstetric ultrasound and auscultation of fetal heartbeat to the pregnant woman prior to abortion. Ky. Rev. Stat. Ann. § 311.727; Ky. Rev. Stat. Ann. § 311.7704; Ky. Rev. Stat. Ann. § 311.7705.
- Physician must provide notice to the spouse of the pregnant woman before the abortion, if it is reasonable. Ky. Rev. Stat. Ann. § 311.735.
- Physician must specify in a written document the medical rationale for providing an abortion. Ky. Rev. Stat. Ann. § 311.7707.
- Physician must determine the probable post-fertilization age of the unborn child prior to abortion, except in the case of a medical emergency. Ky. Rev. Stat. Ann. § 311.783.

Reporting Requirements that have not been repealed:

- All abortions must be reported within 3 days after the end of the month in which they were performed. Ky. Rev. Stat. § 213.101.
- All prescriptions for abortion-inducing drugs must be reported within 3 days after the end of the month in which the prescription was dispensed. H.B. 3, 2022 Reg. Sess. (Ky. 2022).
- Abortion providers must document abortions in the pregnant woman's medical records and must maintain records for at least 7 years. Ky. Rev. Stat. § 311.7707(3); Ky. Rev. Stat. § 311.7710; Ky. Rev. Stat. § 311.7736.
- Each prescription for an abortion-inducing drug must be reported within 3 days. Ky. Rev. Stat. § 311.774(1).
- Any adverse event resulting from an abortion must be reported. Ky. Rev. Stat. § 311.7741.

Facility Requirements that have not been repealed:

- Facilities must report abortions performed each month. Ky. Rev. Stat. § 216B.0431.
- All abortion facilities must have written agreements with acute-care hospitals capable of treating patients with complications. Ky. Rev. Stat. § 216B.0435.
- Publicly owned hospitals and health care facilities shall not permit the performance of abortions, except to save the life of the pregnant woman. Ky. Rev. Stat. Ann. § 311.800.

Penalties	**Immunities:** A pregnant woman cannot be found guilty with regards to the performance of an abortion. Ky. Rev. Stat. § 311.7705(4); Ky. Rev. Stat. § 7706(4); Ky. Rev. Stat. § 311.782(6); Ky. Rev. Stat. § 311.787; Ky. Rev. Stat. § 311.731(7); Ky. Rev. Stat. § 311.990.
	
	Criminal Penalties that have not been repealed:
	• Generally, violations of abortion laws are considered class D felonies, punishable by 1 to 5 years in prison and $1,000 to $10,000 in fines, or double the gain from the commission of the offense. Ky. Rev. Stat. § 311.990(10-27); Ky. Rev. Stat. § 532.020(1)(a); Ky. Rev. Stat. § 534.030.
	• An unlicensed physician who performs an abortion commits a class B felony, punishable by 10 to 20 years of imprisonment. Ky. Rev. Stat. § 311.990(14); Ky. Rev. Stat. § 311.750; Ky. Rev. Stat. §532.020(1)(c).
	• Performing an abortion after viability in the absence of a medical emergency is a class C felony, punishable by 5 to 10 years of imprisonment. Ky. Rev. Stat. § 311.990(18); Ky. Rev. Stat. § 311.780; Ky. Rev. Stat. § 532.020(1)(b).
	• It is a class A misdemeanor, punishable by 3 to 12 months imprisonment and up to a $500 fine, to:
	  o Perform an abortion without adhering to cabinet requirements. Ky. Rev. Stat. § 311.990(10)(b).
	  o Perform an abortion on a minor knowingly without following the proper requirements. Ky. Rev. Stat. § 311.990(12)(b).
	  o Allow an abortion to take place in a public hospital, if you are on staff at that hospital. Ky. Rev. Stat. § 311.990(27).
	  o Receive a fee for abortion referral services. Ky. Rev. Stat. § 311.990(29).
	  Ky. Rev. Stat. § 532.020(2); Ky. Rev. Stat. § 534.040(2)(a).
	• It is a class B misdemeanor, punishable by up to 3 months imprisonment and a $250 fine, to:
	  o Perform an abortion without first determining the gestational age of the child. Ky. Rev. Stat. § 311.990(20).
	  o Negligently release documents pertaining to the abortion of a minor. Ky. Rev. Stat. § 311.990(12)(c).
	  Ky. Rev. Stat. § 532.020(3); Ky. Rev. Stat. § 534.040(2)(b).
	• Additionally, one may be subject to the charge of Fetal Homicide. Ky. Prac. Substantive Crim. L. § 4:12.
	
	Civil Actions & Penalties that have not been repealed:
	• People on whom an abortion was performed may file civil malpractice actions and actions for wrongful death. Ky. Rev. Stat. § 311.7709; Ky. Rev. Stat. § 311.7739.
	
	Administrative Actions & Penalties that have not been repealed:
	• Any abortion facility that operates in violation of the licensing laws shall by punished through civil fines and license revocation. Ky. Rev. Stat. § 216B.990.
	• A physician who performs an unlawful abortion shall be subject to disciplinary actions, including suspension or revocation of their license. Ky. Rev. Stat. 311.595.

Aiding & Abetting	**Physician:** If a physician aids and abets the provision of an unlawful abortion, their medical license could be suspended or revoked. Ky. Rev. Stat. § 311.595(3). **Third Parties:** Others may be liable for criminal conspiracy, criminal facilitation, or criminal solicitation, likely punished as a class A misdemeanor. Ky. Rev. Stat. §§ 506.030; 506.040; 506.080.
State Constitution	The state constitution does not directly protect the right to an abortion, or include a general right to privacy. However, in November 2022, Kentucky voters rejected a ballot initiative that would have amended the state constitution to clarify that there was no right to an abortion. See Kentucky 2021 Sess. Laws, Reg. Sess., ch.174. See also, PBS.org, "Kentucky voters rejected a constitutional amendment on abortion. Here's what that means," (Nov. 14, 2022). See also: • § 1: All men are, by nature, free and equal, and have certain inherent and inalienable rights, among which may be reckoned: First: The right of enjoying and defending their lives and liberties . . . Third: The right of seeking and pursuing their safety and happiness. • § 2: Absolute and arbitrary power over the lives, liberty and property of freemen exists nowhere in a republic, not even in the largest majority.
Future Considerations	On August 2, 2022, abortion laws that had been enjoined by temporary injunctions were allowed to go into effect, thus effectively banning the procedure in the state. See Louisville Courier Journal, "Clinics ask Supreme Court to halt appeals court order blocking abortion in Kentucky," (Aug. 2, 2022). See also Reuters, "Kentucky top court won't block abortion ban while clinics challenge it," (Aug, 18, 2022); *EMW Women's Surgical Ctr., P.S.C. v. Cameron*, No. 2022-SC-0326 (Ky. Aug. 18, 2022). Litigation continues, however, and on November 15, 2022, the Kentucky Supreme Court heard oral arguments on whether or not the abortion bans violate the Kentucky state constitution. A ruling is expected in the coming weeks. See Politico, "Kentucky Supreme Court wrestles with the state's abortion laws after midterms upset," (Nov. 15, 2022); and CNBC, "Several Kentucky supreme court justices sound skeptical of state's near-total abortion ban," (Nov. 15, 2022).

Louisiana

La. Rev. Stat. § 9:2800.12

La. Rev. Stat. § 40:1061 to § 40:1061.30

La. Rev. Stat. §14:32.9 to §14:32.11

La. Rev. Stat. § 14:87 to § 14:87.9

La. Rev. Stat. § 37:1285

La. Rev. Stat. § 40:48

La. Rev. Stat. § 40:65 to § 40:66

La. Rev. Stat. § 40:2109.1

La. Admin. Code tit. 48 § I.4431 to § I.4439

48 La. Reg. 2073 (Aug. 20, 2022) (Emergency Rule Effective Aug. 1, 2022)

48 La. Reg. 2445 (Sept. 20, 2022) (Emergency Rule Effective Aug. 1, 2022)

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NOTE: In 2006, Louisiana enacted a trigger ban, known as the "Human Life Protection Act." Other trigger bans and general amendments to Louisiana's abortion laws were enacted on June 21, 2022. All of these trigger laws came into force after the Supreme Court ruling in *Dobbs v. Jackson Women's Health Organization*. See S. B. 342, 2022 Reg. Sess. (La. 2022); S. B. 388, 2022 Reg. Sess. (La. 2022). The laws provide no exceptions for cases of rape or incest, though there are new exceptions for medical emergencies and certain lethal fetal abnormalities. In addition, the Louisiana Constitution clearly specifies that there is no constitutional right to abortion in the state. Many provisions within the trigger bans seem to conflict with one another, but the text of S.B. 342 includes language that specifically does not repeal any of the other abortion restrictions currently enacted. See S. B. 342, 2022 Reg. Sess. § 1 (La. 2022). The following summary of Louisiana law includes all laws currently enacted, whether or not they conflict with one another or are enforceable.

Restrictions	

	Abortion Ban:
	• It is unlawful for a physician or other person to perform an abortion, including a drug induced abortion, with or without the consent of the pregnant woman. La. Rev. Stat. § 14:87.7; La. Rev. Stat. § 40:1061.
	  o **Exception**: for a medical emergency to save the life of the mother, or to prevent the permanent impairment of a life sustaining organ or organs.
	  o The medical emergency exception does not include psychological emergencies.
	• Medical procedures to remove an ectopic pregnancy, or an unborn child deemed "medically futile"shall not be subject to abortion restrictions. La. Rev. Stat. § 14:87.1(19).
	  o List of medically futile conditions promulgated as an emergency rule by the Lousiana Health Department. 48 La. Reg. 2073 (Aug. 20, 2022) (Emergency Rule Effective Aug. 1, 2022, but not yet codified in the Louisiana Administrative Code).
	
	Drug-Induced Abortion Ban:
	• No person may knowingly cause an abortion by means of delivering, dispensing, distributing or providing a pregnant woman with an abortion-inducing drug. La. Rev. Stat. § 14:87.9.
	• No person may distribute or sell an abortion-inducing drug in Louisiana. La. Rev. Stat. § 40:962.2.
	
	Additional Abortion Restrictions that have not been repealed:
	• It is unlawful to perform an abortion after a fetal heartbeat has been detected. La. Rev. Stat. § 40:1061.1.3.
	• Abortion is prohibited at 20 or more weeks post fertilization or after viability. La. Rev. Stat. § 40:1061.1(E).
	  o If a physician must perform an abortion after viability, they must certify that a medical emergency exists and a second physician must be in attendance for the procedure. La. Rev. Stat. § 40:1061.13.
	• Partial-birth abortions are prohibited. La. Rev. Stat. § 14:32.11; La. Rev. Stat. § 40:1061.28.
	• Abortion advertising is prohibited. La. Rev. Stat. § 14:87.4.
	• It is unlawful to perform a late-term abortion. La. Rev. Stat. § 14:87.8.
	• Dismemberment abortions are prohibited. La. Rev. Stat. § 40:1061.1.1.
	• No abortion may be performed due to genetic abnormalities of the fetus. La. Rev. Stat. § 40:1061.1.2.
	
	Drug-Induced Abortion Requirements that have not been repealed:
	• Physician who prescribes a drug or chemical to induce abortion must be in the same room and in the physical presence of the pregnant woman when the drug/chemical is administered, dispensed, or provided to pregnant woman. La. Rev. Stat. § 40:1061.11(A).

- Physician must report drug-induced abortion to Louisiana Department of Health. La. Rev. Stat. § 40:1061.11(C).

Physician Requirements that have not been repealed:

- Only a licensed physician may perform an abortion. La. Rev. Stat. § 14:32.9.
- Physicians who perform abortions must have active admitting privileges at a hospital located no further than 30 miles from the abortion clinic and that provides obstetrical or gynecological health care services. La. Rev. Stat. § 40:1061.10.
- Prior to performing an abortion, the physician must determine whether or not the fetus is viable, perform an ultrasound, and inform the pregnant woman of her right to view the ulstrasound or hear the fetal heartbeat. La. Rev. Stat. § 40:1061.10.

Consent Requirements that have not been repealed:

- Except in medical emergency, voluntary and informed consent is required at least 72-hours before an abortion. Consent is voluntary only if a physician performs an ultrasound test and determines viability. La. Rev. Stat. § 40:1061.17.
    - A woman who certifies in writing that she currently lives 150 miles or more from the nearest facility must only wait 24-hours before the procedure. La. Rev. Stat. § 40:1061.17(3)(c).
- If medical emergency compels abortion, physician must orally inform patient of why it is necessary to preserve her life or health. La. Rev. Stat. § 40:1061.17.
- Except in medical emergency, physician cannot perform/induce abortion upon pregnant woman under the age of 18 years, and who is not emancipated judicially or by marriage, unless physician or physician's agent has received:
    - A notarized statement of consent signed by a parent/legal guardian/tutor of unemancipated minor; or
    - A court order granting minor permission to obtain abortion. La. Rev. Stat. § 40:1061.14.
- Medical Emergency Exception:
    - Provisions of Chapter 5 of La law do not apply when medical emergency requires immediate abortion to preserve the life and health of the mother. La. Rev. Stat. § 40:1061.23.
    - Within 24 hours, attending physician must certify to emergency need for the abortion, and must enter certification in the pregnant woman's medical record. La. Rev. Stat. § 40:1061.23.
    - Physician must use method most likely to ensure survival of fetus. La. Rev. Stat. § 40:1061.13(B)

Reporting Requirements that have not been repealed:

- Abortion sought due to rape or incest – individual who wants the abortion must meet certain requirements (i.e. reporting it to law enforcement, and certifying it in front of treating physician). La. Rev. Stat. § 40:1061.18.
- Physicians must report the number of consent forms they receive from woman to the state. La. Rev. Stat. § 40:1061.17(6).

	• Each induced termination of pregnancy shall be reported to the vital records registry within 15 days by the person in charge of the facility in which the abortion was performed, or the attending physician. La. Rev. Stat. § 40:48; La. Rev. Stat. § 40:65. • Physicians must also provide reports on abortions and abortion complications within 30 days of performing the procedure. These reports include dozens of items of information. La. Rev. Stat. § 40:1061.21. • Hospitals must submit reports on all women who present for treatment in the emergency department as the result of complications from an abortion. La. Rev. Stat. § 40:2109.1.

Penalties	**Criminal Penalties:**
	• Whoever commits an abortion shall be imprisoned at hard labor for no more than 10 years and shall be fined between $10,000 and $100,000. La. Rev. Stat. § 14:87.7.
	  o These penalties also apply to anyone who performs an abortion after the detection of a fetal heartbeat. La. Rev. Stat. § 40:1061.1.3.
	• Whoever performs a drug-induced abortion on a pregnant woman shall be imprisoned at hard labor for not less than 1 nor more than 5 years, fined not less than $5,000 nor more than $50,000, or both. La. Rev. Stat. § 14:87.9.
	  o Penalties are increased if the pregnant woman is a minor.
	• It is unlawful for any person to perform a late term abortion. Those who commit this crime face up to 15 years imprisonment at hard labor and a fine between $20,000 to $200,000. La. Rev. Stat. § 14:87.8.
	• Whoever causes or performs an abortion may be fined at most $1,000 or imprisoned for at most 2 years or both per abortion. La. Rev. Stat. § 40:1061; La. Rev. Stat. § 40:1061.29.
	• Whoever commits the crime of abortion advertising shall be imprisoned, with or without hard labor not more than 1 year or fined not more than $5,000 or both. Abortion advertising is the placing or carrying of any advertisement of abortion services. La. Rev. Stat. § 14:87:4.
	• Any person who gives parental consent on behalf of a minor who was not authorized to do so may be fined not more than $5,000 or imprisoned with or without hard labor for no more than 3 years or both. La. Rev. Stat. § 40:1061.14.1(A); La. Rev. Stat. § 14:70.7.
	• Intentionally killing a fetus which would have otherwise been born alive carries a lifetime hard labor sentence. La. Rev. Stat. § 14:87.1
	• If aborted fetus is viable, intentionally not exercising due medical care necessary to sustain fetus' life is a crime – punishable by imprisonment at hard labor for up to 21 years. La. Rev. Stat. § 14:87.5.
	• Whoever coerces a woman into an abortion through the use or threatened use of force commits a crime and shall be fined not more than $5,000 or imprisoned for up to 5 years. La. Rev. Stat. § 14:87.6.
	• Any physician who fails to report an abortion commits a misdemeanor punishable by a $500 fine, imprisonment for 90 days or both. La. Rev. Stat. § 40:66.

Civil Actions & Penalties:

- Whoever causes or abets an abortion may be subject to a civil fine of up to $1,000 per abortion. The attorney general may pursue these fines. Additionally, performance of an abortion provides the basis for a civil malpractice action that may be brought by the individual upon whom the abortion is performed and the basis for professional disciplinary action. The attorney general or district attorney may also obtain a writ of injunction where the trial would be a bench trial. La. Rev. Stat. § 40:1061; La. Rev. Stat. § 40:1061.29.
- For each violations of Chapter 5 of LA law, a person will be fined $1,000. La. Rev. Stat. § 40:1061.29. Failure to comply with Chapter 5 provides a basis for the following:
    - Civil malpractice action;
    - Professional disciplinary action;
    - Recovery for the woman for the death of her unborn child under La Civil Code, whether or not the unborn child was viable at time abortion was performed, or was born alive; and
    - Attorney general, district attorney in whose jurisdiction the violation occurred, or secretary of the department to obtain a writ of injunction.
- The Secretary is empowered to issue a written cease and desist order to prevent or terminate an unsafe condition or an illegal practice for a violation of Chapter 5. La. Rev. Stat. § 14:2175.8.
- Any person who performs an abortion is liable to the mother of the unborn child for any damages. La. Rev. Stat. § 9:2800.12.

Administrative Actions & Penalties:

- Abortion facilities may have their license suspended or may be unable to renew their license if they systemically, intentionally, or deliberately falsify or destroy patient files or complete in advance of an appointment with a patient seeking an abortion any portion of the patient records required under Louisiana law, including patient-specific data or a physician's signature. La. Rev. Stat. § 40:1061.30.
- Phyisians may be subject to disciplinary actions for any violations of abortion laws. La. Rev. Stat. § 40:1061.29.
- Physicians may have their licenses suspended or revoked for performing abortion services under certain circumstances. La. Rev. Stat. § 37:1285(8) & (9).

Aiding & Abetting

Third-Parties:

- Any employees of a licensed outpatient abortion facility who knowingly aids and abets a person who is not the parent or legal guardian or tutor of a minor to give consent to an abortion may be subject to a fine of not more than $1,000 per indigence or incurrence, or imprisonment for not more than two years or both. La. Rev. Stat. §§ 40:1061.14.1(B); R.S. 40:1061.29.

State Constitution	In 2020, Louisiana voters approved a state constitutional amendment that specifically declares no right to an abortion can be found under the constitution. According to a summary from the Louisiana Secretary of State, "[the] proposed Constitutional Amendment provides that in order to protect human life, nothing in the present constitution shall be construed to secure or protect a right to abortion or require the funding of abortion."
Future Considerations	After the ruling in Dobbs was issued, several lawsuits were filed challenging Louisiana's broad tapestry of bans as vague, but the laws remain in place while litigation continues. Abortion currently remains illegal except for emergencies and a short list of fatal fetal abnormalities promulgated by the Louisiana Health Department as an Emergency Rule. See the following: • AP, "Louisiana Supreme Court rejects appeal in abortion ban case," (Aug. 12, 2022). • Louisiana Department of Health, "Emergency Rule: List of Conditions that Shall Deem an Unborn Child Medically Futile," (Aug. 1, 2022). • The Advocate, "Louisiana woman who was denied an abortion for a fetus without a skull gets procedure in New York," (Sept. 14, 2022). • WWNO, New Orleans, "Louisiana proposes expanding list of exceptions to abortion ban," (Oct. 20, 2022). • Louisiana Illuminator, "Louisiana health department declines to answer doctors' questions on abortion law," (Nov. 1, 2022). Most recently, a Louisiana district court has removed an injunction on an older law that requires doctors performing abortions to have admitting privileges at hospitals within a 30-mile radius. The state had argued in the case that the injunction was no longer equitable following the *Dobbs* decision. The case could prove to be a roadmap for other states seeking to invalidate older injunctions that were based on *Roe*. See *June Medical Svcs. LLC v. Phillips*, No. 14-cv-525 (M.D. La. Nov. 14, 2022). Finally, Louisiana's law provides for legal personhood from the moment of conception. La. Rev. Stat. § 40:1061.8. Elsewhere in the law, the State defines conception as the moment of fertilization between human spermatozoon and ovum. La. Rev. Stat. § 87. It is possible that lawmakers could use these already exisiting laws to further restrict access to contraceptives and in vitro fertilization procedures.

Maine

Me. Rev. Stat. tit. 22, § 1591 to Me. Rev. Stat. tit. 22, § 1599-A.

Restrictions | Penalties | Aiding & Abetting | State Constitution | Future Considerations

Restrictions

Abortions can be performed:

- At any time before viability. 22 Me. Rev. Stat. § 1598.
- After viability if the abortion is necessary to preserve the life or health of the mother. 22 Me. Rev. Stat. § 1598.

Physician Requirements:

- Only a physician or physician's assistant may perform an abortion. 22 Me. Rev. Stat. § 1598; 22 Me. Rev. Stat. § 1596.

Consent Requirements:

- A patient must give informed consent before having an abortion. Me. Rev. Stat. tit. 22, § 1599-A.
- To perform an abortion on a minor, health care professionals must receive the written consent of the minor and at least one parent, guardian, or adult family member. Me. Rev. Stat. tit. 22, § 1597-A.

Reporting Requirements:

- Physicians must report each abortion they perform to the Department of Health and Human Services no later than 10 days after the end of the month in which the procedure was performed. Me. Rev. Stat. tit. 22, § 1596.

Penalties

Criminal Penalties:

- Class C crime is punishable by between 3 and 5 years imprisonment, $5,000 fine, or both. Me. Rev. Stat. tit. 17-A § 4-A; Me. Rev. Stat. tit. 17, § 1604; Me. Rev. Stat. tit. 17, § 1604. **The following are class C crimes:**
  - Performing an abortion without a license. Me. Rev. Stat. tit. 22 § 1598.
  - A collateral consequence of conviction of a felony (class C) crime in Maine is the loss of a professional license.
- Class D crime is punishable by between 1 and 3 years imprisonment, a $2,000 fine, or both. Me. Rev. Stat. tit. 17-A § 4-A; Me. Rev. Stat. tit. 17, § 1604; Me. Rev. Stat. tit. 17, § 1604. **The following are Class D misdemeanors:**

	o A person who performs an abortion after viability, unless the abortion is necessary to preserve the mother's life or health. Me. Rev. Stat. tit. 22, § 1598(4). o A person who knowingly performs an abortion on a minor without obtaining valid informed consent. Me. Rev. Stat. tit. 22, § 1597-A. ▪ In this instance, the fine is $1,000. • Whenever an abortion results in a live birth, failure to take all reasonable steps to preserve the life and health of the person born alive shall subject the party responsible to Maine law governing homicide and manslaughter. Me. Rev. Stat. tit. 22, § 1594. **Civil Actions & Penalties:** Whenever an abortion results in a live birth, failure to take all reasonable steps to preserve the life and health of the person born alive shall subject the party responsible to civil liability for wrongful death and medical malpractice. Me. Rev. Stat. tit. 22, § 1594.
Aiding & Abetting	**Third-Parties:** • A person may not knowingly aid in the performance of an abortion that violates unemancipated minor consent requirements. Me. Rev. Stat. tit. 22, § 1597-A.
State Constitution	The constitution does not specifically provide rights for abortion, but does include the following provisions: • Art. I, § 1: All people are born equally free and independent, and have certain natural, inherent and unalienable rights, among which are those of enjoying and defending life and liberty, acquiring, possessing and protecting property, and of pursuing and obtaining safety and happiness. o This section has been used to establish substantive due process rights in Maine. • Art. I, § 6-A: No person shall be deprived of life, liberty or property without due process of law, nor be denied the equal protection of the laws, nor be denied the enjoyment of that person's civil rights or be discriminated against in the exercise thereof.
Future Considerations	According to recent news reports, the current Democrat Governor and Attorney General in Maine are considering actions to protect providers in Maine and persons who travel to the state from jurisdictions that have outlawed abortion, but there are no plans to act at this time. See Bangor Daily News, "Maine looks at limiting participation in conservative states' abortion probes," (Jun. 28, 2022).

Maryland

Md. Code Ann. Health-Gen. § 20-102 to § 20-103

Md. Code Ann. Health-Gen. § 20-207 to § 20-214

Restrictions | Penalties | Aiding & Abetting | State Constitution | Future Considerations

Restrictions

Abortions may be performed:

- At any time before viability. Md. Code Ann. Health-Gen. § 20-209(b).
- When necessary to protect the life and health of the person carrying the baby. Md. Code Ann. Health-Gen. § 20-209(b).
- Where the fetus has a genetic defect or serious deformity or abnormality. Md. Code Ann. Health-Gen. § 20-209(b).

Physician Requirements:

- Abortions must be performed by qualified providers, which include physicians, nurse practitioners, nurse-midwives, licensed certified midwives, physician assistants or any other individual. Md. Code Ann. Health-Gen. § 20-103; Md. Code Ann. Health-Gen. § 20-207; Md. Code Ann. Health-Gen. § 20-208.

Informed Consent:

- A physician may accept the consent of a minor to medical treatment, including an abortion, when the physician believes the life or health of the minor would be adversely affected by delaying treatment to obtain the consent of a parent or guardian. Md. Code Ann. Health-Gen. § 20-102.
- A minor may also consent without notification to a parent or guardian if, in the opinion of the qualified provider, the notice would lead to abuse or would not otherwise be in the minor's best interest. Md. Code Ann. Health-Gen. § 20-103.
- A qualified provider may perform an abortion on a minor without notice to a parent or guardian if the minor no longer lives with one, and reasonable efforts to give notice have been unsuccessful. Md. Code Ann. Health-Gen. § 20-103.

Penalties

Immunities: Physicians who perform abortions in good faith, using their best medical judgement in accordance with accepted standards of medical practice are not liable for civil damages or subject to a criminal penalty. Md. Code Ann. Health-Gen. § 20-209(c).

	Civil Actions & Penalties: A health care provider is not immune from civil damages or other disciplinary action if the failure to refer a patient for an abortion would reasonably be determined as the case of death or serious physical injury to the patient, or otherwise contrary to the standards of medical care. Md. Code Ann. Health-Gen. § 20-214.
Aiding & Abetting	No Provision.
State Constitution	There is currently no provision directly related to abortion in the state constitution, nor any other provisions that reflect a general right to privacy or bodily autonomy. The Maryland House adopted a constitutional amendment to protect abortion rights in March 2022, but the Senate failed to adopt it. See A.P. News, "Amendment on Abortion Doesn't Advance in Maryland," (March 25, 2022).
Future Considerations	Members of the Maryland House have tried to enact a constitutional amendment to protect abortion rights twice since 2018, but both attempts have been thwarted by Senate Republicans. Regardless, it is likely that the House will try again now that *Roe* has been overturned.

Massachusetts

Mass. Gen. Law ch. 38, § 3

Mass. Gen. Laws ch. 112, § 12F

Mass. Gen. Laws ch. 112, § 12I to § 12U

Mass. Gen. Laws ch. 112, § 21B

Restrictions | Penalties | Aiding & Abetting | State Constitution | Future Considerations

Restrictions

The commonwealth shall not interfere with a person's personal decision regarding their pregnancy, including a decision to have an abortion, or restrict the use of medically appropriate methods of abortion or the manner in which such an abortion is provided. Mass. Gen. Laws ch. 112, § 12L.

Abortions are permitted at any time before 24 weeks of pregnancy. Mass. Gen. Laws ch. 112, § 12M.

Abortions are prohibited:

- After 24 weeks, unless it is necessary to save the life of the patient or to preserve the patient's physical or mental health, or if the fetus has a lethal anomaly that will prevent survival outside the uterus. Mass. Gen. Laws ch. 112, § 12N.
- Abortions performed after 24 weeks must be performed at a hospital with obstetrical services, unless an emergency requires otherwise. Mass. Gen. Law ch. 112, § 12P.

Physician Requirements:

- A physician, physician assistant, nurse practitioner, or nurse midwife may perform an abortion. Mass. Gen. Laws ch. 112, § 12M.
- Only a physician may perform an abortion after 24 weeks. Mass. Gen. Laws ch. 112, § 12N.

Informed Consent.

- Signed, written consent must be obtained before performing an abortion. Mass. Gen. Law ch. 112, § 12P; Mass. Gen. Law ch. 112, § 12R.
- There is no waiting period requirement. Mass. Gen. Law ch. 112, § 12R.
- If the patient is under 16, a parent/guardian must consent to the procedure, with exception for court waivers. By law they may only consider the patient's best interests. Mass. Gen. Law ch. 112, § 12R.

	o **Exception**: if obtaining consent would cause a delay in treatment that would endanger the life, limb or mental well-being of the minor. Mass. Gen. Law ch. 112, § 12F. **Facility Requirements:** • Any facility in which abortions are performed after 24 weeks gestation must maintain life-support equipment to enable the physician to take steps to preserve the life and health of both the patient and any live birth that may result. Mass. Gen. Law ch. 112, § 12O.
Penalties	**Civil Actions & Penalties:** If a physician or other health care worker has knowledge of a death due to unlawful abortion that has not been reported to the Medical Examiner, then that person shall be subject to a fine of not more than $500. Mass. Gen. Law ch. 38, § 3.
Aiding & Abetting	No Provision.
State Constitution	There is no direct provision in the constitution related to abortion, however the Massachusetts Supreme Court has frequently held that there is a right to privacy under the state constitution, particularly under the Massachusetts Declaration of Rights. • Art. I: All people are born free and equal and have certain natural, essential and unalienable rights; among which may be reckoned the right of enjoying and defending their lives and liberties; that of acquiring, possessing and protecting property; in fine, that of seeking and obtaining their safety and happiness. Equality under the law shall not be denied or abridged because of sex, race, color, creed or national origin. • Art. X: Each individual of the society has a right to be protected by it in the enjoyment of his life, liberty and property, according to standing laws. … See, for instance, *Moe v. Secretary of Admin. & Finance*, 382 Mass. 629 (1981)(ruling in favor of a class of physicians seeking reimbursement under State Medicaid funds for performing non-emergency abortions and stating that "our constitutional guarantee of due process has sometimes impelled us to go further than the United States Supreme Court.").
Future Considerations	Massachusetts has joined a growing number of states seeking to further protect abortion providers and women seeking abortions. On June 24, 2022, Governor Charlie Baker signed an Executive Order barring state agencies from assisting another state's investigation into patients and providers receiving or delivering abortion services that are legal in Massachusetts. Exec.Order 2022-600.

Then, on June 30, 2022, the House adopted a new bill that declares the state constitution protects access to reproductive health services, among other things. H.B. 4390, 192nd Gen. Ct., 2022 Reg. Sess. (Mass. 2022).

The bill ---

- Defines "abusive litigation" that includes any action to deter or prevent any person seeking a legal abortion under Massachusetts law.
- Creates a civil action for those harassed by abusive litigation, or other attempts to prevent access to reproductive health care services.
- Applies the laws of Massachusetts to any cause or controversy that arises out of the performance of an abortion, if the abortion occurred in Massachusetts.
- Creates immunity from disciplinary action for health care professionals who provide reproductive health care services.
- Prohibits Massachusetts courts and judgment creditors from recognizing judgments from other states related to abortion services that are permitted in Massachusetts; no judge may issue a summons in a pending case that criminalizes legally-protected abortion services.
- Permits extradition or rendition only when the act for which extradition or rendition is sought would also be punishable under Massachusetts law.

Michigan

Mich. Comp. Laws § 333.1071 to § 333.1073

Mich. Comp. Laws § 333.2835 and § 333.2837

Mich. Comp. Laws § 333.17014 to § 333.17017

Mich. Comp. Laws § 333.17516

Mich. Comp. Laws § 333.20181 to § 333.20184

Mich. Comp. Laws § 722.901 to § 722.907

Mich. Comp. Laws § 750.14 to § 750.15

Mich. Comp. Laws § 750.90h

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NOTE: In November 2022, Michigan voters adopted a ballot initiative to enshrine abortion rights in the state constitution. That amendment will become effective on December 24, 2022, at which time it's expected that abortions rights advocates will begin challenging current state abortion restrictions in court. A newly elected Democrat-controlled legislature is also expected to attempt repeals or amendments of statutes to make them comport with the new constitutional rights. That said, all abortion restrictions enacted in Michigan still remain on the books, including an abortion ban from 1931 was held unconstitutional by a Michigan Court of Claims in September 2022. The following summary of state law includes the 1931 ban and all other laws currently enacted in Michigan, regardless of whether or not they conflict with one another or are enforceable.

Restrictions	**Pre-*Roe* Abortion Ban (held unconstitutional by :** • No person shall perform an abortion, including a drug-induced abortion, on a pregnant woman with the intent to procure a miscarriage, unless the life of the woman is in danger. Mich. Comp Laws § 750.14. o The performance of an abortion in any case other than to save the life of the mother is a felony. Mich. Comp. Laws § 750.14. • Any person who performs an abortion, including a drug-induced abortion, and causes the death of the pregnant woman shall be guilty of manslaughter. Mich. Comp. Laws § 750.14.

- No person shall sell abortion-inducing drugs, or advertise the performance of abortions. Mich. Comp. Laws § 750.15.
    - A violation of this section is a misdemeanor.

Additional Abortion Restrictions:

- Partial-birth abortions are banned unless a pregnant person's life is endangered by a physical disorder, illness, or injury. A partial-birth abortion is defined as a procedure where a physician partially delivers a living fetus before killing the fetus and completing the delivery. Mich. Comp. Laws § 333.17016; Mich. Comp. Laws § 333.17516; Mich. Comp. Laws § 750.90h.
- No one can coerce a pregnant female to have an abortion. Mich. Comp. Laws § 750.213a.
- Explicit that there is no right to an abortion created by these acts. Mich. Comp. Laws § 722.908.

Physician Requirements:

- Abortions may only be performed by physicians or a qualified person assisting the physician, which includes licensed physician's assistants, nurses, psychologists, professional counselors, professional nurses, or practical nurses. Mich. Comp. Laws § 333.17015.
- If an abortion results in a live birth, the physician must provide immediate care to the newborn. Mich. Comp. Laws § 333.1073.
- Physicians have the right to refuse to perform an abortion. Mich. Comp. Laws § 333.20182.
- Physician must be physically present to obtain informed consent from the patient and to perform the abortion and the physical examination.
- Mich. Comp. Laws § 333.17017.

Consent Requirements:

- Michigan has a 24-hour required waiting period. A physician must inform the patient at least 24-hours before the abortion procedure the gestational age of the fetus; provide the patient with a medically accurate depiction, illustration, or photograph of a fetus of approximately the same gestation phase as the patient's fetus; the associated risks about the procedure or the pregnancy; prenatal care and parenting information (though this information could be shared via the internet); the ability to view an ultrasound (if performed); the physicians name; confirm that the coercion to abort screening was performed, and this must all be signed by the patient to constitute consent. Mich. Comp. Laws § 333.17015.
    - Exception for medical emergency.
- Must get the certification form, detailing consent and described in subsection 11(f) of statute, signed by a health department representative at the time the pregnancy is confirmed, as requested by patient. Mich. Comp. Laws § 333.17015(11).

- The physician must make a determination as to whether or not the patient is being coerced into having an abortion. Mich. Comp. Laws § 333.17015a.
- An abortion may not be performed on a minor without first obtaining the consent of one of the patient's parents or legal guardians. A minor may petition the court to bypass this provision and receive a waiver of parental consent. Mich. Comp. Laws § 722.903; Mich. Comp. Laws § 722.904.

Reporting Requirements:

- Physicians or a qualified physician assistant must ask the patient if they are victims of domestic violence or if their abortion was coerced prior to performing the procedure. Physicians must report any domestic violence or coercion to the relevant state authorities. Mich. Comp. Laws § 333.17015.
- A physician who performs an abortion must report it within seven (7) days after the procedure was performed. Mich. Comp. Laws § 333.2835.
- A physician must report any complications from an abortion procedure. Mich. Comp. Laws § 333.2837.
- If a minor reveals to the court during a waiver proceeding that she was a victim of sexual abuse, the court must report that information to law enforcement. Mich. Comp. Laws § 722.904(6).

Penalties

Criminal Penalties:

- Misdemeanor (when no penalty is described in statutory provision: Misdemeanors are punishable by imprisonment for not more than 90 days or a fine not more than $50,000.00, or both. Mich. Comp. Laws § 750.504. **The following are misdemeanors:**
  - It is a misdemeanor to sell drugs whose purpose is to produce an abortion if these drugs are not prescribed by a physician and delivered by a druggist. Mich. Comp. Laws § 750.15.
    - Currently enjoined by *Planned Parenthood of Michigan v. Attorney General*, Case No. 22-44 (Mich. Ct. Cl., May 17, 2022).
  - A person who intentionally performs an abortion on a minor without first getting parental consent or a waiver of parental consent from a court is guilty of a misdemeanor. Mich. Comp. Laws § 722.907(1).
- Manslaughter: Guilty of a felony punishable by up to 15 years imprisonment in the state prison, by a fine of not more than $7,500, or both. Mich. Comp. Laws § 750.321. **The following is considered manslaughter:**
  - It is a felony to purposely induce an abortion unless it was necessary to preserve the life of a woman. If the miscarriage results in the woman's death then the person committed manslaughter. Mich. Comp. Laws § 750.14; Mich. Comp. Laws § 767.72.
    - Currently enjoined by *Planned Parenthood of Michigan v. Attorney General*, Case No. 22-44 (Mich. Ct. Cl., May 17, 2022).
  - Anyone who administers to a pregnant person medicine or a drug with the intent to destroy a quick child is guilty of manslaughter in the event of the death of the pregnant person or the quick child

	except if the medicine was administered to preserve the life of the pregnant person. Mich. Comp. Laws §§ 750.322; 750.323. **Civil Actions & Penalties:** • Failure to obtain parental consent or a judicial waiver is prima facie evidence of wrongdoing in a civil action. Mich. Comp. Law § 722.907(2). • Misappropriation of public funds for performance of an abortion results in liability for a civil fine up to $10,000 per violation. Mich. Comp. Laws Ann. § 400.109e. o Exception for medical emergency. Mich. Comp. Laws Ann. § 400.109a.
Aiding & Abetting	There are no provisions directly related to aiding and abetting an abortion. However, Michigan has enacted general laws that criminalize aiding and abetting, Mich. Comp. Laws § 767.39, and conspiracy to commit crimes, Mich. Comp. Laws § 750.157a. Prior to *Roe*, both of these statutes were used to prosecute doctors and other individuals involved in abortion care but not pregnant persons. *See e.g., In re Petition of Vickers*, 371 Mich. 114 (Mich. 1963) (holding that a woman who received an abortion could not be held criminally liable for conspiracy or aiding or abetting); *People v. Tinskey*, 394 Mich. 108 (1975) (distinguished because there must be a pregnancy in order for a conspiracy to take place).
State Constitution	In November 2022, Michigan voters approved a constitutional amendment that guarantees the right to an abortion and reproductive health services. The language has now been added as Article I, § 28. See Michigan House Fiscal Agency, "Ballot Proposal 3 of 2022, Reproductive Freedom for All," (Oct. 26, 2022); Politico, "Michigan votes to put abortion rights into state constitution," (Nov. 9, 2022). The constitutional amendment takes effect on December 24, 2022.
Future Considerations	On July 13, 2022, Governor Whitmer signed an executive order to prohibit extraditions of health care providers and women seeking abortions in Michigan. See Exec. Order No. 2022-4. With the adoption of Prop 3 and a newly elected Democrat-controlled legislature starting in January 2023, many abortion rights advocates are expected to file lawsuits challenging current abortion restrictions, while the legislature may try to repeal abortion laws that no longer comport with the state constitution. See Bridge Detroit, "Michigan Democrats eye other abortion law changes as Prop 3 set to take effect," (Dec. 9, 2022); Bridge Michigan, "Abortion locked into Michigan constitution. What comes next," (Nov. 9, 2022); Governor's Office, "Whitmer Statement on Michigan Court of Claims Ruling on Abortion," (Sept. 7, 2022).

Minnesota

Minn. Stat. § 144.343

Minn. Stat. § 145.411 to § 145.415

Minn. Stat. § 145.423

Minn. Stat. § 145.4241 to § 145.4249

Minn. Stat. § 617.20

Minn. R. § 4615.0800

Minn. R. § 4615.3400 to § 4615.3600

Restrictions | Penalties | Aiding & Abetting | State Constitution | Future Considerations

Restrictions

Abortions can be performed at any time prior to fetal viability.

- Abortions may only be performed by a physician or a supervised physician in training. Minn. Stat. § 145.412.

Abortion Restrictions:

- Abortions may not be performed after fetal viability, unless the abortion is performed in a hospital and the attending physician certifies in writing that the abortion is necessary to preserve the life or health of the pregnant woman. Minn. Stat. § 145.412.
- Abortions performed after fetal viability must reasonably assure the live birth and survival of the fetus. Minn. Stat. § 145.412; Minn. Stat. § 145.415.
- If an abortion is performed after 20 weeks gestation, then the physician shall take all reasonable measures to preserve the life of any infant born alive during the procedure. Minn. Stat. § 145.423.

Prohibitions:

- Minnesota requires a woman seeking an abortion to wait at least 24 hours between the time she receives biased-counseling materials and when she can get the procedure. Minn. Stat. § 145.4242.

	Drug-Induced Abortions: An older provision in the Minnesota Statutes makes it a felony to manufacture, give or sell a drug or medicine that unlawfully produces an abortion. Minn. Stat. § 617.20.
	
	Informed Consent:
	• A physician must inform the patient at least 24-hours before the abortion in person or by telephone the risks associated with the procedure, the probable gestational age of the fetus, and the medical risks of caring the child to term. For fetus over 20 weeks, the physician must tell the patient whether an anesthetic would eliminate or elevate pain for the fetus caused by the abortion. Patients seeking an abortion for fetal anomaly must be informed of perinatal hospice services. Minn. Stat. § 145.4242.
	  o **Exception**: when a medical emergency compels the performance of an abortion and the physician believes the 24-hour delay will create serious risk of substantial and irreversible impairment of a major bodily function. Minn. Stat. § 145-4245.
	• Parental notification is required when a minor seeks an abortion. Minn. Stat. § 144.343.
	  o **Exceptions:**
	  ▪ Medical emergency, or
	  ▪ The minor states she is the victim of sexual or physical abuse, or neglect.
	  o Judicial review and waiver is available.
	
	Reporting Requirements:
	• Physicians must report to the Health Commissioner whether or not a woman on whom they performed an abortion has died for any reason within 30 days of the procedure, and within 90 days if the cause is potentially related to the abortion. Minn. Stat. § 145.413.
	• Physicians must also file comprehensive reports related to abortions they have performed and any complications that may have arisen. Minn. Stat. § 145.4131; Minn. Stat. § 145.4132; Minn. Stat. § 145.4133.
	• Physicians must submit a report documenting various data points related to informed consent. Minn. Stat. § 145.4246.

Penalties	**Criminal Penalties:** • A physician who performs an abortion outside of a hospital after the first trimester is guilty of a felony, which consists of over one-year imprisonment and/or up to maximum fine specified in law. Minn. Stat. § 145.412. • A physician who fails to report the death of a woman on whom they performed an abortion is guilty of a misdemeanor, and will be fined a $500 late fee for each 30-day period the report is overdue. Minn. Stat. § 145.413; Minn. Stat. § 145.4135. **Civil Actions & Penalties:** • Medical personnel must take reasonable measures to preserve the life of a fetus born alive after an abortion. Medical personnel who fail to take these

	precautions can be sued by the patient (or her parents if under 18) for negligence for death or injury to the alive infant. Minn. Stat. § 145.423. • A civil action may be maintained against a physician by a pregnant woman for violations of the informed consent provisions. Minn. Stat. § 145.4247. o A judgment against the physician shall result in an award of attorney fees in favor of the plaintiff. **Administrative Actions & Penalties:** • Violations of reporting requirements face fine/professional action. Minn. Stat. § 145.4135. • Any medical personnel that does not take all reasonable measures to preserve the life and health of a born-alive infant may be subject to suspension or revocation of their license. Minn. Stat. § 145.423. • If a civil judgement is rendered against a physician under § 145.423 (infant born-alive during an abortion), their license will be automatically suspended for at least one year. Minn. Stat. § 145.423. • A failure to submit the report under § 145.4246 related to informed consent data will result in a $500 late fee for each month the report remains late. Minn. Stat. § 145.4246.
Aiding & Abetting	No Provision.
State Constitution	The Minnesota Constitution protects the right to choose as a fundamental right and to a greater extent than the U.S. Constitution. In 1995, the Minnesota Supreme Court held that a law limiting state medical assistance for abortion to cases of life endangerment and reported rape and incest was unconstitutional under the state constitutional right to privacy because it prohibited reimbursement for medically necessary abortion services while providing funding for health-care services necessary to carry a pregnancy to term. In addition, the Court specifically concluded that a right to privacy could be found in Article I, secs. 1, 2, and 10 of the Minnesota constitution and that this right "encompasses a woman's right to decide to terminate her pregnancy." *Women of Minn. v. Gomez*, 542 N.W.2d 17, 27 (Minn. 1995). • Art. I, § 1: Government is instituted for the security, benefit and protection of the people, in whom all political power is inherent, together with the right to alter, modify or reform government whenever required by the public good. • Art I., § 2: No member of this state shall be disfranchised or deprived of any of the rights or privileges secured to any citizen thereof, unless by the law of the land or the judgment of his peers. … • Art. I, § 10: The right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures shall not be violated; and no warrant shall issue but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched and the person or things to be seized.

Future Considerations	On June 25, Governor Walz signed an Executive Order to protect abortion providers and those seeking an abortion in the state. See Exec. Order 22-16. The Order --- • Prohibits state agencies from cooperating in investigations or proceedings by other states that seek to impose criminal, civil or disciplinary sanctions on people who seek reproductive health services that are legal in Minnesota. • Prohibit non-fugitive extraditions of people who have sought reproductive health care services that are legal in Minnesota. State Attorney General Keith Ellison has stated that he will not prosecute anyone who comes to Minnesota seeking an abortion, or anyone who assists in performing abortion services. His office also posted information online that summarizes abortion rights in Minnesota. Minnesota Democrats took control of both sides of the legislature during the Novemebr 2022 elections. Now that they control the legislature and the Governor's office, it's likely that Democrats will try to further protect abortion rights in 2023. See Star Tribune, "Codifying abortion access a top priority after Democrats take power in Minnesota," (Nov. 16, 2022).

Mississippi

Miss. Code Ann. § 41-41-31 to § 41-41-45

Miss. Code Ann. § 41-41-51 to § 41-41-863

Miss. Code Ann. § 41-41-75 to § 41-41-80

Miss. Code Ann. § 41-41-101 to § 41-41-117

Miss. Code Ann. § 41-41-131 to § 41-41-149

Miss. Code Ann. § 41-41-151 to § 41-41-183

Miss. Code Ann. § 41-41-191

Miss. Code Ann. § 41-41-401 to § 41-41-419

Miss. Code Ann. § 97-3-3 to § 97-3-5

Restrictions | Penalties | Aiding & Abetting | State Constitution | Future Considerations

NOTE: Mississippi provided the origin for the law at issue in *Dobbs v. Jackson Women's Health Organization*, and has always been at the forefront of restrictive abortion regulations. In the wake of *Dobbs*, Mississippi implemented its blanket ban on abortion, yet none of the prior statutes governing the procedure have been repealed. Most recently, conservative legal groups filed an action for a declaratory judgment in which they ask the courts to clarify that the current abortion bans do not violate the Mississippi state constitution. See Future Considerations below. The following summary of state law includes the trigger ban and all other laws currently enacted in Mississippi, regardless of whether or not they conflict with one another or are enforceable.

Restrictions

Abortion Bans:

- Every abortion is illegal in the state of Mississippi. Miss Code Ann. § 41-41-45(2).
  - **Exceptions:**
    - Where necessary for the preservation of the mother's life, or

        - In cases of rape, when a formal charge of rape has been filed. Miss Code Ann. § 41-41-45(3).
- Any person who knowingly causes an abortion or miscarriage by the means of any instrument or drug shall be guilty of a felony. Miss Code Ann. § 97-3-3.
    - **Exceptions**:
        - When necessary for the preservation of the mother's life, and two physicians who certify in writing prior to the abortion that it is medically necessary; or
        - Where the pregnancy was caused by rape.

Additional Abortions Restrictions that have not been repealed:

- Abortions are prohibited after 15 weeks gestational age except in cases of medical necessity and severe fetal abnormality. Miss Code Ann. § 41-41-191(4).
- Abortions cannot be performed after 20 weeks gestational age. Miss. Code Ann. § 41-41-137.
    - **Exceptions:**
        - The abortion is necessary to preserve the life or health of the patient and the method used provides the best opportunity for the fetus to survive; Miss. Code Ann. § 41-41-141(1); or
        - The fetus has a severe abnormality and the patient is informed 24 hours before the abortion of the services available should she choose to continue to the pregnancy. Miss. Code Ann. § 41-41-141(2).
- Abortions are prohibited once a fetal heartbeat is detected. Miss Code Ann. § 41-41-34.1.
- Partial-birth abortions are prohibited. Miss. Code § 41-41-73.
- Dismemberment abortions are prohibited. Miss. Code § 41-41-155.
- Abortions peformed because of race, sex selection or genetic abnormality are prohibited. Miss. Code Ann. § 41-41-407.

Drug-Induced Abortion Requirements that have not been repealed:

- Only a physician can sell, dispense, administer, provide, or prescribe an abortion-inducing drug. Miss. Code Ann. §41-41-107(1).
- A physician who provides abortion drugs must physically examine the patient and schedule a follow-up visit approximately fourteen days after the abortion. Miss. Code Ann. §41-41-107(2); Miss. Code Ann. §41-41-107(6).
    - If a physician cannot provide a physical follow-up, they must have a contract with another physician to provide that follow-up care. Miss. Code Ann. §41-41-107(5).
- A physician must be in the same room as the patient when any drug is given for an abortion. Miss. Code Ann. § 41-41-107(3).

- Physicians must provide patients with a copy of the drug label. Miss. Code Ann. §41-41-107(4).

Physician Requirements that have not been repealed:

- Physicians must provide appropriate medical care and comfort care necessary to sustain life to any viable child born alive in the course of an abortion. Miss. Code Ann. § 97-3-4.
- Physicians must perform an ultrasound and detect a fetal heart tone prior to performing an abortion. The physician must offer to provide the patient the opportunity to see the ultrasound and hear the fetal heartbeat as well as offer to provide the patient with a picture of the ultrasound. Miss. Code § 41-41-34.
- Except to prevent the death or immediate and irreversible loss of major bodily function of a pregnant woman, a physician must wait twenty-four hours before performing an abortion. Miss. Code Ann. § 41-41-37.
- Prior to an abortion, a physician must assess the probable gestational age of the fetus. Miss. Code Ann. § 41-41-135.
- A physician performing an abortion after 20-weeks gestational age must terminate the pregnancy in the manner that, in their reasonable medical judgement, provides the best opportunity for the fetus to survive. Miss. Code Ann. § 41-41-139(2).
- Before performing an abortion, a physician must confirm that the abortion is not sought because of the race or sex of the fetus or presence or presumed presence of a genetic normality. Miss. Code. Ann. § 41-41-407(1).

Informed Consent Requirements that have not been repealed:

- Physicians must get voluntary and informed written consent from abortion patients; such consent involves providing certain information orally and in-person to the patient at least 24-hours prior to the procedure. Miss. Code Ann. § 41-41-33.
- Minors must obtain the written consent of both parents in order to receive an abortion, with certain exceptions for divorced parents and other situations. Miss. Code. Ann. § 41-41-53.
    - There is an exception for a medical emergency that so complicates the pregnancy as to require immediate abortion. Miss. Code. Ann. § 41-41-57.
- Minors can petition for a consent waiver in the court of chancery in the county where they reside or the county where their abortion is to be performed. Miss. Code. Ann. § 41-41-53.

Record/Reporting Requirements that have not been repealed:

- A physician who treats a patient where the patient requires medical treatment or suffers death and where the attending physician has a reasonable basis to believe the injury is the primary, secondary, or tertiary result of an abortion must file a written report with the state department of health within thirty days of the discharge or death of the patient. Miss. Code. Ann. § 41-41-77; Miss. Code Ann. § 41-41-78.

	• A physician shall report the provision of an abortion-inducing drug to a patient and shall also report adverse events that occur after taking an abortion-inducing drug to the FDA. Miss. Code Ann. § 41-41-109. • All abortions performed on a fetus of greater than 15-weeks gestational age shall be reported to the Department of Health. Miss. Code Ann. § 41-41-191(4)(c). • Each abortion facility shall report monthly to the state department of health such information that may be required by the department in its rules and regulations for each abortion performed by the facility. Miss. Code. Ann. § 41-75-18. • Physicians shall provide to the Department of Health within 15 days of performing an abortion a report that details certain information about that abortion, including a statement confirming that the reason for the abortion was not due to race, sex selection or genetic abnormality and also describing the probable health consequences of the specific abortion method used. Miss. Code Ann. § 41-41-407(3).
Penalties	**Immunities:** • A woman upon whom a drug-induced abortion is performed may not be prosecuted, nor be held civilly liable. Miss. Code. Ann. § 41-41-111; Miss. Code Ann. §41-41-113. • A woman who has an abortion after twenty weeks cannot be prosecuted for having an abortion. Miss. Code Ann. § 41-41-145(4). **Criminal Penalties that have not been repealed:** • Performing an abortion without medical necessity or a case of rape is a felony and will be punished by imprisonment between one and ten years. Miss Code Ann. § 41-41-45(4); Miss. Code Ann. § 97-3-3. • Any person who allows a born-alive child to die is guilty of a felony and should be punished by between 1 and 10 years imprisonment and a fine of between $25,000 and $50,000. Miss Code Ann. § 97-3-4(3). • Any person who knowingly performs a partial-birth abortion is guilty of a felony and may be fined no more than $25,000 or imprisoned in a state prison for no more than 2 years, or both. Miss. Code § 41-41-73. • Any person who intentionally and knowingly performs an abortion without confirming that the abortion is not sought for impermissible reasons of race, sex, or genetic disability status or performs the abortion regardless of the patient's answer is guilty of a felony and can be imprisoned for up to 10 years. Miss. Code Ann. § 41-41-411. • Any person who illegally performs or attempts to induce an abortion after a fetal heartbeat is detected upon conviction shall be guilty of a misdemeanor punishable by a $1,000 fine or imprisonment in a county jail for no more than 6 months, or both. Miss. Code. Ann. § 41-41-39. • A physician who fails to provide follow-up care for an abortion patient or is not physically in the room for a drug-induced abortion is guilty of a misdemeanor. Miss. Code Ann. § 41-41-111.

- Performance of a dismemberment abortion is a felony, punishable by imprisonment of not more than 2 years and fine of not more than $10,000. Miss. Code Ann. § 41-41-163.
- Willfully violating the reporting requirements of § 41-41-77 and § 41-41-78 shall constitute a misdemeanor. Miss. Code. Ann. § 41-41-79.

Civil Actions & Penalties that have not been repealed:

- Person injured by the death of an "unborn quick child" can sue for wrongful death. Miss Code Ann. § 11-7-13.
- Civil penalties are available against a physician who fails to provide follow-up care for an abortion patient or is not physically in the room for a drug-induced abortion. Miss. Code Ann. § 41-41-11.
- Cause of action for injunctive relief against a person who performs a dismemberment abortion is available to the woman upon whom the abortion was performed, her spouse, guardian, parents or a prosecuting attorney. Miss. Code Ann. § 41-41-157.
    - If the cause of action for injunctive relief has been denied, a cause of action for civil damages may be pursued; damages awarded shall include money damages for all physical and psychological injuries, as well as statutory damages equal to three times the cost of the abortion. Miss. Code Ann. § 41-41-159.
    - Attorney's fees shall also be awarded if the plaintiff prevails. Miss. Code Ann. § 41-41-161.
- Husbands of patients who receive partial-birth abortions or parents of the patient if the patient is a minor may sue abortion providers for monetary and statutory damages unless the abortion resulted from the plaintiff's criminal conduct or the plaintiff consented to the procedure. Miss. Code § 41-41-73-3(1)-(b).

Administrative Actions & Penalties that have not been repealed:

- A physician or nurse who performs an abortion in violation of the abortion ban shall have their li-censed automatically revoked upon conviction. Miss. Code § 97-3-3(3).
- Performing an abortion on a minor without parental consent or a judicial waiver is prima facie evidence of unprofessional conduct and subjects a physician to action by the State Board of Medical Licensure. Miss. Code § 41-41-59.
- Physicians who perform an abortion without determining that the abortion is being sought for the impermissible reasons of race, sex or disability may have their license suspended or revoked for unprofessional conduct. Miss. Code Ann. § 41-41-413.
- A physician who performed an emergency abortion after fifteen weeks may be fined up to $500 for failing to file a report with the state. Miss. Code Ann. § 41-41-191(6)(b).

Aiding & Abetting

Third Parties:

- No person shall knowingly perform an abortion on a pregnant woman with the specific intent of causing or abetting an abortion. Miss. Code Ann. § 41-41-34.1

State Constitution	There is no provision in the Mississippi constitution that directly addresses abortion or reproductive rights. However, the Mississippi Supreme Court has held that the state constitution contains a right to privacy that may cover the right to an abortion. See *Pro-Choice Mississippi. v. Fordice*, 716 So. 2d 645 (Miss. 1998)(holding that while the state constitution does not recognize an explicit right to an abortion, it does provide that autonomous bodily integrity is protected under a constitutional right to privacy found in Art. III, § 32). See also: • Art. III, § 14: … no person shall be deprived of life, liberty, or property except by due process of law. • Art. III, § 32: The enumeration of rights in this constitution shall not be construed to deny and impair others retained by, and inherent in, the people.
Future Considerations	The trigger ban came into effect ten days after the *Dobbs* decision was issued. While a lawsuit seeking to stop the trigger ban was filed, a Mississippi judge refused to issue a temporary restraining order to stop the law from going into effect. The clinic's lawsuit argued that the state constitution invokes a right to privacy. See POLITICO, "Judge won't block law banning most Mississippi abortions," (Jul. 5, 2022). On July 10, 2022, news outlets reported that a California doctor plans to offer abortion services on a floating clinic that will operate in federal waters off the Gulf Coast. See AL.com, "Floating abortion clinic planned off Alabama coast in Gulf of Mexico," (Jul. 10, 2022). A new lawsuit filed in Mississippi state court is asking for a final determination as to the legality of the state's abortion restrictions in light of the ruling in *Pro-Choice Mississippi v. Fordice*, 716 So. 2d 645 (Miss. 1998), a case that suggested abortion was covered by the state constitution's privacy provisions. Some conservative groups worry that while abortion is statutorily illegal, the *Fordice* decision makes it constitutional permissible. See *American Assoc. of Pro-Life Obstetricians and Gynecologists v. Mississippi Bd. of Med. Licensure*, No. 25CH1:22-cv-01371 (Miss. Ch., 1st Jud. Dist. Nov. 14, 2022). See also Mississippi Today, "Abortion is technically both legal and illegal in Mississippi. New lawsuit asks Supreme Court to clarify," (Nov. 14, 2022); AP, "Lawsuit: Mississippi abortion ban might not be valid yet," (Nov. 14, 2022); Mississippi Free Press, "Conservative Litigation Group Challenges Mississippi Supreme Court Abortion Ruling," (Nov. 15, 2022).

Missouri

Mo. Ann. Stat. § 188.010 to § 188.375

Mo. Ann. Stat. § 197.032

Mo. Ann. Stat. § 197.315

Mo. Ann. Stat. § 565.300

Mo. Code Regs. Tit. 19, § 10-15.050

Restrictions | Penalties | Aiding & Abetting | State Constitution | Future Considerations

NOTE: With the release of the U.S. Supreme Court opinion in *Dobbs v. Jackson Women's Health Organization*, Missouri has banned all abortions across the state with an exception for medical emergencies, but none for rape or incest. The trigger ban, referred to as the "Right to Life of the Unborn Child Act," did not specifically repeal any of the other abortion-related statutes in Missouri. The following summary of state law includes the trigger ban and all other laws currently enacted in Missouri, regardless of whether or not they conflict with one another or are enforceable.

Restrictions

Abortion Ban:

- No abortion can be performed or induced upon a pregnant person, except in cases of medical emergency. Mo. Ann. Stat. § 188.017.
  - A "medical emergency" means a condition that necessitates the immediate abortion of the pregnancy to avert the death of the pregnant person or for which a delay will create a serious risk of substantial and irreversible physical impairment of a major bodily function of the pregnant person, based on "reasonable medical judgment". Mo. Ann. Stat. § 188.015.
  - There are no exceptions for rape, incest, or fetal abnormality. Mo. Ann. Stat. § 188.017.

Missouri enacted a fetal personhood measure in 1986. Mo. Ann. Stat. § 1.205.

Additional Abortions Restrictions that have not been repealed:

- Beginning at 20 weeks gestational age, abortions may not be performed on viable fetuses unless the life of the mother is endangered. In that case, the physician must perform the abortion in a way that increases the chances of

the fetus surviving. Another physician must be present to provide immediate care to the fetus. Mo. Ann. Stat. § 188.030.

- Except in the case of a medical emergency, abortions cannot be performed after eight weeks gestational age. Mo. Ann. Stat. § 188.056; Mo. Ann. Stat. § 188.057; Mo. Ann. Stat. § 188.058.
- Partial-birth abortions "in which the person performing the abortion partially vaginally delivers a living fetus before killing the fetus and completing delivery" are banned. Mo. Ann. Stat. § 565.300.
- Abortions cannot be performed if the person performing the abortion knows the abortion is sought solely because the sex or race of the fetus or a prenatal diagnosis indicating Down Syndrome. Mo. Ann. Stat. § 188.038.
- Abortions cannot be performed if the physician knows the pregnancy was conceived or the abortion was procured because of a desire to utilize fetal tissue or organs for medical research or transplant. Mo. Ann. Stat. § 188.036.

Drug-Induced Abortion Requirements that have not been repealed:

- For an abortion that uses the drug mifepristone, a physician must be in the same room and in the physical presence of the patient when the first dose is administered. The physician must make reasonable efforts to ensure the patient receives a follow-up visit. Mo. Ann. Stat. § 188.021.
- Physicians may not prescribe abortion drugs without a state-approved plan for complications if more than one percent of those administered the drug in clinical studies required surgical intervention. Mo. Ann. Stat. § 188.021.
- If the drug used to induce an abortion carries a warning from the FDA or a peer-reviewed journal that the drug may cause birth defects in a live child, the physician who uses that drug must carry insurance to cover legal liability for injury to the child. Mo. Ann. Stat. § 188.044.

Physician Requirements that have not been repealed:

- Only a physician may perform an abortion. Mo. Ann. Stat. § 188.020; Mo. Rev. Stat. § 334.245.
- Physicians who have prima facie evidence that an abortion patient has been a victim of first or second-degree rape, or a minor has been the victim of first- or second-degree rape or incest must report the offenses. Mo. Ann. Stat. § 188.023.
- Any physician seeking to perform or induce an abortion on a viable fetus must consult with a second physician, who must agree about the abortion procedure that will be used. The physician must certify in writing the method and techniques considered and employed. Mo. Ann. Stat. § 188.030.
- If an in-state medical provider gives a patient the name, address, telephone number, or website of an out-of-state abortion provider, that abortion provider must provide the same Missouri-government-produced material to the patients as an in-state provider. Mo. Ann. Stat. § 188.033.
- Physicians who perform abortions must have medical malpractice insurance with coverage amounts at least $1 million per occurrence and $3 million per aggregate. Failure to maintain this insurance is grounds for sanctioning a physician's license. Mo. Ann. Stat. § 188.043.

- The Department of Health's regulations on complication plans require a physician or a hospital to file a plan for each physician who performs an abortion. Mo. Code Regs. Tit. 19, § 10-15.050.

Informed Consent Requirements that have not been repealed:

- Physicians must receive the patients informed consent for an abortion and must inform the patient of immediate and long-term risks of the procedure, the gestational age of the fetus, and the anatomical and physiological characteristics of the fetus. Mo. Ann. Stat. § 188.027.
- Missouri has a 72-hour waiting period requirement. The physician must provide the patient with the opportunity at least seventy-two hours prior to the abortion to view an active ultrasound and to hear the fetal heartbeat. Mo. Ann. Stat. § 188.027.
- Alternatives to abortion must be disclosed, as well as any relevant associated risks. The patient must be given materials about the possibility that the abortion will cause pain to the fetus. Mo. Ann. Stat. § 188.027.
- Payment for the abortion cannot be accepted until at least seventy-two hours have passed. Mo. Ann. Stat. § 188.027.
- The physician must provide the location of a hospital that offers obstetrical or gynecological care located within thirty miles of the location where the abortion is performed or induced. Mo. Ann. Stat. § 188.027.
- An unemancipated minor patient must have the written consent of one parent or guardian to receive an abortion, and the consenting parent must notify any other custodial parent or guardian in writing prior to securing the abortion. A judicial waiver is available. Mo. Ann. Stat. § 188.028.
- No person shall perform an abortion if they know that the patient seeks an abortion because of a prenatal diagnosis, test, or screening indicating Down Syndrome or because the patient wants an abortion solely because of the sex or race of the fetus. Mo. Ann. Stat. § 188.028.

Record/Reporting Requirements that have not been repealed:

- Physicians have forty-five days following the performance of an abortion to submit a report detailing the individual abortion and certifying that the physician does not have any knowledge that the woman sought the abortion solely because of a prenatal diagnosis, test, or screening indicating Down Syndrome or because of the sex or race of the fetus. Mo. Ann. Stat. § 188.052.
- Physicians must complete an individual complication report for any post-abortion care performed upon a person. Mo. Ann. Stat. § 188.052.
- All medical records, reports, and documents shall be maintained in the permanent files of the abortion facility or hospital where the abortion was performed for a period of seven years. Mo. Ann. Stat. § 188.060.
- All tissue removed at the time of an abortion must be submitted within five days to a certified pathologist for gross and histopathological examination, which will become part of the patient's medical record and the pathologist will file as a report. Mo. Ann. Stat. § 188.047.

	Facility Requirements that have not been repealed: • All abortions performed after sixteen weeks gestational age or later must be performed in a hospital. Mo. Ann. Stat. § 188.025. • A hospital must take reasonable measures to ensure that a physician complies with the complication plan. If the patient experiences complications, the physician who performed the abortion must personally treat all complications (including those requiring surgical care) and may not refer as a matter of course patients experiencing complications to the emergency room unless they experience an immediate life-threatening complication. Mo. Code Regs. Tit. 19, § 10-15.050. • Every hospital, abortion facility, pathology lab, or any other facility involved in abortion must have a written whistleblower protection policy to protect employees who allege violations of state or federal law concerning abortion. Mo. Ann. Stat. § 188.160. • Except in the case of a medical emergency, a public facility cannot be used for the purpose of performing or assisting an abortion or for the purpose of counseling a pregnant person to have an abortion not necessary to save her life. Mo. Ann. Stat. § 188.215.

Penalties	**Immunities:** If a woman receives an abortion after viability, she may not be prosecuted with conspiracy. Mo. Ann. Stat. § 188.030(7).
	
	Criminal Penalties that have not been repealed:
	• Class A felonies are punishable by death, life imprisonment, or imprisonment for a term of twenty years or more. Mo. Ann. Stat. § 557.021. **The following are class A felonies:**
	  o Killing a child who is aborted alive. Mo. Ann. Stat. § 188.035.
	  o Performing a partial-birth abortion, unless the abortion is performed to preserve the life and health of the mother. Mo. Ann. Stat. § 565.300.
	• Class B felonies are punishable by a minimum of ten years and a maximum of twenty years imprisonment. Mo. Ann. Stat. § 557.021. **The following are class B felonies:**
	  o Except in the case of a medical emergency, performing or inducing an abortion. Mo. Ann. Stat. § 188.017.
	  o Performing or inducing an abortion on a pregnant person at eight weeks gestational age or later, unless there is a medical emergency. Mo. Ann. Stat. § 188.056; Mo. Ann. Stat. § 188.057; Mo. Ann. Stat. § 188.058.
	  o When a person who is not a physician performs an abortion. Mo. Ann. Stat. § 188.080; Mo. Rev. Stat. § 334.245.
	• Any person who illegally performs an abortion on a viable fetus commits a class D felony, which is punishable in this case with at least a year in prison and a fine between $10,000 and $50,000. Mo. Ann. Stat. § 188.030.
	• Class A misdemeanors are punishable by a minimum of six months in jail. Mo. Ann. Stat. § 557.021. **The following are class A misdemeanors:**
	  o Any violation of these sections constitutes a class A misdemeanor unless a different penalty is provided for in the law. Mo. Ann. Stat. § 188.075.

	o Performing an abortion as a physician who does not have admitting privileges to a hospital that offers obstetrical or gynecological care within thirty miles of the location at which the abortion is performed. Mo. Ann. Stat. § 188.080. **Civil Actions & Penalties that have not been repealed**: • Public funds may not be used to provide abortions not necessary to save a mother's life. Mo. Ann. Stat. § 188.205. Any taxpayer has standing to bring suit if this provision is violated. Mo. Ann. Stat. § 188.220. • An employer cannot discriminate against any individual because of such individual's refusal to participate in an abortion. Mo. Ann. Stat. § 188.105. **Administrative Penalties that have not been repealed:** • Except in the case of a medical emergency, any physician who performs or induces an abortion is subject to a suspension or revocation of her license. Mo. Ann. Stat. § 188.017. • Any practitioner of medicine or nursing who violates Missouri's code on abortion may have their license rejected or revoked by the appropriate state licensing board. Mo. Ann. Stat. § 188.065. • Physicians found guilty are subject to suspension or revocation of their license. Any hospital or abortion facility that knowingly allows such an abortion may have its license suspended or revoked. Mo. Ann. Stat. § 188.030. • Except in the case of a medical emergency, any physicians who performs an abortion after eight weeks, fourteen week, or eighteen weeks gestational age is subject to license suspension or revocation. Mo. Ann. Stat. § 188.056; Mo. Ann. Stat. § 188.057; Mo. Ann. Stat. § 188.058.
Aiding & Abetting	**Third Parties:** • No person can intentionally cause, aid, or assist a minor in obtaining an abortion without the consent(s) required. Mo. Ann. Stat. § 188.250. o A person who violates this section shall be civilly liable to the minor and to the person(s) required to give the consent. A court may award damages to the person(s) affected, including compensation for emotional injury without the need for personal presence at the act, attorney-s fees, litigation costs, and punitive damages. Mo. Ann. Stat. § 188.250.
State Constitution	Article I, section 2 of the Missouri state constitution states that the government "is intended to promote the general welfare of the people; that all persons have a natural right to life, liberty, the pursuit of happiness and the enjoyment of the gains of their own industry; that all persons are created equal and are entitled to equal rights and opportunity under the law . . . ." Mo. Const. Art. I, § 2.

Future Considerations	Following the release of *Dobbs*, Attorney General Eric Schmitt issued Opinion Letter No. 22-2022, which affirmed that *Roe v. Wade* had been overturned and the trigger law codified at § 188.017 was now enforceable law. Furthermore, there has been no follow-up as to whether the "Right to Life of the Unborn Child Act" will impact in vitro fertilization or any clarification around ectopic pregnancies. News reports suggest that a Missouri hospital is now under investigation for violations of the Emergency Medical Treatment and Labor Act (EMTALA) when it turned away a woman who needed an abortion. See St. Louis NPR, "Her doctors told her she needed an abortion - Missouri law told her to go away," (Nov. 18, 2022); Missouri Independent, "Missouri hospital the first confirmed federal investigation of denied emergency abortion," (Nov. 2, 2022). Despite the near-total ban on abortion, lawmakers and administrators in Missouri continue to propose further restrictions. In November 2022, the Missouri Department of Health and Senior Services published a proposed rule in the Missouri Register that would require doctors who provided an abortion in a medical emergency to certify to the state that there was an emergency. See Springfield News-Leader, "Proposed change would require Missouri doctors to certify medically necessitated abortion," (Nov. 15, 2022).

Montana

Mont. Code § 37-20-103

Mont. Code § 50-20-101 to § 50-20-112

Mont. Code § 50-20-113 (enjoined)

Mont. Code Ann. § 50-20-301 to § 50-20-308

Mont. Code Ann. § 50-20-401

Mont. Code Ann. § 50-20-501 to § 50-20-511

Mont. Code Ann. § 50-20-601 to § 50-20-606 (enjoined)

Mont. Code § 50-20-701 to § 50-20-711 (enjoined)

Restrictions | Penalties | Aiding & Abetting | State Constitution | Future Considerations

Restrictions

Abortions are permitted at any time prior to fetal viability, generally around 24 weeks.

Prohibitions:

- It is an offense for a person to purposely, knowingly, or negligently cause a partial-birth abortion. Mont. Code Ann. § 50-20-401.
- It is an offense for a person to purposely, knowingly, or negligently cause the death of the subject of an abortion if born alive and viable. Mont. Code Ann. § 50-20-108.
    - Medical emergency exception.

Physician Requirements:

- Only a physician or a physician's assistant may perform an abortion. Mont. Code Ann. § 37-20-103; Mont. Code Ann. § 50-20-109.
- Abortion providers must provide complete information on alternatives to an abortion. Mont. Code Ann. § 50-20-302.

Informed Consent Requirements:

- Certified informed consent required at least 24 hours prior to abortion. Mont. Code Ann. § 50-20-106; Mont. Code Ann. § 50-20-707.
    - **Exception** for medical emergency.

- Notarized written consent of parent or legal guardian is necessary to perform abortion on a minor. Mont. Code Ann. § 50-20-504; Mont. Code Ann. § 50-20-505; Mont. Code Ann. § 50-20-507; Mont. Code Ann. § 50-20-509.
    - **Exceptions**:
        - Medical emergency;
        - Insufficient time to provide consent; or
        - Minor petitions the court for a waiver

Reporting Requirements:

- Physicians and facilities shall keep records and report all abortions performed to the Department of Health within 30-days of performance. Mont. Code Ann. § 50-20-110.
- Physicians must report each year the number of women who were informed of abortion alternatives prior to performance of an abortion. Mont. Code Ann. § 50-20-306.

Penalties

Immunities: No penalty imposed against person upon whom abortion is performed or attempted to be performed. Mont. Code Ann. § 50-20-112.

Criminal Penalties:

- Felony under the Montana Abortion Control Act (Mont. Code Ann. § 50-20-102 through 50-20-113) for anyone other than a physician or physician assistant to perform an abortion, or for an abortion to be performed on a pain-capable fetus. Mont. Code Ann. § 50-20-109.
    - If a person is convicted of a deliberate, mitigated, or negligent homicide, they will be punished according to § 45-5-102 through § 45-5-104.
    - If a person is convicted of any other kind of felony, they will be subject to a fine not to exceed $1,000, imprisonment for a term not to exceed 6 years, or both.
- Felony to cause a partial birth abortion, punishable by a fine of up to $50,000, imprisonment for 5 to 10 years, or both. Mont. Code Ann. § 50-20-401.
- Misdemeanor to violate informed consent provisions, punishable by a fine of not more than $500, imprisonment in the county jail for a term not to exceed 6 months, or both. Mont. Code Ann. § 50-20-106(8).
- Misdemeanor to violate abortion reporting requirements, punishable by a fine of not more than $500, imprisonment in the county jail for a term not to exceed 6 months, or both. Mont. Code Ann. § 50-20-110.
- A person convicted of performing an abortion on a minor without obtaining valid parental consent shall be fined an amount not to exceed $1,000, imprisoned in the county jail for a term not to exceed 1 year, or both. A subsequent violation will result in an additional fine of between $500 and $50,000, imprisonment in the state prison for between 10 days and 5 years, or both. Mont. Code Ann. § 50-20-510.
- Misdemeanor to coerce a minor into having an abortion, punishable by a fine not to exceed $1,000, imprisonment in the county jail for a term not to exceed 1 year, or both. A subsequent violation will result in a fine between

	$500 and $50,000, imprisonment in the state prison for between 10 days and 5 years, or both. Mont. Code Ann. § 50-20-510. **Civil Actions & Penalties:** • Abortion or attempted abortion performed in violation of Chapter 20 is the basis for a professional disciplinary action under Mont. Code Ann. § 37-1-316. • Physician who files late reports required under § 50-20-306 will face a $500 penalty for each 30-day period the reports are overdue. Mont. Code Ann. § 50-20-306. • Person who performs or attempts to perform an abortion in knowing or reckless violation of this chapter may be liable for actual and punitive damages. Mont. Code Ann. § 50-20-307. • Person who fails to obtain parental consent prior to performing an abortion on a minor shall be subject to a civil action. Mont. Code Ann. § 50-20-510. **Administrative Actions & Penalties:** • Performance of an abortion in violation of the Women's Right to Know Act (Mont. Code Ann. § 50-20-301 through § 50-20-308) is subject to a professional disciplinary action. Mont. Code Ann. § 50-20-307.
Aiding & Abetting	No provision.
State Constitution	The Montana Supreme Court has held that the state constitution protects a woman's right to a pre-viability abortion under a general right to privacy located in Art. II, § 10. See *Armstrong v. State*, 989 P.2d 364 (Mont. 1999). Furthermore, any legislative attempts to infringe upon that right must demonstrate a compelling state interest and survive a strict scrutiny review. See *Gryczan v. State*, 942 P.2d 112 (Mont. 1997). • Art. II, § 3: All persons are born free and have certain inalienable rights. They include the right to a clean and healthful environment and the rights of pursuing life's basic necessities, enjoying and defending their lives and liberties, acquiring, possessing and protecting property, and seeking their safety, health and happiness in all lawful ways. In enjoying these rights, all persons recognize corresponding responsibilities. • Art. II, § 4: The dignity of the human being is inviolable. No person shall be denied the equal protection of the laws. Neither the state nor any person, firm, corporation, or institution shall discriminate against any person in the exercise of his civil or political rights on account of race, color, sex, culture, social origin or condition, or political or religious ideas. • Art. II, §10: The right of individual privacy is essential to the well-being of a free society and shall not be infringed without the showing of a compelling state interest.

Future Considerations	Only a constitutional amendment, or a court overruling the *Armstrong* decision could completely ban abortion in Montana. See Montana Free Press, "For anti-abortion activists in Montana, next steps are uncertain," (Jun. 29, 2022).
	
	In November 2022, Montana voters rejected an anti-abortion ballot initiative. See Time, "Voters Rejected Montana's Anti-Abortion Referendum. Here's What it Means," (Nov. 10, 2022).
	
	Currently, three abortion laws that remain on the books have been enjoined by a Montana court as unconstitutional under the state constitution and the *Armstrong* decision. In addition, a request by the State Attorney General to overturn or reconsider *Armstrong* in light of the U.S. Supreme Court decision in *Dobbs* was denied by the Montana Supreme Court in August 2022. See *Planned Parenthood v. State*, No. DA-21-521 (Mont. Aug. 8, 2022) ("The State asks this Court to overrule *Armstrong*. As we do not determine the ultimate merits of a case on appeal from a preliminary injunction … we decline to overrule precedent in such an appeal, when the very purpose of a preliminary injunction is to maintain the status quo pending that final determination."). See also, Montana Free Press, "Montana Supreme Court says abortion laws will remain blocked while case proceeds," (Aug. 9, 2022). Litigation in this case continues and will proceed to trial.
	
	The enjoined laws cover a wide range of abortion restrictions, including a ban on all abortions after 20 weeks, except in the cases of an emergency, provision of information regarding ultrasounds, and rules on drug-induced abortions. See Order Granting Preliminary Injunction, *Planned Parenthood of Montana and Banks v. State*, No. DV 21-999 (Sept. 30, 2021).
	
	The Montana Pain-Capable Unborn Child Protection Act (codified at Mont. Code Ann. § 50-20-601 through § 50-20-606) includes the following restrictions and penalties that have been enjoined:
	
	• No person may perform or attempt to perform an abortion of an unborn child capable of feeling pain (probable gestational age of fetus is 20+ weeks). Mont. Code Ann. § 50-20-603.
	• Felony to purposely or knowingly perform or attempt to perform abortion past 20 weeks. Mont. Code Ann. § 50-20-604.
	  o If a person is convicted of a deliberate, mitigated, or negligent homicide, they will be punished according to § 45-5-102 through § 45-5-104.
	  o If a person is convicted of any other kind of felony, they will be subject to a fine not to exceed $1,000, imprisonment for a term not to exceed 6 years, or both.
	• A civil action may be maintained against a person who performs an abortion on a pain-capable fetus, or a fetus of 20 weeks gestational age. Mont. Code Ann. § 50-20-605.
	
	Another enjoined law would require that a woman be given the opportunity to view an ultrasound and hear a fetal heartbeat. Physicians would be subject to civil

penalties for violating the act, and would also be subject to reporting requirements. Mont. Code Ann. § 50-20-113.

Finally, the Montana Abortion-Inducing Drug Risk Protocol Act (codified at Mont. Code Ann. § 50-20-701 through § 50-20-714) enacts several restrictions and penalties that have been enjoined:

- Abortion-inducing drugs must be provided to patients by a qualified medical practitioner who meets certain qualifications, and who must ensure a follow-up visit is scheduled. Mont. Code Ann. § 50-20-703(10).
- Must be in-person – a qualified medical practitioner cannot provide abortion-inducing drug via courier, delivery, or mail service. Mont. Code Ann. § 50-20-704.
- Abortion-inducing drug cannot be provided in an elementary, secondary, or postsecondary school facility or on school grounds. Mont. Code Ann. § 50-20-706.
- At least 24-hours prior to providing an abortion-inducing drug to a patient, the qualified medical provider must obtain informed, written consent. Mont. Code Ann. § 50-20-707.
- All health care providers who perform drug-induced abortions must report each abortion performed to the Department of Health. The report shall include data related to any complications that may have occurred. Mont. Code Ann. § 50-20-709.
- Failure to follow the requirements of the Montana Abortion-Inducing Drug Risk Protocol Act (Mont. Code Ann. § 50-20-701 through 50-20-714) may form the basis of a civil malpractice action or wrongful death action. Mont. Code Ann. § 50-20-712.
- Felony to purposely, knowingly, or negligently violate any provision of the Montana Abortion-Inducing Drug Risk Protocol Act (Mont. Code Ann. § 50-20-701 through 50-20-714). Mont. Code Ann. § 50-20-711.
    - Upon conviction, person will be fined up to $50,000, imprisoned in state prison for up to 20 years, or both.
- A conviction for violating the Montana Abortion-Inducing Drug Risk Protocol Act (Mont. Code Ann. § 50-20-701 through 50-20-714) will provide the basis for an action to suspend or revoke the health care provider's license. Mont. Code Ann. § 50-20-712.

Nebraska

Neb. Rev. Stat. § 28-325 to § 28-347

Neb. Rev. Stat. § 28-3,102 to § 28-3,111

Neb. Rev. Stat. § 71-6901 to § 71-6911

Restrictions | Penalties | Aiding & Abetting | State Constitution | Future Considerations

Restrictions

Prohibitions:

- Abortions may not be performed after a fetus has reached viability except when necessary to preserve the life or health of the mother. Neb. Rev. Stat. § 28-329.
- Abortions may not be performed when the probable postfertilization age of the woman's unborn child is 20 weeks or more unless an abortion is necessary to prevent her death or serious injury or to preserve the life of the fetus. Neb. Rev. Stat. § 28-3,106.
- Partial-birth abortions are prohibited unless necessary to save a pregnant woman's life from physical illness or injury. Neb. Rev. Stat. § 28-328.
- Dismemberment abortions are prohibited unless necessary due to a medical emergency. Neb. Rev. Stat. § 28-347.

Physician Requirements:

- Only a physician may perform an abortion. Regardless of the method of abortion, the physician must be in the same room as the patient when the abortion occurs. Neb. Rev. Stat. § 28-335.
- In any abortion performed once a fetus is viable, the physician shall take all reasonable precautions to protect the lift of both the mother and the viable, unborn child. Neb. Rev. Stat. § 28-330.
- If after attempting abortion, fetus is alive, all reasonable steps must be employed to preserve life of the child. Neb. Rev. Stat. § 28-331.
- In emergency situation, physician must explain to pregnant woman, prior to abortion if possible, the medical indications supporting their judgment that abortion is necessary to avert her death or to avert a substantial impairment of a major bodily function. Neb. Rev. Stat. § 28-327.02.
- If an ultrasound is used prior to the performance of an abortion, a physician must simultaneously display the ultrasound images so a woman may choose to view or not view the images. Neb. Rev. Stat. § 28-327.
- At least one hour prior to the performance of an abortion, a licensed physician, psychiatrist, psychologist, mental health practitioner, physician assistant, registered nurse, or social worker must evaluate the patient to

identify if the patient has the perception of feeling pressured or coerced into seeking or consenting to an abortion, evaluate the patient to identify the presence of any risk factors associated with abortion, and inform the pregnant woman and the physician set to perform the abortion of the results in writing. Neb. Rev. Stat. § 28-327.

- Before performing an abortion, a physician must make a determination of the probable post-fertilization age of the fetus. Neb. Rev. Stat. § 28-3,105.

Consent Requirements:

- A patient must give voluntary and informed consent at least 24-hours before an abortion may be performed except in a medical emergency. Neb. Rev. Stat. § 28-327.01.
- An abortion is not voluntary unless a physician or physician's agent tells the patient at least 24-hours prior to the procedure the particular risks associated with the procedure, the probable gestational age of the unborn child at the time the abortion is performed, the medical risks associated with carrying the child to term, that research indicates that mifepristone alone is not always effective in ending pregnancy, and that she does not have to consent to an abortion. The patient must also be told the name of the physician who will perform the abortion, that medical assistance for prenatal and neonatal care may be available, and that the father is liable for child support. Neb. Rev. Stat. § 28-327.
- Except in a medical emergency, no person shall perform an abortion on a minor child or woman for who a guardian has been appointed without the notarized consent of both the pregnant woman and at least one of her guardians. Neb. Rev. Stat. § 71-6902.
    - This requirement is waived if the pregnant woman declares in a signed written statement that she is a victim of abuse or sexual abuse by either of her parents or legal guardians. In that case, the physician may perform the abortion with the notarized consent of the pregnant woman's grandparent and must notify the pregnant woman of the physician's duty to alert the proper authorities about the abuse. Neb. Rev. Stat. § 71-6902.01.
    - A pregnant minor may also seek a judicial waiver to the parental consent law. Neb. Rev. Stat. § 71-6903; Neb. Rev. Stat. § 71-6905.
- Consent is not required to perform an abortion if an attending physician certifies in the pregnant woman's medical record that a medical emergency exists and there is insufficient time to obtain the required consent. Neb. Rev. Stat. § 71-6906.
- If an emergency situation compels the performance of an abortion, a physician shall inform the woman prior to the abortion if possible of the medical indications supporting the physician's judgement that abortion is necessary to avert the pregnant woman's death or substantial impairment of a major bodily function. A physician who performs an abortion in violation of Nebraska's informed consent rules for minors may be sued by the parent or guardian of a minor upon who an abortion was performed. Neb. Rev. Stat. § 28-327.02.

Reporting Requirements:

- Physicians must report to the Department of Health information on all abortions performed within 15 days after each reporting month. Neb. Rev. Stat. § 28-343.
- A physician who performs an abortion must report information about the abortion to the Department of Health and Human Services. Neb. Rev. Stat. § 28-3,107.
- Physicians must report monthly on abortions performed on minors. Neb. Rev. Stat. § 71-6909.

Penalties

Immunities: In general, a woman upon whom an abortion has been performed is not guilty and will not be prosecuted. Neb. Rev. Stat. § 28-328(3); Neb. Rev. Stat. § 28-347.03; Neb. Rev. Stat. § 28-3,108.

Criminal Penalties:

- A physician who performs a partial-birth abortion commits a Class III felony, which is punishable by 4 years imprisonment and 2 years post-release supervision, or $25,000 fine, or both and will have her license automatically suspended and revoked. Neb. Rev. Stat. § 28-328; Neb. Rev. Stat. § 28-105.
- A class IV felony is punishable with a maximum of 2 years imprisonment and 12 months post-release supervision or a $10,000 fine or both. Neb. Rev. Stat. § 28-105. **The following are class IV felonies:**
  - Intentionally or recklessly performing or attempting to perform an abortion when a fetus is over 20 weeks of age. Neb. Rev. Stat. § 28-3,108.
  - The performance of an abortion by anyone other than a licensed phyisican. Neb. Rev. Stat. § 28-335.
  - Performing an abortion using anything other than accepted medical procedures. Neb. Rev. Stat. § 28-336.
    - Accepted medical procedures are not defined in the code.
  - Violating the requirements to preserve the life of a born-alive child. Neb. Rev. Stat. § 28-332.
  - Intentional and knowing performance of a dismemberment abortion. Neb. Rev. Stat. § 28-347.04.
- A physician who fails to follow reporting requirements will be guilty of a class II misdemeanor, which is punishable by a maximum of 6 months imprisonment, a $1,000 fine, or both. Neb. Rev. Stat. § 28-344; Neb. Rev. Stat. § 28-106.
- A class III misdemeanor is punishable by a maximum of 3 months imprisonment, a $500 fine, or both. Neb. Rev. Stat. § 28-106. **The following are considered class III misdemeanors:**
  - Violating informed consent requirements for minors. Neb. Rev. Stat. § 71-6907.
  - Giving consent for a minor to get an abortion when not authorized. Neb. Rev. Stat. § 71-6907.
  - Coercing a pregnant woman to have an abortion. Neb. Rev. Stat. § 71-6907.

	Civil Actions & Penalties:
	• Any physician who performs an abortion in violation of the Pain-Capable Unborn Child Protection Act (after 20 weeks) can be subject to civil action from the formerly pregnant woman, her spouse, parent, sibling, guardian, or current or former licensed health care provider. Injunctive relief is available. Neb. Rev. Stat. § 28-3,109.
	• A physician who performs an abortion in violation of Nebraska's informed consent rules may be sued for professional negligence by the person who obtained the abortion or her parents if she was a minor. Neb. Rev. Stat. § 28-327.04.
	  o Damages may include the award of reasonable costs and attorney's fees and recovery for the pregnant woman for the wrongful death of her unborn child. Neb. Rev. Stat. § 28-327.07.
	• If a physician performs an abortion on pregnant minor without her parent's consent, the physician bears the burden of proving the pregnant minor was capable of independently evaluating the information given to her. Neb. Rev. Stat. § 28-327.09.
	  o The pregnant woman enjoys a rebuttable presumption that she would not have undergone the recommended abortion if she had be given the information mandated by Nebraska's informed consent law. Neb. Rev. Stat. § 28-327.11.
	• A woman, the father of the unborn child, or maternal grandparents if the woman is a minor or has died, or a prosecuting attorney with appropriate jurisdiction may bring a cause of action against a physician for a dismemberment abortion. Neb. Rev. Stat. § 28-347.01.
	  o **Exception**: no damages or relief may be awarded if the pregnancy was due to the criminal conduct of the plaintiff. Neb. Rev. Stat. § 28-347.02.
	
	Administrative Actions & Penalties
	• Any physician who fails to report the required information about abortions they perform thirty days after the deadline is subject to a five-hundred dollar late fee for each additional thirty-day late period. Neb. Rev. Stat. § 28-3,107.
	• Unprofessional conduct includes a physician who performs a partial birth abortion, performs an abortion after a fetus is more than 20 weeks gestational age, performs an abortion on a minor without parental consent, or performs an abortion under circumstances where he or she will not be available for a period of forty-eight hours for postoperative care unless such care is delegated to another physician. Neb. Rev. Stat. § 38-178; Neb. Rev. Stat. § 38-179; Neb. Rev. Stat. § 38-193; Neb. Rev. Stat. § 38-2021.

Aiding & Abetting	**Third-Party Penalties:** • The knowing, willful, or intentional consenting to, aiding, or abetting of sale, transfer, distribution, or other unlawful disposition of an aborted child is a Class III felony. Neb. Rev. Stat. § 28-342. • No parent or guardian shall coerce a pregnant woman to obtain an abortion. If they cut of financial support to their child, the pregnant woman will be

	deemed emancipated for the purpose of eligibility for public assistance benefits. Neb. Rev. Stat. § 71-6902.02. • An agent who acts at the discretion of a physician to perform a dismemberment abortion may be held liable for performing or attempting to perform a dismemberment abortion. Similarly, a pharmacist who is not a physician may be liable for filling a prescription or providing instruments used in such a procedure. Neb. Rev. Stat. § 28-347(3). • A woman or her survivors will have a cause of action for reckless endangerment against any person other than a licensed physician or pharmacist who attempts or completes an abortion, or aids and abets the commission of an abortion. Neb. Rev. Stat. § 28-327.11.
State Constitution	There are no provisions in the Nebraska constitution that directly address abortion or a right to privacy. • Art. I, § 1: All persons are by nature free and independent, and have certain inherent and inalienable rights; among these are life, liberty, the pursuit of happiness … • Art. I, § 3: No person shall be deprived of life, liberty, or property, without due process of law, nor be denied equal protection of the laws. • Art. III, § 2: The first power reserved by the people is the initiative whereby laws may be enacted and constitutional amendments adopted by the people independently of the Legislature. This power may be invoked by petition wherein the proposed measure shall be set forth at length. …
Future Considerations	In April 2022, the state's unicameral legislature (the only one of its kind in the U.S.) attempted to pass a trigger ban in, but lacked the votes to overcome the state filibuster by a narrow margin. See Nebraska Public Media, "Nebraska Reacts to Supreme Court Decision to Overturn Roe v. Wade," (Jun. 28, 2022); WOWT News, "Nebraska legislature could call special sessions to again attempt abortion ban 'trigger law'," (May 3, 2022). While results from some counties may face a recount, it appears that Republicans were able to get one seat closer to a supermajority in the Nebraska legislature during the November 2022 midterms. It seems likely that the legislature will attempt to restrict abortion rights in 2023. See KMTV.com, "Democrats block filibuster-proof majority in Nebraska, no guarantee they can stop Republican bills," (Nov. 18, 2022); Nebraska Public Media, "Republican hopes for 'filibuster-proof' Legislature appear dashed," (Nov. 18, 2022).

Nevada

Nev. Rev. Stat. Ann. § 442.240 to § 442.270

Nev. Rev. Stat. Ann. § 200.220

Nev. Admin. Code § 442.100 to 442.200

Restrictions | Penalties | Aiding & Abetting | State Constitution | Future Considerations

Restrictions

Prohibitions:

- No abortion may be performed after 24 weeks gestation, except in the case of medical emergency. Nev. Rev. Stat. Ann. § 442.250.
- If an abortion is performed after the 24th week, and the fetus could survive outside the womb, then the abortion must be performed in a licensed hospital. Nev. Rev. Stat. Ann. § 442.250.

Physician Requirements:

- Only a physician licensed in Nevada or employed by the US government, with accepted medical practices/procedures, may perform an abortion. Nev. Rev. Stat. Ann. § 442.250.
- Before performing an abortion after the 24th week, the physician must report the facts on which the physician has based his or her judgment that the continuance of the pregnancy would endanger the life, or gravely impair the physical or mental health of the patient. Nev. Rev. Stat. Ann. § 442.250.
- After performing an abortion, a physician must conduct a follow-up examination. Nev. Admin Code § 442.190.

Consent Requirements:

- Physician must obtain the informed consent of a woman seeking an abortion. Nev. Rev. Stat. Ann. § 442.252; Nev. Rev. Stat. Ann. § 442.253.
- Prior to performing an abortion, the physician must inform the woman seeking an abortion the approximate gestational age of the fetus. Nev. Rev. Stat. Ann. § 442.253.
- If the pregnant woman is a minor, the physician must notify a parent or guardian prior to performing an abortion. Nev. Rev. Stat. Ann. § 442.255.
    - **Exceptions**:
        - When the abortion is necessary to preserve the patient's life or health; or
        - The patient receives court order authorization.

	Reporting Requirements: • A physician who performs an abortion shall maintain a record of it for at least 5 years that includes the signed consent form, statement of information provided to the patient and any attempts to give notice if the patient was a minor. Nev. Rev. Stat. Ann. § 442.256. • Each hospital must submit monthly reports to the State Registrar of Vital Statistics regarding the number of patients admitted for any abortion complication, the nature of the complication, and type of abortion. Nev. Rev. Stat. Ann. § 442.265. • The physician or physician's staff must submit a report for each abortion performed. Nev. Admin. Code § 442.200.
Penalties	**Immunities:** If an abortion is judicially authorized and is performed legally, then any action by the parents or guardians against the persons performing the abortion is barred. Nev. Rev. Stat. Ann. § 442.268. **Criminal Penalties:** • Any violation of the informed consent requirements, including those related to minors, is a misdemeanor. Nev. Rev. Stat. Ann. § 442.257. • If abortion results in an infant capable of sustained survival, failure to preserve infant's life creates criminal liability for wrongful death and medical malpractice. Nev. Rev. Stat. Ann. § 442.270. • Category B felony is punishable by 1 to 10 years imprisonment and a fine of up to $10,000 or both. **The following is a Category B felony:** o Category B felony to intentionally terminate one's pregnancy by using any substance or instrument after 24 weeks, unless done under advice of a physician pursuant to 442.250. Nev. Rev. Stat. Ann. § 200.220. **Civil Actions & Penalties:** • If abortion results in an infant capable of sustained survival, failure to preserve infant's life creates civil liability for wrongful death and medical malpractice. Nev. Rev. Stat. Ann. § 442.270. **Administrative Actions & Penalties:** • Performing an unlawful abortion constitutes grounds for initiating disciplinary action or denying the issuance of a license. Nev. Rev. Stat. Ann. § 630A.370. • Performing an unlawful abortion is considered unprofessional conduct. Nev. Rev. Stat. Ann. § 633.131; Nev. Rev. Stat. Ann. § 634.018.
Aiding & Abetting	No Provision.

State Constitution	There are no provisions related directly to abortion or a right to privacy under the state constitution.
Future Considerations	In 1990, Nevada held a referendum on the question of the validity of the state's abortion statutes. Voters approved the referendum approving the provisions, and so they can now only be amended or repealed through another referendum. See Nevada Legislative Counsel Bureau, Ballot Question No. 7. On June 28, 2022, Governor Sisolak issued an Executive Order to further protect access to reproductive health services in Nevada. See Exec. Order 2022-8. Among other things the Order --- • Prohibits Nevada executive agencies from assisting with an investigation initiated in another state seeking to impose civil or criminal penalties for seeking reproductive health care services in Nevada. • Protects Nevada health care providers from disciplinary action should they perform an abortion on an out-of-state patient. • Prohibits extradition for any person charged with a criminal violation of another state's law related to abortion services if the conduct alleged is not a crime under Nevada law.

New Hampshire

N. H. Rev. Stat. § 132:32 to § 132:36

N. H. Rev. Stat. § 329:32 to § 329:50

Restrictions | Penalties | Aiding & Abetting | State Constitution | Future Considerations

Restrictions

Abortions are permitted at any time prior to 24 weeks gestation.

Prohibitions:

- No abortion may be performed after 24 weeks gestation. N.H. Rev. Stat. § 329:44.
  - **Exceptions:**
    - Medical emergency where the abortion is necessary to preserve the life of the pregnant woman whose life is endangered by a physical disorder, physical illness, or physical injury, including a life-endangering physical condition caused by or arising from the pregnancy itself, or when continuation of the pregnancy will create a serious risk of substantial and irreversible impairment of a major bodily function. N.H. Rev. Stat. § 329:44.
    - In the case of fetal abnormalities incompatible with life. N.H. Rev. Stat. § 329:44(II).
- A person shall not knowingly perform or attempt to perform a partial-birth abortion.
  - **Exception:** where the life of the mother is endangered by a physical disorder, physical illness, or physical injury, including a life-endangering physical condition caused by or arising from the pregnancy itself. The performing physician must certify the existence of such medical necessity along with a documented referral from another independent physician. N.H. Rev. Stat. § 329:34.

Physician Requirements:

- The physician must determine the probable gestational age of the fetus before performing an abortion EXCEPT in cases of medical emergency. N.H. Rev. Stat. § 329:44.
- An ultrasound must be performed if the provider knows that the fetus has a gestational age of at least 24 weeks or is conscious of a substantial risk that the fetus has a gestational age of at least 24 weeks. N.H. Rev. Stat. § 329:44(I).

Consent Requirements:

- No abortion may be performed on a minor (or someone with an appointed conservator) until at least 48 hours after written notice to parent or guardian. N.H. Rev. Stat. § 132:33; N.H. Rev. Stat. § 132:34(I).
    - **Exceptions:**
        - Medical emergency
        - Notification is waived by a court.

Reporting Requirements:

- A physician who performs an abortion after 24 weeks must report the reasons for the determination that a medical emergency necessitated the abortion to the medical facility where the abortion is performed, and such report shall be retained for at least 5 years. N.H. Rev. Stat. § 329:45.
- A physician who performs a partial-birth abortion must report the reasons for the determination that a medical emergency necessitated the abortion to the medical facility in which the abortion is performed, and such report shall be retained for at least 5 years. N.H. Rev. Stat. § 329:35.

Penalties

Immunities: A woman upon whom a partial-birth abortion is performed may not be prosecuted. N.H. Rev. Stat. § 329:40

Criminal Actions & Penalties:

- A Class B felony is punishable by imprisonment of 1 to 10 years, a fine of $10,000 to $100,000, or both. N.H. Rev. Stat. § 625:8; N.H. Rev. Stat. § 625:9. **The following are considered class B felonies:**
    - Any physician who knowingly performs an abortion past 24 weeks (or who consciously disregards a substantial risk that the fetus has a gestational age of at least 24 weeks). N.H. Rev. Stat. § 329:46.
    - Intentionally or knowingly performing a partial-birth abortion. N.H. Rev. Stat. § 329:36.
- Any physician who performs an abortion in violation of the informed consent requirements for a minor is guilty of a misdemeanor. N.H. Rev. Stat. § 132:35; N.H. Rev. Stat. § 625:9(IV)(c).

Civil Penalties:

- A civil action may be maintained against a person who performs an abortion in violation of the consent requirements for minors. N.H. Rev. Stat. § 132:35.
- The father, if married to the mother at the time she received a partial birth abortion, or the maternal grandparents if the mother is under 18, may bring a civil action UNLESS the pregnancy resulted from the plaintiff's criminal conduct or the plaintiff consented to the abortion. N.H. Rev. Stat. § 329:37.
    - Remedies include monetary damages for psychological and physical injury as well as statutory damages equal to 3 times the cost of the partial-birth abortion.
- The woman, the father of the fetus if married to the mother at the time she has an abortion past 24 weeks, and/or the maternal grandparents if the

	mother is under 18 at the time, may bring a civil action. N.H. Rev. Stat. § 132:47. o Remedies include monetary damages for all psychological and physical injuries caused. **Administrative Actions & Penalties**: • Ambulatory health care facilities where unlawful partial-birth abortion is performed is subject to license revocation and loss of all state funding for three years. N.H. Rev. Stat. § 329:39. • Physicians may be subject to disciplinary action by the board for violating the reporting requirements related to partial-birth abortions. N.H. Rev. Stat. § 329:35.
Aiding & Abetting	No provision.
State Constitution	The constitution includes a general right to privacy. • Pt. FIRST, Art. 2: All men have certain natural, essential, and inherent rights—among which are, the enjoying and defending life and liberty; acquiring, possessing, and protecting, property; and, in a word, of seeking and obtaining happiness. Equality of rights under the law shall not be denied or abridged by this state on account of race, creed, color, sex or national origin. • Pt. FIRST, Art. 2-b: An individual's right to live free from governmental intrusion in private or personal information is natural, essential, and inherent.
Future Considerations	Although Governor Sununu signed the current abortion restrictions post-24 weeks into law in 2021, he has signaled that he would support no further restrictions. State Republican lawmakers also have no current intentions to pursue further abortion restrictions. See New Hampshire Bulletin, "How does the end of Roe affect New Hampshire?" (Jun.24, 2022). New Hampshire is the only New England state that does not explicitly protect the right to an abortion under state law. US News & World Report, "Efforts to Enshrine Abortion Rights in New Hampshire Fail," (May 5, 2022).

New Jersey

N.J. Stat. Ann. § 2A:65A-1 to § 2A:65A-7

N.J. Stat. Ann. § 10:7-1 to § 10:7-2

Restrictions | Penalties | Aiding & Abetting | State Constitution Future Considerations

Restrictions	**Abortions are permitted** without any gestational age restrictions. • In January 2022, Governor Phil Murphy signed into law the Freedom of Reproductive Choice Act, which codified the right to abortion into state law, and also stipulates that any law passed after the Act that infringes on the right to an abortion is invalid. N.J. Stat. Ann. § 10:7-1; N.J. Stat. Ann. § 10:7-2. **Prohibitions**: • Partial-birth abortions are prohibited, unless the procedure is necessary to save the life of the mother whose life is endangered by a physical disorder, illness, or injury. N.J. Stat. Ann. § 2A:65A-6. o **Exception**: when necessary to save the patient whose life is endangered by a physical disorder, illness or injury.
Penalties	**Immunities**: No civil or criminal liability for a person upon whom a partial-birth abortion is performed. N.J. Stat. Ann. § 2A:65A-7. **Administrative Actions & Penalties**: • A physician who performs an unlawful partial-birth abortion is subject to an immediate revocation of their professional license and a penalty of $25,000 for each incident. N.J. Stat. Ann. § 2A:65A-6. • A health care facility where a partial-birth abortion is performed is subject to license revocation. N.J. Stat. Ann. § 2A:65A-6.
Aiding & Abetting	No provision.
State Constitution	The state's highest court has recognized the fundamental right to abortion under the New Jersey constitution. *Right to Choose v. Byrne*, 91 N.J. 287 (N.J. Sup. Ct. 1982).

	In addition, several of New Jersey's abortion provisions pertaining to unemancipated minors (N.J. Stat. Ann. §§ 9:17A-1.1 to 9:17A-1.12) were declared unconstitutional in *Planned Parenthood of Cent. N.J. v. Farmer*, 762 A.2d 620 (N.J. Sup. Ct. 2000)(holding that the consent requirements for minors is unconstitutional under the equal protection principles in the New Jersey Constitution). Although the Court declared the provisions unconstitutional, they have not been formally repealed by the legislature and remain in the New Jersey Statutes at this time. • Art. I, para. 1: All persons are by nature free and independent, and have certain natural and unalienable rights, among which are those of enjoying and defending life and liberty, of acquiring, possessing, and protecting property, and of pursuing and obtaining safety and happiness.
Future Considerations	On June 28, 2022, Governor Murphy signed into law two bills that protect New Jersey residents and providers from criminal prosecution in states that have now outlawed abortion. A.B. 3974, 220th Leg., Reg. Sess. (N.J. 2022); A.B. 3975, 220th Leg., Reg. Sess. (N.J. 2022). The new laws --- • Prohibit extradition of any person in New Jersey who has come to the state seeking reproductive health services that are legal in New Jersey. • Prohibit the disclosure of any information about a person who has come seeking an abortion in New Jersey. Also, the Governor sent a letter to nearly sixty businesses just prior to the release of the *Dobbs* decision inviting companies to come to New Jersey and set up business specifically because the state has expanded abortion rights. See NPR.org, "New Jersey touts abortion protections to lure businesses," (Jun. 15, 2022).

New Mexico

N.M. Stat. Ann. § 30-5A-1 to § 30-5A-5

N.M. Stat. Ann. § 24-14-18; N.M. Stat. Ann. § 24-14-31

N.M. Stat. Ann. § 61-12G-8

Restrictions | Penalties | Aiding & Abetting | State Constitution | Future Considerations

Restrictions

Abortions are permitted without gestational age restrictions.

- Nurse practitioners and physicians are authorized to perform abortions. *Planned Parenthood of N.M. v. New Mexico*, No. CV-200604230 ¶ 11 (N.M. 2d Dist. Ct. 2007).

Prohibitions:

- Partial birth abortions are banned unless necessary to save the life of a pregnant person or prevent great bodily harm, and no other medical procedure would suffice for that purpose. N.M. Stat. Ann. § 30-5A-3.
- Naturopathic doctors are not allowed to perform surgical abortions. N.M. Stat. Ann. § 61-12G-8.

Reporting Requirements:

- Each induced abortion must be reported within five days by the person in charge of the institution where it was performed or by the attending physician, if performed outside a hospital. N.M. Stat. Ann. § 24-14-18.

Penalties

Immunities: A person on whom a partial-birth abortion is performed is not subject to criminal culpability as an accomplice, aider, abettor, solicitor or conspirator. N.M. Stat. Ann. § 30-5A-5.

Criminal Penalties:

- A fourth-degree felony is punishable by up to 18 months imprisonment, a fine of $5,000, or both. N.M. Stat. Ann. § 31-18-15. **The following are fourth-degree felonies:**
  - Performing a partial-birth abortion. N.M. Stat. Ann. § 30-5A-5.
  - Knowingly and willfully permitting the inspection of or disclosing information contained in a report on induced abortions. N.M. Stat. Ann. § 24-14-31.

	Civil Actions & Penalties: • A civil action for compensatory damages may be maintained against a person who performs a partial birth abortion by the person on whom the abortion was performed, the biological father of the fetus, or the parents of a minor who obtained an abortion. N.M. Stat. Ann. § 30-5A-4. o Any person who consented to the abortion, and no person who caused the pregnancy through criminal conduct are barred from maintaining an action.
Aiding & Abetting	No Provision.
State Constitution	There are no provisions specifically addressing abortion or privacy rights. In addition, no New Mexico case has addressed whether or not the constitution protects abortion rights. The New Mexico Supreme Court has found, however, that the constitution's equal protection clause protects the right of a woman to have her abortion paid for. See *N.M. Right to Choose/Naral, Abortion & Reprod. Health Servs., Planned Parenthood of the Rio Grande v. Johnson*, 975 P.2d 841 (N.M. Sup. Ct. 1998). See also: • Art. II, § 4: All persons are born equally free, and have certain natural, inherent and inalienable rights, among which are the rights of enjoying and defending life and liberty, of acquiring, possessing and protecting property, and of seeking and obtaining safety and happiness. • Art. II, § 18: No person shall be deprived of life, liberty or property without due process of law; nor shall any person be denied equal protection of the laws. Equality of rights under law shall not be denied on account of the sex of any person.
Future Considerations	In February 2021, New Mexico repealed the criminal abortion provisions located at N.M. Stat. Ann. § 30-5-1 through § 30-5-3. There is, however, no abortion right codified in New Mexico law. On June 27, 2022, Governor Lujan Grisham signed an Executive Order aimed at protecting health care providers from legal retribution for performing legal abortions in New Mexico on out-of-state residents. Exec. Order 2022-107. The Order --- • Prohibits executive agencies from cooperating with other states' investigations into the use of reproductive health services that are lawful in New Mexico. • Protects New Mexico health providers from disqualification or revocation of a license for performing abortions or other reproductive health care services.

	• Prohibits extradition of anyone charged with violating another state's laws related to reproductive health services, unless the offense forming the basis of the prosecution would also be illegal under New Mexico law. Gov. Luhan Grisham won re-election in the November 2022 midterms and has expressed support for a bill to be introduced in 2023 that would officially codify abortion rights. See Santa Fe New Mexican, "Democratic lawmakers will seek to codify abortion rights in next session," (Nov. 12, 2022).

New York

N.Y. Civ. Rights § 70-b

N.Y. Pub. Health § 2599-aa to § 2599-bb

N.Y. Crim. Pro. § 570.17

N.Y. C.P.L.R. § 3119(g)

Restrictions | Penalties | Aiding & Abetting | State Constitution | Future Considerations

Restrictions	Comprehensive reproductive health care is a fundamental component of every individual's health, privacy, and equality. N.Y. Pub. Health § 2599-aa. **Abortions are permitted:** • At any time before 24 weeks from the commencement of pregnancy. • When there is no fetal viability. • When the abortion is necessary to protect the patient's life or health. N.Y. Pub. Health § 2599-bb. **Physician Requirements:** • Abortions may be performed by a health care practitioner that is licensed, certified, or authorized in New York in the scope of her practice. N.Y. Pub. Health § 2599-bb.
Penalties	A person may pursue a claim of unlawful interference with a protected right, including the right to terminate a pregnancy. N.Y. Civ. Rights § 70-b. No abortion providers will be extradited if they performed abortion services that are legal in New York on out-of-state residents. N.Y. Crim. Pro. § 570.17. No court or county clerk shall issue a subpoena in connection with an out-of-state proceeding relating to any abortion services or procedures which were legally performed in New York. N.Y. C.P.L.R. § 3119(g).
Aiding & Abetting	No provision.

State Constitution	There is no provision in the state constitution directly related to abortion or reproductive rights or a right to privacy. The following provisions may implicate a right to privacy in other areas. • Art. I, § 11: No person shall be denied the equal protection of the laws of this state or any subdivision thereof. No person shall, because of race, color, creed or religion, be subjected to any discrimination in his or her civil rights by any other person or by any firm, corporation, or institution, or by the state or any agency or subdivision of the state. • Art. I, § 12: Security against unreasonable searches, seizures and interceptions. The right of the people to be secure in their persons, houses, papers and effects, against unreasonable searches and seizures, shall not be violated, …
Future Considerations	On July 1, 2022, the New York state legislature began the process to amend the state constitution by adopting a concurrent resolution to add reproductive health care, pregnancy and pregnancy outcomes as protected rights under the current equal protection clause. See S. 51002, 245th Leg., 1st Spec. Sess. (N.Y. 2022). The bill must now be adopted by the next legislature convening after the mid-term elections in November. If it is adopted by that legislature, it will then be placed on a ballot for a statewide voter referendum. In the meantime, New York adopted a package of bills in June 2022 that protect abortion providers in the state by prohibiting extraditions or cooperation with out-of-state investigations related to reproductive health care services that are legal in New York. See N.Y. Crim. Pro. § 570.17 and N.Y. C.P.L.R. § 3119(g). The state Attorney General has also posted information online that summarize New York's abortion laws.

North Carolina

N.C. Gen. Stat. § 14-44 to 14-46.1

N.C. Gen. Stat. § 90-21.80 to 90-21.92

N.C. Gen. Stat. Ann. § 130A-131.10

Restrictions | Penalties | Aiding & Abetting | State Constitution | Future Considerations

NOTE: With the release of the U.S. Supreme Court opinion in *Dobbs v. Jackson Women's Health Organization*, the North Carolina state legislature is seeking to reinstate a 20-week ban on abortion with an exception for medical emergencies. In addition, a complete prohibition on abortion without any exceptions that was originally enacted in 1881 has never been repealed. The following summary of state law includes the outright ban and all other laws currently enacted in North Carolina, regardless of whether or not they conflict with one another or are enforceable.

Restrictions

Pre-*Roe* Bans:

- All abortions, including drug-induced abortions, are prohibited, and violators shall be punished as class H felons. N.C. Gen. Stat. § 14-44.
- It is unlawful for any person to administer to any pregnant woman, or prescribe for any such woman, or advise and procure such woman to take any medicine, drug or anything whatsoever, with intent thereby to procure the miscarriage of such woman, or to injure or destroy such woman, or to use any instrument or application for any of the above purposes. N.C. Gen. Stat. Ann. § 14-45.

Abortions are prohibited after 20 weeks of pregnancy, unless there is a medical emergency (as defined by N.C. Gen. Stat. § 90-21.81(5)). N.C. Gen. Stat. § 14-45.1(a).

Additional Abortion Restrictions that have not been repealed:

- No abortion may be performed that is based on the sex of the unborn child. N.C. Gen. Stat. § 90-21.121.

Physician Requirements that have not been repealed:

- Abortions may only be performed by licensed physicians who: (1) possess or are eligible to possess board certification in obstetrics or gynecology; (2) possess sufficient training in established medical standards in abortion care, or (3) a physician who performs an abortion during a medical emergency. N.C. Gen. Stat. § 14-45.1(g).
- At least four hours before the pregnant woman can have an abortion performed or induced, the physician must show an obstetric real-time view of the fetus, offer the patient an opportunity to hear the fetal heartbeat, display the images, provide a medical description of the images, and obtain a written certification from the patient that these requirements were satisfied. N.C. Gen. Stat. § 90-21.85.
    - The ultrasound requirements at N.C. Gen. Stat. § 90-21.85(a) were held unconstitutional. *Stuart v. Camnitz*, 774 F.3d 238 (4th Cir. 2014), *cert. denied*, *Walker-McGill v. Stuart*, 135 S. Ct. 2838 (2015).
- For an abortion after 16 weeks of pregnancy, a physician must record the following to the Department of Health and Human Services: the method used to determine the gestational age, the results of the methodology, measurements of the fetus, and an ultrasound of the fetus. N.C. Gen. Stat. § 14-45.1(b1).

Informed Consent Requirements that have not been repealed:

- Voluntary and informed consent is required. N.C. Gen. Stat. § 90-21.82.
- There is a 72 hour waiting requirement. N.C. Gen. Stat. § 90-21.82(1).
- In the case of a medical emergency, the physician must inform the patient of why an immediate abortion is necessary to save her life. N.C. Gen. Stat. § 90-21.86.
- Physicians may not perform abortions on unemancipated minors unless the physician obtains the written consent of the minor and a legal parent/guardian, or in certain instances, a grandparent. N.C. Gen. Stat. § 90-21.7 to N.C. Gen. Stat. § 90-21.9, N.C. Gen. Stat. § 90-21.87.
    - **Exceptions**:
        - the minor obtains judicial waiver of the parental consent requirement; or
        - there is a medical emergency.

Record/Reporting Requirements that have not been repealed:

- A physician performing abortion after the 16th week shall record: the method used to determine the probable gestational age at the time the procedure is to be performed; the results of the methodology, including the measurements of the unborn child; and an ultrasound image of the unborn child that depicts the measurements. The qualified physician shall provide this information, including the ultrasound image, to the Department of Health and Human Services. N.C. Gen. Stat. Ann. § 14-45.1(b1).
- A physician who performs an abortion after the 20th shall record the findings and analysis on which the determination that there existed a medical emergency as defined by G.S. 90-21.81(5) was made and shall

provide that information to the Department of Health and Human Services. N.C. Gen. Stat. Ann. § 14-45.1(b1).

Facility Requirements that have not been repealed:

- Abortions after the 20th week must be performed in a licensed hospital.
  - Any clinic where abortions are performed are subject to annual inspections by the Department of Health and Human Services and the results of the inspection are published on the Department's website. N.C. Gen. Stat. § 14-45.1(b).
- All facilities authorized to terminate pregnancies shall dispose of the remains in a manner limited to burial, cremation, or approved hospital type of incineration. N.C. Gen. Stat. Ann. § 130A-131.10.

Penalties

In general, North Carolina does not provide for criminal or civil penalties against a woman who is seeking an abortion.

Criminal Penalties:

- Administering to any woman, either "pregnant or quick with child" a drug, or using an instrument, with the intent to "destroy such child" is punishable as a Class H felony. A Class H felony has a minimum of 4 months and a maximum of 25 months imprisonment. N.C. Gen. Stat. § 14-44.
  - Constitutionality challenged based on *Roe*. *See Corkey v. Edwards*, 322 F.Supp. 1248 (W.D.N.C. 1971), *judgment vacated*, 41 U.S. 950 (1973).
- Besides a licensed physician, using drugs or instruments to produce a miscarriage or injure a pregnant woman shall be punished as a Class I felony. A Class I felony is punishable by 3 to 12 months imprisonment. N.C. Gen. Stat. § 14-45.
- Any person who intentionally performs an abortion on an unemancipated minor in violation of informed consent requiements commits a class 1 misdemeanor, which is punishable by N.C. Gen. Stat. § 90-21.10.

Civil Actions & Penalties:

- Any person upon whom an abortion has been attempted may maintain an action for damages against the person who performed the abortion. N.C. Gen. Stat. § 90-21-88.
- Any person who violates the terms of an injunction issued in accordance with this section shall be subject to civil contempt and shall be fined ten thousand dollars ($10,000) for the first violation, fifty thousand dollars ($50,000) for the second violation, and one hundred thousand dollars ($100,000) for the third violation and each subsequent violation. Each performance or attempted performance of an abortion in violation of the terms of an injunction is a separate violation. The fine shall be the exclusive penalty for civil contempt under this subsection. The fine under this subsection shall be cumulative. No fine shall be assessed against the woman upon whom an abortion is performed or attempted. N.C. Gen. Stat. § 90-21.122.

Aiding & Abetting	No Provision.
State Constitution	There are no provisions directly addressing abortion or a right to privacy in the state constitution. • Art. I, § 1: We hold it to be self-evident that all persons are created equal; that they are endowed by their Creator with certain inalienable rights; that among these are life, liberty, the enjoyment of the fruits of their own labor, and the pursuit of happiness. • Art. I, § 13: All persons have a natural and inalienable right to worship Almighty God according to the dictates of their own consciences, and no human authority shall, in any case whatever, control or interfere with the rights of conscience. • Art. I, § 19: … No person shall be denied the equal protection of the laws; nor shall any person be subjected to discrimination by the State because of race, color, religion, or national origin.
Future Considerations	The governor of North Carolina issued an Executive Order protecting abortion access, including for people from other states who seek or provide abortion in North Carolina. N.C. Exec. Order No. 263, Protecting Access to Reproductive Health Care Services in North Carolina (July 6, 2022). The state Attorney General has voiced his commitment to protecting reproductive rights, indicating an unwillingness to prosecute violations of abortion law. Avi Bajpai, Josh Stein responds to GOP calls for NC's 20-week abortion ban to be reinstated, News Observer (July 1, 2022).

North Dakota

N. D. Cent. Code § 14-02.1-01 to § 14-02.1-12 ("Abortion Control Act")

N. D. Cent. Code § 14-02.6-01 to § 14-02.6-03

N. D. Cent. Code § 43-06-15

N. D. Cent. Code Ann. § 43-17-30.1 and § 43-17-31

Restrictions | Penalties | Aiding & Abetting | State Constitution | Future Considerations

NOTE: North Dakota enacted a trigger ban in 2007 that would prohibit all abortions with no exceptions, but would allow physicians to use medical emergencies or situations involving rape or incest as affirmative defenses. The trigger was certified to take effect on August 26, but was enjoined pending ongoing litigation challenging the ban under the state constitution. The following summary of state law includes the trigger ban and all other relevant abortion laws currently enacted in North Dakota, regardless of whether or not they conflict with one another or are enforceable.

Restrictions

Abortion Ban (Trigger Ban):

- All abortions are prohibited. N. D. Cent. Code § 12.1-31-12.
  - **Affirmative Defenses**: The abortion was necessary to prevent the death of the pregnant female, or because of rape or incest.
- It is a Class C felony to perform an abortion. N. D. Cent. Code § 12.1-31-12.

Effective Date: This Act became effective on August 26, 2022, but was then enjoined pending litigation as to the constitutionality of the provision. See *Access Indep. Health Servs., Inc. v. Wrigley*, No. 08-2022-CV-01608 (N.D. Dist. Ct. filed Jul. 7, 2022).

Additional Abortion Restrictions:

- Except in the case of a medical emergency, an abortion cannot be performed after twenty weeks postfertilization. N.D. Cent. Code § 14-02.1-05.3.
- Abortion of a viable child may only be performed when there is another physician in attendance who shall take control and provide immediate care

for the viable child born alive after an abortion. N. D. Cent. Code § 14-02.1-05.

- Except to prevent the death or serious risk of substantial and irreversible impairment to the pregnant woman, an abortion may not be performed if a fetal heartbeat is detected. N.D. Cent. Code Ann. § 14-02.1-05.2.
- For purposes of sex-selection. N.D. Cent. Code Ann. § 14-02.1-04.1.

Drug-Induced Abortion Restrictions:

- Only physicians can provide or prescribe any drug for the purpose of inducing an abortion. N. D. Cent. Code § 14-02.1-03.5(2).
- Abortion-inducing drugs may only be administered in the same room and in the physical presence of the physician who prescribed or otherwise provided the drug to the patient. N. D. Cent. Code § 14-02.1-03.5(5).
- The drug label must be provided to the pregnant woman. N. D. Cent. Code § 14-02.1-03.5(3).
- Any physician who administers abortion-inducing drugs must contract with another physician who agrees to handle emergencies associated with the use or ingestion of the abortion-inducing drug and provide that information to the patient receiving the drug. N. D. Cent. Code § 14-02.1-03.5(4).
    - The physician who contracts to handle the emergency must have active admitting privileges at a hospital designated to handle any emergencies associated with the ingestion of an abortion-inducing drug. N. D. Cent. Code § 14-02.1-03.5(4).

Physician Requirements: Only physicians licensed to practice in North Dakota may perform abortions. N.D. Cent. Code § 14-02.1-04.

Informed Consent Requirements:

- A pregnant woman must give informed consent, upon learning the name of the physician, that the abortion "will terminate the life of a whole, separate, unique, living human being," medical risks associated with the particular abortion and carrying her child to term, and the probable gestational age of the fetus. N. D. Cent. Code § 14-02.1-03.
- The pregnant woman must receive information by the physician, or physician's agent, relating to medical assistance the woman could receive, alternative to abortion, parental support, reversing the effect of an abortion-inducing drug, and that she can withhold or withdraw her consent. The pregnant woman must have this information and related printed materials at least twenty-four hours before the abortion can be performed. N.D. Cent. Code § 12-02.1-02.
- Subsequent to the period of pregnancy where the fetus "may reasonably be expected to have reached viability" no abortion, unless the pregnant woman's life or physical or mental health are at life-threatening risk, cannot be performed without the written consent of her husband, unless her husband is voluntarily separated from her, or the written consent of a parent or guardian if the woman is unmarried and under eighteen years of age. N.D. Cent. Code § 14-02.1-03(2).
- With the exception of medical emergency, the physician must determine if the unborn child the pregnant woman is carrying has a detectable heartbeat. N.D. Cent. Code Ann. § 14-02.1-05.1.

Facility Requirements:

- All facilities that perform abortions must display signs, in an "area that ensure maximum visibility to women at the time a woman gives consent to an abortion" that say: "NOTICE: No one can force you to have an abortion. It is against the law for a spouse, a boyfriend, a parent, a friend, a medical care provider, or any other person to in any way force you to have an abortion." N.D. Cent. Code § 14-02.1-03.4.
- After the first twelve weeks of pregnancy, but prior to the time at which the fetus has reached viability, any abortions must be performed at a licensed hospital. N.D. Cent. Code § 14-02.1-04.

Reporting Requirements:

- The attending physician must complete an individual abortion compliance report and individual abortion data report for each abortion performed. The department of Health and Human Services is charged with reporting violations of this chapter to the attorney general. N.D. Cent. Code Ann. § 14-02.1-07.

Penalties

Criminal Penalties:

- A class AA felony is punishable by life imprisonment without the possibility of parole. N.D. Cent. Code § 12.1-32-01. **The following is a class AA felony:**
  - Intentionally causing the death of a living, intact fetus that is partially born. N. D. Cent. Code § 14-02.6-02.
- A class B felony is punishable by a maximum of 10 years imprisonment and/or a fine of $20,000. N.D. Cent. Code § 12.1-32-01. **The following is a class B felony:**
  - It is a class B felony for any person, other than a licensed physician under chapter 43-17 to perform an abortion in North Dakota. N.D. Cent. Code § 14-02.1-04.
- A class C felony carries a maximum of 5 years' imprisonment and/or a fine of $10,000. N.D. Cent. Code § 12.1-32-01. **The following are class C felonies:**
  - Performing an abortion where the fetus has a detectable heartbeat and there is no medical emergency. The pregnant woman is not subject to liability or criminal penalties. N.D. Cent. Code § 14-02.1-05.2.
    - While the provision was previously held as unconstitutional, it has not been repealed.
  - Intentionally performing a human dismemberment, except in the case of medical emergency. N.D. Cent. Code Ann. § 14-02.1-04.2.
  - Failure to take all reasonable steps to preserve the life and health of a born-alive infant. N. D. Cent. Code § 14-02.1-05.
  - Knowingly or negligently causing the death of a child born-alive after an abortion. N. D. Cent. Code § 14-02.1-08.
- A class A misdemeanor is punishable by a maximum penalty of 360 days imprisonment and/or a fine of $1,500. N.D. Cent. Code § 12.1-32-01. **The following are class A misdemeanor:**

	o Under section N.D. Cent. Code § 14-01.1-11, violations of any abortion provision of this chapter for which another penalty is not specifically prescribed. o Intentionally causing a partial-birth abortion that is not necessary to preserve a woman's life. N.D. Cent. Code § 14-02.1-04. **Civil Actions & Penalties**: • A person upon whom an abortion has been performed without informed consent as required by North Dakota law may maintain an action against the person who performed the abortion for ten thousand dollars in punitive damages and triple actual damages. N.D. Cent. Code § 14-02.1-03.2. **Administrative Actions & Penalties:** • Physician could be subject to disciplinary action if they do not determine if there is a fetal heartbeat before performing an abortion on a pregnant woman. N.D. Cent. Code Ann. § 43-17-31; N.D. Cent. Code § 14-02.1-05.1. • Physician could be subject to license suspension and/or revocation for engaging in the practice of abortion, or fined up to $5,000 or both. N. D. Cent. Code § 43-06-15; N. D. Cent. Code § 43-17-30.1.
Aiding & Abetting	No Provisions.
State Constitution	There are no provisions directly affecting abortion or a right to privacy. The following provision is at issue in current litigation arguing that abortion is a right protected under the constitution: • All individuals are by nature equally free and independent and have certain inalienable rights, among which are those of enjoying and defending life and liberty; acquiring, possessing and protecting property and reputation; pursuing and obtaining safety and happiness; and to keep and bear arms for the defense of their person, family, property, and the state, and for lawful hunting, recreational, and other lawful purposes, which shall not be infringed. N.D. Const. art. I, § 1.
Future Considerations	The North Dakota Supreme Court is currently examining the constitutionality of the trigger ban in the case of *Wrigley v. Romanick*, No. 2022-0260 (N.D. filed Sept. 7, 2022). Oral arguments were held on November 29 to determine if the near-total abortion ban should remain in effect while the court considers whether or not the state constitution protects a right to an abortion. See AP, "Judge keeps North Dakota abortion ban from taking effect," (Oct. 31, 2022); Courthouse News Service, "North Dakota Supreme Court takes up trigger law banning abortion," (Nov. 29, 2022).

N. Mariana Islands

N. Mar. Isl. Const., Art. I, § 12

Att'y Gen. Op., Commonwealth Register Vol. 17, No. 3 (March 15, 1995)

Restrictions | Penalties | Aiding & Abetting | Constitution | Future Considerations

NOTE: The Commonwealth of the Northern Mariana Islands (CNMI) officially became a territory of the United States after the adoption of a covenant in 1975. The covenant, among other things, described the parts of the U.S Constitution that the CNMI would adopt. Although the CNMI adopted a constitutional amendment in 1985 prohibiting all abortions, an Attorney General (AG) opinion issued in 1995 declared that "pursuant to the Covenant to Establish a Commonwealth of the Northern Mariana Islands in Political Union with the United States of America, the U.S. Constitution, Supreme Court case law, the CNMI Constitution, and federal statutory law, a woman may legally obtain an abortion in the CNMI, and has a qualified right to do so." Att'y Gen. Op., Commonwealth Register Vol. 17, No. 3 at 13,073 (March 15, 1995).

Although the CNMI Constitution specifies that abortions are prohibited "except as provided by law," no law currently exists to regulate abortion, and no abortion facilities are currently available on the Islands. With the Supreme Court's recent opinion in *Dobbs*, however, it is possible that the CNMI legislature will act to finally implement their Constitutional prohibition.

Restrictions	**Abortions are not permitted:** • Under the Commonwealth's Constitution, all abortions are illegal, with no exceptions: "the abortion of the unborn child during the mother's pregnancy is prohibited in the Commonwealth of the Northern Mariana Islands, except as provided by law." N. Mar. Isl. Const., Art. I, § 12 • An Attorney General opinion from 1995 declares that abortions must be allowed in the Commonwealth.
Penalties	No provision.
Aiding & Abetting	No provision.

Territory Constitution	Section 12: Abortion. The abortion of the unborn child during the mother's pregnancy is prohibited in the Commonwealth of the Northern Mariana Islands, except as provided by law.
Future Considerations	N. Mariana Islands Attorney General Edward E. Manibusan is one of 83 elected prosecutors around the nation who has signed a declaration that they will not prosecute anyone who seeks, assists, or provides abortions. See the L.A. County District Attorney's Office, News Releases & Advisories, "With Roe Overturned, 83 Elected Prosecutors Commit to Not Prosecute Abortions," (Jun. 24, 2022).

Ohio

Ohio Rev. Code Ann. § 2919.10 to § 2919.195

Ohio Rev. Code Ann. § 2317.56 to 561

Ohio Rev. Code Ann. § 2919.20 to § 2919.204

Ohio Rev. Code Ann. § 2151.85

Ohio Rev. Code Ann. § 2305.234

Ohio Rev. Code Ann. § 2307.52 to 2307.54

Ohio Rev. Code Ann. § 2505.073

Ohio Rev. Code Ann. § 3701.791

Ohio Rev. Code Ann. § 4723.28

Ohio Rev. Code Ann. § 4731.22

Ohio Rev. Code Ann. § 4730.25

Restrictions | Penalties | Aiding & Abetting | State Constitution | Future Considerations

NOTE: With the release of the U.S. Supreme Court decision in *Dobbs v. Jackson Women's Health Organization*, an Ohio district court vacated the preliminary injunction on the six-week abortion ban enacted into law in 2019. See Ohio Rev. Code Ann. § 2919.195, summarized below. The law was in effect for two months before being enjoined again by *State ex rel. Preterm-Cleveland, et al. v. Yost, et al.*, No. A2203203 (Oh. Ct. Com. Pl. Oct. 12, 2022). Litigation remains ongoing. The following summary of state law includes all relevant abortion laws currently enacted in Ohio, regardless of whether they conflict one another or are enforceable.

Restrictions	**Abortions are not permitted:**
	• Before an attempt has been made to determine whether the unborn fetus has a detectable heartbeat. Ohio Rev. Code Ann. § 2919.193; Ohio Rev. Code Ann. § 2919.13; Ohio Rev. Code Ann. § 2919.192.
	  o **Exception:**
	  ▪ If the physician performing or inducing the abortion believes that a medical emergency exists. Ohio Rev. Code Ann. § 2919.193; Ohio Rev. Code Ann. § 2919.16.

- If a fetal heartbeat has been detected. Ohio Rev. Code Ann. § 2919.195.
    - **Exception:**
        - If the physician performing the procedure reasonably believes that it is necessary to prevent the death or serious physical impairment of the pregnant woman.
- If a heartbeat has been detected and the physician has not complied with requirements such as informing the pregnant woman that a fetal heartbeat has been detected, among other requirements. Ohio Rev. Code Ann. § 2919.194.
    - **Exception:**
        - If the person performing or inducing the abortion believes that a medical emergency exists preventing compliance with the above provision.
- When the fetus is viable. Ohio Rev. Code Ann. § 2919.17.
    - **Exception:**
        - Medical Emergencies. Ohio Rev. Code Ann. § 2919.16.
- After 20 weeks gestational age, if the fetus is viable or if no test of viability has been performed. Ohio Rev. Code Ann. § 2919.18.
    - **Exception:**
        - A determination of viability does not have to be made prior to an abortion performed after 20 weeks gestational age if there is a medical emergency. Ohio Rev. Code Ann. § 2919.18; Ohio Rev. Code Ann. § 2919.16.
- After 20 weeks, if no test has been performed to determine the probable post-fertilization age of the fetus. Ohio Rev. Code Ann. § 2919.203.
    - **Exception:**
        - Medical Emergency. Ohio Rev. Code Ann. § 2919.20.
- When the probable post-fertilization age of the unborn fetus is 20 weeks or greater. Ohio Rev. Code Ann. § 2919.201; Ohio Rev. Code Ann. § 2919.203.
    - **Exception:**
        - If necessary to prevent the death or serious risk of substantial impairment of a major bodily function of the pregnant woman. Ohio Rev. Code Ann. § 2919.201.

Prohibitions:

- A person cannot perform an abortion if he has knowledge that the pregnant woman is seeking an abortion because the fetus has, or is believed to have, Down syndrome. Ohio Rev. Code Ann. § 2919.10.
- No person shall purposely take the life of a fetus born alive as the result of an abortion. Ohio Rev. Code Ann. § 2919.13.
- No person shall perform a dismemberment abortion. Ohio Rev. Code Ann. § 2919.15.
    - **Exception:**
        - When necessary to preserve the life of the pregnant woman.
        - When necessary to prevent irreversible physical damage to the pregnant woman.
- When the fetus is viable, no person shall knowingly perform a partial-birth procedure on a pregnant woman. Ohio Rev. Code Ann. § 2919.151.

    - **Exception:**
        - When necessary to preserve the life or health of the pregnant woman.
- When the fetus is not viable, no person shall knowingly perform a partial-birth procedure on a pregnant woman. Ohio Rev. Code Ann. § 2919.151.
    - **Exception:**
        - When necessary to preserve the life or health of the pregnant woman.

Drug-induced Abortion Requirements/Prohibitions:

- Only physicians may prescribe an abortion-inducing drug and abortion-inducing drugs may only be distributed after prescription by a physician. Ohio Rev. Code Ann. § 2919.123.
    - The physician must be present at the time and location where the initial dose of the drug is consumed. Ohio Rev. Code Ann. § 2919.124.

Physician Requirements:

- Only physicians are allowed to prescribe abortion-inducing drugs. Ohio Rev. Code Ann. § 2919.123.
- No physician shall perform or induce an abortion after the beginning of the 20th week of gestation without first entering his determinations in the medical record of the pregnant woman. Ohio Rev. Code Ann. § 2919.18.
    - **Exception:**
        - Medical Emergency. Ohio Rev. Code Ann. § 2919.16.

Consent Requirements:

- No abortion shall be induced or performed without the informed consent of the pregnant woman. Ohio Rev. Code Ann. § 2919.12.
    - Detailing the information to be given to the pregnant woman and other consent requirements: Ohio Rev. Code Ann. § 2317.56.
    - **Exception:**
        - Medical Emergency. Ohio. Rev. Code Ann. § 2317.56.
- If an obstetric ultrasound is performed at any time prior to the performance or inducement of abortion, the physician must provide the pregnant woman with the opportunity to view the ultrasound, among other requirements. Ohio Rev. Code Ann. § 2317.561.
- Before performing an abortion on an unemancipated and unmarried minor, written consent from a person acting in the capacity of a legal guardian must be obtained. Ohio Rev. Code Ann. § 2919.12; Ohio Rev. Code Ann. § 2919.121.
    - The pregnant minor may petition a court for a waiver of the legal guardian consent requirement. Ohio Rev. Code Ann. § 2151.85; Ohio Rev. Code Ann. § 2919.121; Ohio Rev. Code Ann. § 2505.073.
    - The pregnant woman may ask that a family member aged 21 or older be notified instead of a parent. Ohio Rev. Code Ann. § 2919.12.

	Facility Requirements:
	• An office or facility at which abortions are performed or induced shall post a notice that is accessible to all patients, employees, and visitors. Ohio Rev. Code Ann. § 3701.791.
	  o **Exception:**
	  ▪ Offices or facilities at which abortions are performed or induced due only to a medical emergency.
	
	Record/Reporting Requirements:
	• The attending physician must complete an individual abortion report for each abortion performed within fifteen days after the woman is discharged. Ohio Rev. Code Ann. § 3701.79; Ohio Rev. Code Ann. § 2919.202; Ohio Rev. Code Ann. § 2919.171.
	• Each time a physician treats a post abortion complication, the physician must submit a post abortion complication form. Ohio Rev. Code Ann. § 3701.79.
	• The attending physician must note in the post abortion report that the attending physician does not have any knowledge that the pregnant woman was seeking the abortion because of a prenatal diagnosis of Down Syndrome in a fetus. Ohio Rev. Code Ann. § 2919.101.
	• If an abortion is performed after a fetal heartbeat is detected, the physician who performed the abortion must declare in a written document that the procedure was necessary to prevent death or substantial injury of the pregnant woman. The physician must keep a copy in the physician's own records for at least seven years. Ohio Rev. Code Ann. § 2919.195; Ohio Rev. Code Ann. § 2919.196

Penalties	**Immunities:** • A pregnant woman on whom an abortion is performed or induced in violation of section 2919.193, 2919.194, or 2919.195 of the Revised Code is not guilty of violating any of those sections. Ohio Rev. Code Ann. § 2919.19; Ohio Rev. Code Ann. § 2919.198. • A pregnant woman on whom an abortion is performed or attempted to be performed after the fetus has been determined viable, is not liable or guilty of violating the statute. Ohio Rev. Code Ann. § 2919.17. • A pregnant woman on whom an abortion is performed to prevent pregnancy of an unborn fetus with Down syndrome is not liable. Ohio Rev. Code Ann. § 2919.10. • A pregnant woman upon whom a partial-birth procedure is performed is not guilty of conspiracy or complicity. Ohio Rev. Code Ann. § 2919.151. • A pregnant woman who obtains or possesses mifepristone for the purposes of terminating their pregnancy shall not be held liable. Ohio Rev. Code Ann. § 2919.123. • A pregnant woman on whom an abortion is performed or induce in violation of section 29.19.193, 2919.194, or 2919.195 of the Revised Code is not guilty of violating any of those sections. (Heartbeat Provisions). Ohio Rev. Code Ann. § 2919.198.

- A pregnant woman on whom an abortion is performed or induced or purposely attempted to be performed or induced in violation of 20-week post-fertilization provisions shall not be guilty of violating those provisions. Ohio Rev. Code Ann. § 2919.201.
- An individual who works for a person who is performing a dismemberment abortion and who acts under their direction is not liable. Ohio Rev. Code Ann. § 2919.15.
- A pharmacist who provides materials in relation to dismemberment abortions is not liable. Ohio Rev. Code Ann. § 2919.15.
- A licensed manufacturer and/or distributor of drugs used to induce abortion may not be held liable. Ohio Rev. Code Ann. § 2919.123.
- A person performing legal delivery of drugs used to induce abortion may not be held liable. Ohio Rev. Code Ann. § 2919.123.
- Immunity may be available for volunteer health care professionals, nonprofit referral organizations, and facilities or locations. Ohio Rev. Code Ann. § 2305.234.

Criminal Penalties:

- First-degree felonies are punishable by a prison term of a minimum of 3 years. Ohio Rev. Code Ann. § 2919.13. **The following is a first-degree felony:**
  - Terminating a fetus born alive.
- Second-degree felonies are punishable by a prison term of 2 to 10 years. Ohio Rev. Code Ann. § 2919.151. **The following is a second-degree felony:**
  - Partial birth feticide. Ohio Rev. Code Ann. § 2919.151.
- Third-degree felonies are punishable by a prison term of 12 to 60 months if certain conditions are met, or 9 to 36 months imprisonment if not. Ohio Rev. Code Ann. § 2929.14. **The following is a third-degree felony:**
  - Performing an unlawful-drug induced abortion if the person has previously been convicted or pleaded guilty to an abortion related violation. Ohio Rev. Code Ann. § 2919.123.
- Fourth-degree felonies are punishable by a prison term of 6 to 18 months. Ohio Rev. Code Ann. § 2929.14. **The following are fourth-degree felonies:**
  - Performing or attempting to perform an abortion that was being sought because of possible Down syndrome in the fetus. Ohio Rev. Code Ann. § 2919.10.
  - Terminating or attempting to terminate a human pregnancy after viability. Ohio Rev. Code Ann. § 2919.17.
  - Unlawful distribution of an abortion-inducing drug. Ohio Rev. Code Ann. § 2919.123; Ohio Rev. Code Ann. § 2919.124.
    - Unless the person has already committed an offense of this kind or has previously violated section 2919.12, 2919.121, 2919.13, 2919.14, 2919.15, 2919.151, 2919.17, or 2919.18 of the Revised Code. Ohio Rev. Code Ann. § 2919.123; Ohio Rev. Code Ann. § 2919.124.
  - Performing an illegal abortion on a minor after the first offense. Ohio Rev. Code Ann. § 2919.12; Ohio Rev. Code Ann. § 2919.121.

- Dismemberment feticide. Ohio Rev. Code Ann. § 2919.15.
- Performing or inducing an abortion without informed consent when there is a detectable fetal heartbeat, on every offense after the first offense. Ohio Rev. Code Ann. § 2919.194.
- Terminating or attempting to terminate a human pregnancy of a pain-capable unborn child. Ohio Rev. Code Ann. § 2919.201.

- Fifth-degree felonies are punishable by a prison term of 6 to 12 months. Ohio Rev. Code Ann. § 2929.14. **The following are fifth-degree felonies:**
  - Performing an illegal abortion on a minor when a parent, custodian or legal guardian is not available or another person is designated for notice in their place—after the first violation. Ohio Rev. Code Ann. § 2919.12.
  - Performing an abortion prior to determining whether the fetus has a detectable heartbeat. Ohio Rev. Code Ann. § 4731.22.
  - Performing or inducing an abortion after the detection of a fetal heartbeat. Ohio Rev. Code Ann. § 2919.195.
- First-degree misdemeanors are punishable by a prison term of no more than 180 days. Ohio Rev. Code Ann. § 2929.24. **The following are first-degree misdemeanors:**
  - Performing an illegal abortion on a minor on the first offense. Ohio Rev. Code Ann. § 2919.12.
  - Performing an illegal abortion on a minor when a parent, custodian, or legal guardian is not available or another person is designated for notice in their place—on the first violation. Ohio Rev. Code Ann. § 2919.12; Ohio Rev. Code Ann. § 2919.121.
  - Performing or inducing an abortion without informed consent when there is a detectable fetal heartbeat, on the first offense. Ohio Rev. Code Ann. § 2919.194.
- Fourth-degree misdemeanors are punishable by a prison term of no more than 30 days. Ohio Rev. Code Ann. § 2929.24. **The following is are fourth-degree misdemeanors:**
  - Failing to perform viability testing prior to an abortion. Ohio Rev. Code Ann. § 2919.18.
  - Failing to perform probable post-fertilization age testing. Ohio Rev. Code Ann. § 2919.203.

Civil Actions & Penalties

- A physician may be liable for civil damages for:
  - Performing an abortion related to a finding of Down syndrome. Ohio Rev. Code Ann. § 2919.10.
  - Performing an illegal abortion on a minor. Ohio Rev. Code Ann. § 2919.12.
  - Performing an abortion without the consent of the pregnant woman. Ohio Rev. Code Ann. § 2919.12.
  - Performing an abortion without determining whether the fetus has a detectable heartbeat. Ohio Rev. Code Ann. § 2919.193.
  - A wrongful death action filed by the pregnant woman when he has performed or induced an abortion in violation of heartbeat provisions. Ohio Rev. Code Ann. § 2919.199.

	o Performing an abortion in violation of 20 week post-fertilization provisions with actual knowledge that neither of the affirmative defenses in the statute apply or with indifference as to whether they apply. Ohio Rev. Code Ann. § 2919.201; Ohio Rev. Code Ann. § 2307.54. o Terminating or attempting to terminate a human pregnancy after viability with actual knowledge that neither of the affirmative defenses in the statute apply or with indifference as to whether they apply. Ohio Rev. Code Ann. § 2919.17; Ohio Rev. Code Ann. § 2307.52. o Failure to perform viability testing prior to an abortion. Ohio Rev. Code Ann. § 2919.18. o Partial-birth feticide. Ohio Rev. Code Ann. § 2307.53. **Administrative Actions & Penalties:** • Physicians may generally have their licenses revoked or incur other administrative penalties by the state medical board for violation of any abortion rule adopted by the director of health pursuant to section 3701.341 of the Revised Code. Ohio Rev. Code Ann. § 4731.22. • A physician will have their license revoked for performing an abortion related to finding of Down syndrome. Ohio Rev. Code § 2919.10. • A physician will have their license revoked for terminating or attempting to terminate a human pregnancy after viability. Ohio Rev. Code § 2919.17. • A physician will have their license revoked or suspended for performing an unlawful drug-induced abortion. Ohio Rev. Code § 2919.124. • Except in the case of a medical emergency, a physician who performs an abortion without determining whether the fetus has a detectable heartbeat may be subject to disciplinary action. Ohio Rev. Code Ann. § 2919.193; Ohio Rev. Code Ann. § 4731.22. • State medical board must revoke a physician's license to practice medicine in Ohio if the physician violates or fails to comply with the 20-week post-fertilization requirements. Ohio Rev. Code Ann. § 2919.201.
Aiding & Abetting	**Third-Parties:** • Nurses may be sanctioned by the board of nursing for prescribing any drug or device to perform or induce an abortion, or otherwise performing or inducing an abortion. Ohio Rev. Code Ann. § 4723.28. • Medical assistants may be subject to disciplinary action for prescribing any drug or device to perform or induce an abortion, or otherwise performing or inducing an abortion. Ohio Rev. Code Ann. § 4730.25.
State Constitution	No Provision.

Future Considerations	Litigation over the six-week heartbeat ban (S.B. 23,) continues. See Law360, "Ohio Appeals Judge's Ruling Blocking 6-Weel Abortion Ban," (Oct. 12, 2022). H. B. 598 or "The Human Life Protection Act" would ban all abortions with no exceptions for rape or incest. The bill would allow doctors to perform an abortion to save the life of a pregnant person, but would not prevent the doctor from being arrested. The doctor would have to put up an affirmative defense, which shifts the burden to the doctor to justify the abortion. Pursuant to the bill, anyone who causes or induces an abortion is guilty of a criminal abortion, a felony of the fourth degree. See H. B. 598, 134th Gen. Assemb., Reg. Sess. (Ohio 2022). Ohio House Republications introduced a new bill on July 11, 2022 that would recognize "personhood" from the moment of conception. The bill has an exception for saving the life of the mother, but does not have any exceptions for rape or incest. The law would likely ban in vitro fertilization. See the Columbus Dispatch, "Ohio Lawmakers Introduce Bill Banning Abortion at Conception Unless Mother's Life at Risk," (Jul. 11, 2022).

Oklahoma

Okla. Stat. tit. 21 § 684

Okla. Stat. tit. 63, § 1-728a to tit. 63, § 1-746.10

Okla. Stat. tit. 63 § 1-750.

Restrictions | Penalties | Aiding & Abetting | State Constitution | Future Considerations

NOTE: Oklahoma has some of the most restrictive abortion provisions in the country, many of which are repetitive and contradictory. Three main abortion bans have been enacted: an outright ban, and two that prohibit abortions after the detection of a fetal heartbeat. The outright ban does not repeal any of the other myriad abortion provisions in the Oklahoma Statutes. In addition, the ban provides for a civil enforcement mechanism identical to the one in Texas that allows private citizens to sue anyone they believe has been involved in an abortion. There is even a provision in the Oklahoma statutes under the Humanity of the Unborn Child Act that requires the creation of an educational program for students related to fetal heartbeats. Okla. Stat. tit. 63, § 1-754. The following summary of state law includes the outright ban, the heartbeat laws, and all other laws currently enacted in Oklahoma, regardless of whether or not they conflict with one another or are enforceable.

Restrictions

Abortion Bans:

- Abortions cannot be performed or attempted unless to save the life a pregnant woman in a medical emergency or if the pregnancy is the result of rape, sexual assault, or incest that has been reported to law enforcement. Okla. Stat. tit. 63, § 1-745.32.
  - **Exceptions:**
    - Abortions are permitted to save the life of a pregnant woman in a medical emergency or if the pregnancy is a result of rape, sexual assault, or incest, that was reported to law enforcement.
    - The above does not apply for abortions performed at the behest of federal agencies, contractors, or employees carrying out their duties under federal law. Okla. Stat. tit. 63, § 1-745.33.

Liability for anyone that performs an abortion:

- Any person, other than a governmental actor, may bring a civil action against any person who performs or induces an abortion, knowingly aids and abets the performance or inducement of an abortion through insurance or otherwise, or anyone who intends to perform an abortion. Okla. Stat. tit. 63, § 1-745.35.

- For claimants bringing an action, the court will award (1) injunctive relief, (2) statutory damages not less than $10,000 for each abortion the defendant performed or induced that is not subject to an exception, (3) nominal and compensatory damages, and (4) court costs and attorneys fees.
    - **Exception:** Civil actions may not be brought against the woman upon whom an abortion was performed or attempted.

Oklahoma has two fetal heartbeat bans. The first can be found at § 731-3 and is detailed in the section with provisions that have not been repealed. The second, and most recently enacted, is as follows:

- All physicians must determine whether there is a detectable fetal heartbeat prior to performing an abortion. They then must record the unborn child's estimated gestational age, the method used to estimate the gestational age, and the test used to detect the fetal heartbeat in the pregnant woman's medical record. Okla. Stat. tit. 63, § 1-745.33.
- Physicians cannot knowingly perform or induce an abortion on a pregnant woman if they detected a fetal heartbeat. Okla. Stat. tit. 63, § 1-745.34.
    - **Exceptions:** If a physician believes there is a medical emergency that prevents compliance with act.
        - The physician must note in the pregnant woman's medical record and their own that the physician believed a medical emergency necessitated the abortion and that the condition prevented compliance with the act. Okla. Stat. tit. 63, § 1-745.35.
    - Act does not apply for abortions performed at the behest of federal agencies, contractors, or employees that are carrying out duties under federal law. Okla. Stat. tit. 63, § 1-745.36.

Liability for fetal heartbeat abortion breach:

- Any person, other than a governmental actor, may bring a civil action against any person who performs or induces an abortion, knowingly aids and abets the performance or inducement of an abortion through insurance or otherwise, or anyone who intends to perform an abortion. Okla. Stat. tit. 63, § 1-745.38.
    - For claimants bringing an action, the court will award (1) injunctive relief, (2) statutory damages not less than $10,000 for each abortion the defendant performed or induced that is not subject to an exception, (3) nominal and compensatory damages, and (4) court costs and attorneys fees.
    - **Exception:** Civil actions may not be brought against the woman upon whom an abortion was performed or attempted.

Additional Abortion Restrictions that have not been repealed:

- Abortions may not be performed after viability. A fetus is presumed viable after 24 weeks. Okla. Stat. tit. 63, § 1-732.

- No person shall perform an abortion if a fetal heartbeat is detected unless a patient has a medical condition that necessitates the abortion to avert her death or serious risk of substantial and irreversible physical impairment of a major bodily function, not including a psychological or emotional condition. All physicians must check for a fetal heartbeat before performing an abortion. Okla. Stat. tit. 63, § 1-731.3.

Prohibitions that have not been repealed:

- After the end of the first trimester, abortions may only be performed in a general hospital. Okla. Stat. tit. 63, § 1-731.
- No person shall knowingly or recklessly perform an abortion on a patient who seeks an abortion solely on account of the sex of the unborn child. Okla. Stat. tit. 63, § 1-731.2(B).
- No person shall induce an abortion after viability other than to prevent the death or health impairment of the pregnant person. Okla. Stat. tit. 63, § 1-732.
- No woman may perform or induce an abortion on herself except under the supervision of a duly licensed physician. Okla. Stat. tit. 63, § 1-733.
- No person may purposely take the life of a child born alive from an abortion. To do so is a homicide. Okla. Stat. tit. 63, § 1-734.
- No person shall sell or experiment on the fetal tissue that results from an abortion. Okla. Stat. tit. 63, § 1-735.
- Abortions may be performed only in hospitals. Okla. Stat. tit. 63, § 1-737.
- It is unlawful to perform a dismemberment abortion unless it is necessary to prevent serious health risks to the patient. Okla. Stat. tit. 63, § 1-737.9(A).
- Abortions cannot be performed, induced, or attempted unless a determination of the postfertilization age of the fetus has been made by a physician. Okla. Stat. tit. 63, § 1-745.4.
- Abortions cannot be performed or induced if there has been a determination that the fetus is twenty (20) or more weeks gestational age. Okla. Stat. tit. 63, § 1-745.5.
    - **Exception:** It is allowed in cases where abortion is necessary to avert death or substantial and irreversible physical impairment of a major bodily function. Note that psychological or emotional conditions are specifically excluded.

Drug-Induced Abortion Requirements that have not been repealed:

- A physician must be physically in the same room as the patient when a drug or chemical is administered to the patient to perform an abortion. Okla. Stat. tit. 63, § 1-729.1.
- For drug-induced abortions, a physician must (1) provide each patient with the manufacturer's guide and drug label; (2) explain the procedure; (3) provide the patient with a copy of the drug manufacturer's patient agreement and obtain the patient's signature on it; (4) sign the agreement; and (5) record the serial number of the drug package in the patient's medical record. Okla. Stat. tit. 63, § 1-729a.
- Only a physician who has the ability to assess the duration of a pregnancy accurately, is able to diagnose ectopic pregnancies, can provide surgical

intervention in the case of an incomplete abortion, and can assure access to medical facilities that can provide blood transfusions may provide an abortion-inducing drug. Okla. Stat. tit. 63, § 1-729a.

- Abortion inducing drugs may only be provided by a qualified physician. Okla. Stat. tit. 63, § 1-756.3.
    - The physician must independently verify that the woman is pregnant, determine the woman's blood type (if Rh negative than must offer to administer RhoGAM at time of the abortion), inform the patient that she may see fetal remains, and document the gestational age and intrauterine location of the pregnancy and whether she received Rh negativity treatment. Okla. Stat. tit. 63, 1-756.4.
- No abortion-inducing drugs may be provided in any school facility or on state grounds. Okla. Stat. tit. 63, § 1-756.5.
- At least 72 hours prior to a drug-induced abortion, the pregnant person must be provided with a consent form with the information detailed in the cited section. Okla. Stat. tit. 63, § 1-756.6.
    - **Exception:** If compliance with the section would present a greater risk of the death of the pregnant woman or substantial and irreversible damage to a major bodily function of the pregnant woman, not including psychological or emotional conditions.

Physician Requirements that have not been repealed:

- Only a physician licensed to practice medicine in Oklahoma and who is board-certified in obstetrics and gynecology can perform an abortion. Okla. Stat. tit. 63, § 1-731.
- A physician who administers an abortion-inducing drug must examine the patient in person prior to administering the drug. Okla. Stat. tit. 63, § 1-756.4.
- At least one hour before an abortion, a physician must (1) perform an obstetric ultrasound on the patient and display the images to the patient, (2) determine the probable postfertilization age of the fetus, and (3) detect whether the fetus has a heartbeat. Okla. Stat. tit. 63, § 1-738.3a.
- Physicians must inform minors seeking an abortion that no one can force her to have an abortion and an abortion cannot be performed without her freely given, voluntary, and informed consent. Okla. Stat. tit. 63 § 1-737.6.
- For a physician to provide an abortion inducing drug, they must be credentialed and competent to handle complication management including emergency transfer or have a signed contract with an associated physician that meets the qualifications. The physician must schedule a follow up between seven (7) and fourteen (14) days after the inducement to confirm the termination of the pregnancy. Okla. Stat. tit. 63, § 1-756.4.

Informed Consent Requirements that have not been repealed:

- Except in a medical emergency, a physician must receive voluntary and informed consent from a patient before performing an abortion. A physician or her agent must disclose to the patient in person or by telephone the availability of prenatal, childbirth, and neonatal care; the availability of child support; and medical risks associated with an abortion. This information must be given to the woman 72-hours prior to the abortion

procedure. The physician must also give the patient an opportunity to hear the fetal heartbeat if she has been pregnant for 8 weeks or longer. Okla. Stat. tit. 63 § 1-738.2.

- Any abortion being performed on a fetus whose estimated gestational age is twenty (20) weeks or more has a 72 hour waiting period wherein the physician must inform the patient to review the printed materials described in § 1-738.10 and where they are, and if desired by the patient they must be mailed or received at least 72 hours prior to the abortion via certified mail. The patient will certify receipt of the information in writing and it will remain in her medical record for at least 3 years. Okla. Stat. tit. 63, § 1-738.8.
    - **Exception:** This does not apply in the case of a medical emergency, however, the physician must inform the patient that an abortion is necessary in that case. *See also* Okla. Stat. tit. 63, § 1-738.12.
- A physician may not perform an abortion on an unemancipated minor until 48-hours after a request for consent is delivered to one parent and the parent's written informed consent is obtained except if the minor receives a judicial waiver, the pregnancy is the result of sexual or physical abuse by the minor's parent, or a medical emergency exists. Okla. Stat. tit. 63, § 1-740.2.
- There is a 48 hour written notice requirements for an abortion performed or induced on any unemancipated minor or person deemed incompetent and must be delivered in person by the physician or an agent. Okla. Stat. tit. 63, § 1-744.2.
- If a pregnancy is at least eight (8) weeks after fertilization, the abortion provider must inform the woman that a heartbeat may be audible, and if the woman so chooses then the provider must make the heartbeat audible for the pregnant woman to hear. Okla. Stat. tit. 63, § 1-745.14.
    - **Exception:** This does not apply in the case of a medical emergency wherein an abortion is necessary to avert the death of the woman. Okla. Stat. tit. 63, § 1-745.15.
- At least 72 hours prior to the abortion, the physician must inform:
    - In the case of a female seeking an abortion of her unborn child diagnosed with a fetal anomaly incompatible with life via telephone or in person that perinatal hospital services are available as an alternative, that she can review the materials provided by the State of Oklahoma, and where to find the materials.
    - Generally, the physician must inform the female of the materials and the places where perinatal services are offered in her state and nationally. The female must be able to review the information at least 72 hours prior to the abortion and must certify informed consent in writing. The certification will be kept by the physician in the patient's file for at least five (5) years. Okla. Stat. tit. 63, § 1-746.2.
        - **Exception:** In the case of a medical emergency, the physician should try to inform the patient prior to the abortion about the medical indications of the emergency that an abortion is necessary to avert the patient's death. Okla. Stat. tit. 63, § 1-746.5.

- Physicians and facilities must be certified by and follow the requirements of the Oklahoma Abortion-Inducing Drug Certification Program. Okla. Stat. tit. 63, §§ 1-757.1 to 1-757.14.

Facility Requirements that have not been repealed:

- Any hospital that performs abortions may hold itself out as also providing counseling to pregnant women unless (1) the counseling is done by a licensed physician, licensed registered nurse, or a person holding at least a bachelor's degree in psychology or a similar field; (2) the counseling includes factual information, including explicit discussion of the development of the unborn child; and (3) the counseling includes a thorough discussion of the alternatives to abortion and the availability of agencies and services to assist patients who choose not to have abortions. Okla. Stat. tit. 63, § 1-736.
- Any facility that performs abortions must post state-mandated signage. Okla. Stat. tit. 63, § 1-737.4.
- Abortion facilities must have the adequate number and amount of equipment and supplies, have ultrasound equipment, ensure that the equipment is safe for patients and staff, meets applicable federal standards, and is checked annually. Any day an abortion is performed, a physician with admitting privileges at a general medical surgical hospital within thirty miles (in OK) must remain at the facility just in case there is an emergency. Note that there are many other enumerated requirements in this provision. Okla. Stat. tit. 63, § 1-748.
- Any facility that provides abortions must abide by the signage requirements dictated in Okla. Stat. tit. 63, §§ 1-752 to 1-756.

Reporting Requirements that have not been repealed:

- There are many reporting requirements included in the Statistical Reporting of Abortion Act. Okla. Stat. tit. 63, §§ 1-738i to 1-738q.
- Any physician who encounters an illness or injury that could be reasonably related to an abortion must submit a report to the state. Okla. Stat. tit. 63, § 1-738.
- Physicians most report to the State Department of Health that (a) a probable postfertilization age was made and how; (b) the basis of a medical emergency if one was not made; (c) if an abortion was performed on a fetus that is more than 20 weeks gestational age then the basis of the medical condition; (d) the method of the abortion, and whether it was the one that provided the best chance of survival for the fetus or why that method was not used if applicable. Okla. Stat. tit. 63, § 1-745.6.
- Physicians must report the number of females that were informed pursuant to the Act, how they were informed, how many availed themselves to the information, and how many medical emergencies the physician saw that necessitated noncompliance with the 72 hour waiting period. Okla. Stat. tit. 63, § 1-746.6.
- A report of each drug-induced abortion will be completed by any hospital or facility that sold, dispensed, administered, or otherwise provided or prescribed abortion-inducing drugs with the information enumerated in the cited section. Okla. Stat. tit. 63, § 1-756.8.

	• Physicians certified by the Abortion Inducing Drug Certification Program must annually report the number of patients served, the ages, race, county and state of residence of patients, a list of staff attending patients, the medications provided per patient by date, known complications or effects, and any unresolved cases. Okla. Stat. tit. 63, § 1-757.9.

Penalties	**Criminal Penalties that have not been repealed:**
	• Every person who administers, prescribes, advices, or procures any medicine, drug, or substance to destroy a quick child is guilty of first-degree manslaughter. Okla. Stat. tit. 21, § 714.
	  o **Exception:** Unless it is necessary to preserve the life of the woman.
	• Every person who administers or prescribes to any woman any instrument with the intent to procure a miscarriage will be guilty of a felony punishable with two to five years of imprisonment. Okla. Stat. tit. 21, § 861.
	  o **Exception:** Unless it is necessary to preserve the life of the woman.
	• Any woman who solicits any medicine, drug, or substance or who submits to an operation with intent to procure a miscarriage is punishable by imprisonment for up to one year, a fine up to $1,000, or both. Okla. Stat. tit. 21, § 862.
	  o **Exception:** Unless it is necessary to preserve the life of the woman.
	• Every woman who tries to conceal the stillbirth of death of a child who would be a bastard under two years old is punishable by imprisonment for up to one year, a fine up to $1,000, or both. Okla. Stat. tit. 21, § 863.
	• Any physician who knowingly performs a partial-birth abortion shall be imprisoned for two years or imprisoned and fined $10,000 unless the partial-birth abortion was performed because it was necessary to save the life of a mother. Okla. Stat. tit. 63, § 684.
	• A physician who knowingly or recklessly administers a drug-induced abortion without being physically with the patient is guilty of a felony. Okla. Stat. tit. 63, § 1-729.2.
	• Only physicians licensed to practice medicine in Oklahoma and board certified in Ob/Gyn may perform or induce abortions. Anyone who violates this will be imprisoned for no less than one (1) year and no more than three (3) years. Okla. Stat. tit, 63 § 1-731.
	• Any person who performs an abortion after a fetal heartbeat is detected commits a homicide. Okla. Stat. tit. 63, § 1-731.3.
	• Anyone who performs a dismemberment abortion (violating section 3 of the Oklahoma Unborn Child Protection from Dismemberment Abortion Act) will be fined $10,000 or imprisoned for not more than two (2) years or both. Okla. Stat. tit. 63, § 1-737.13.
	• Any physician who knowingly, willingly, or recklessly violates the Voluntary and Informed Consent provisions (§§1-738.1 to 1-738.5a) will be guilty of a felony. Okla. Stat. tit. 63, § 1-738.5.
	• Any person who violates the Unborn Child Pain Awareness/Prevention Act (specifying informed consent requirements) will be guilty of a felony. Submission of a false report makes the physician guilty of a misdemeanor. Okla. Stat. tit. 63, § 1-738.14.

- A physician who violates the parental notification and informed consent requirements and performs or attempts to induce an abortion on an unemancipated minor in violation of the act commits a felony. Okla. Stat. tit. 63, § 1-740.4b.
- Any person who recklessly or knowingly violates the Act, where abortions are not permitted after twenty (20) weeks gestational age with the exception of medical emergencies will be guilty of a felony**.** Okla. Stat. tit. 63, § 1-745.7.
- Any person who intentionally or recklessly violates the audible heartbeat requirement will be guilty of a misdemeanor. Okla. Stat. tit. 63, § 1-745.16.
- Any person who knowingly or recklessly performs or attempts an abortion with provided the pregnant person with the required State provided information 72 hours prior to the procedure will be guilty of a felony. Okla. Stat. tit. 63, § 1-746.7.
- Any person who violates the requirements of the drug-induced abortion act, requiring a 72 hour waiting period for informed consent, information about abortion pill reversal, reporting requirements, among other provisions will be guilty of a misdemeanor. Okla. Stat. tit. 63, § 1-756.10.
- Any derogation by a person or physician who should be subject to the Oklahoma Abortion-Inducing Drug Certification Act is a misdemeanor. Okla. Stat. tit. 63, § 1-757.10.
    - Fraudulent use of an abortion-inducing drug is a felony.

Civil Actions & Penalties that have not been repealed:

- Any person who knowingly or recklessly performs a medication abortion when they are not present is liable for damages and may be enjoined from performing further medication abortions. A patient, her husband, or her parents may bring such an action for actual and punitive damages. Okla. Stat. tit. 63 §§ 1-729a; 1-729.3.
- Any person who knowingly or recklessly performs an abortion on a patient who seeks an abortion solely because of the fetus' gender may be liable for actual or punitive damages. Okla. Stat. tit. 63 § 1-731.2.
- Any person who is the spouse, parent or guardian, sibling, or current or former licensed health care provider of a patient who receives an abortion that does not comport with Oklahoma law can seek injunctive act against the patient's physician. The Attorney General may also seek such relief. A physician who violates such an injunction may be fined $10,000 for the first violation, $50,000 for the second violation, and $100,000 for the third violation. Okla. Stat. tit. 63, §§ 1-729.3; 1-731.2.
    - Moreover, any abortion provider who violates the ultrasound requirement will be subject to civil action by the same and for the same relief. Okla. Stat. tit. 63, § 1-738.3e.
- A father who is married to a patient who receives a partial-birth abortion or the parents of a minor patient may pursue civil action against the individual who performs a partial-birth abortion unless the pregnancy was caused by the plaintiff's criminal behavior. Damages in such an action include money damages for all psychological and physical injuries as well statutory damages equal to three times the cost of the partial-birth abortion. Okla. Stat. tit. 63 § 684.

- A woman, her spouse, parents or guardians, or current or former licensed health care provider may bring a cause of action against a physician who performs a dismemberment abortion for injunctive relief**.** Damages available include money damages for all injuries and statutory damages equal to three times the cost of the dismemberment abortion. Okla. Stat. tit. 63, § 1-737.10; Okla. Stat. tit. 63, § 1-737.11.
- Any person whom received an abortion where the consent requirements of the Unborn Child Pain Awareness/Prevention Act were not complied with, the father of the aborted fetus, or the grandparent of the aborted fetus may maintain an action against the person who breached the requirements for actual and punitive damages**.** If the abortion was solely attempted, only the patient may maintain an action. Okla. Stat. tit. 63, § 1-738.15.
- An unemancipated minor, or their parent, upon whom an abortion was attempted or performed in violation of parental notification and consent requirements may maintain a cause of action against the person who performed or attempted the abortion. Okla. Stat. tit. 63, § 1-740.4b.
- Any woman upon whom an abortion was performed in violation of the twenty (20) week prohibition (unless in the case of a medical emergency) and the father of the fetus may maintain an action against the person who performed or induced it for actual or punitive damages. Okla. Stat. tit. 63, § 1-745.8.
    - If the abortion was just attempted in violation of the act, then only the woman can sue for actual or punitive damages.
    - The woman, any person who is the spouse, parent, sibling or guardian of, or a current or formed licensed health care provider of the woman has a cause of action for injunctive relief against any person who knowingly or recklessly violated the act.
    - Either winning party can obtain reasonable attorney fees.
- Any woman upon whom an abortion was performed or induced in violation of the requirement that she be informed about a heartbeat and be able to hear it if desired and the father of the fetus may maintain a civil action for actual and punitive damages. Okla. Stat. tit. 63, § 1-745-16.
    - If the abortion was simply performed, only the woman may sue for actual and punitive damages.
    - The woman, any person who is the spouse, parent, sibling or guardian of, or a current or formed licensed health care provider of the woman has a cause of action for injunctive relief against any person who knowingly or recklessly violated the act.
    - Either winning party can obtain reasonable attorney fees.
- Any person whom received an abortion where the 72 hour informed consent requirements were not complied with, the father of the unborn child, or the grandparent of the unborn child may maintain an action pursuant to §§ 1-738.3f to 1-738.k of Title 63 of the Oklahoma Statutes against any person who performed, induced, or attempted to perform or induce an abortion in violation of the act. Okla. Stat. tit. 63, § 1-746.8.
- Any person who is a prosecuting attorney with appropriate jurisdiction, the woman, spouse, parent or guardian, sibling, current or former licensed health care provider of a woman who receives abortion-inducing drugs in violation of the requirements may maintain an action for injunctive relief. Okla. Stat. tit. 63, §§ 1-756.11; 1-757.11.

	Administrative Actions & Penalties that have not been repealed: • A physician who performs an abortion that contradicts may have their license to practice medicine in Oklahoma suspended or revoked. Okla. Stat. tit. 63 § 1-729.3(F); Okla. Stat. tit. 63 § 1-731.2. • Facilities that fail to post state-mandated signage may be fined $10,000 for each violation. Each day an abortion is performed at a clinic without a sign counts as a separate violation. Okla. Stat. tit. 63 § 1-737.5. • Any physician who knowingly, willingly, or recklessly violates the Voluntary and Informed Consent provisions (§§1-738.1 to 1-738.5a) will be subject to disciplinary procedures by the State Board. Okla. Stat. tit. 63, § 1-738.5. • Physicians to fail to submit reports regarding gestational age determinations and the relevant medical emergency for abortions performed after twenty (20) weeks gestational age will be subject to a $500 late fee for each thirty-day period that the report remains unsubmitted. Okla. Stat. tit. 63, § 1-745.6. o Physicians who do not comply with the reporting requirements of the 72 hours informed consent provision are subject to the same $500 late fee for each thirty-day period. Okla. Stat. tit. 63, § 1-746.6.
Aiding & Abetting	Any person who knowingly or recklessly lies to help a minor obtain an abortion in violation of §§ 1-740.1 to 1-740.6 will be guilty of a felony. Okla. Stat. tit. 63, § 1-740.4b.
State Constitution	Oklahoma does not have any relevant state constitutional provisions.
Future Considerations	State lawmakers have written to the state AG asking for an opinion as to whether or not medication abortions violate the current abortion ban. No answer has been given at this time. See The Oklahoman, "Oklahoma lawmakers turn focus to medication abortions," (Nov. 25, 2022). Meanwhile, a citizen-led initiative to protect abortion rights by enshrining them in the state constitution has failed. See AP, "Oklahoma petition to enshrine abortion rights withdrawn," (Dec. 8, 2022). The private citizen enforcement mechanism at the heart of Oklahoma's abortion bans have yet to be fully challenged in courts of law. In the meantime, no one feels secure in their data, and many people view this area as the next one ripe for legal challenges. See NPR, "Data privacy concerns make the post-Roe era uncharted territory," (Jul. 2, 2022).

Oregon

Or. Rev. Stat. § 435.496

Or. Rev. Stat. § 659.880

Restrictions | Penalties | Aiding & Abetting | State Constitution | Future Considerations

Restrictions	Oregon is the only state in the union that places no restrictions on abortion. Oregon's abortion related provisions were fully repealed in 1983. In 2017, the Oregon legislature enacted the Reproductive Health Equity Act, which recognizes the right of an individual to terminate a pregnancy and prohibits any public entity from depriving an individual of that right, either by interfering directly with that individual, with their health care providers, hospitals, or facilities. Or. Rev. Stat. § 659.880. **Reporting Requirements:** Each induced termination of pregnancy shall be reported to the Center for Health Statistics by the attending physician, naturopathic physician, or person in charge of the facility in which the procedure was performed within 30 days of the procedure Or. Rev. Stat. § 435.496.
Penalties	No provision.
Aiding & Abetting	No provision.
State Constitution	There are no provisions directly related to abortion, or a right of privacy. The Oregon Supreme Court has held that the state constitution does not include a general right to privacy. *Planned Parenthood Assoc. v. Dept. of Human Resources*, 63 Ore. App. 41 (Ct. of App. 1983)(holding that Article I, sections 1, 3, 9, and 33 of the Oregon Constitution do not confer a right of privacy that includes a woman's right to choose whether or not to have an abortion). Since the 1970s, several ballot initiatives to amend the Constitution to specifically prohibit a right to an abortion have failed.

Future Considerations	The Governor of Oregon joined the Multi-State Commitment to defend access to reproductive health care that was also signed by the Governors of California and Washington State. See Oregon.gov, "West Coast States Launch New Multi-State Commitment to Reproductive Freedom, Standing United on Protecting Abortion Access in face of U.S. Supreme Court Decision on Roe vs. Wade," (Jun. 24, 2022). At the same time, anti-abortion groups in Oregon have declared their intentions to sponsor legislation during the next session that would restrict late-term abortions, though there are no plans at this time for a constitutional ballot initiative. See OPB, "Abortion-rights opponents focus their Oregon strategy on late-term abortions," (Jun. 28, 2022).

Pennsylvania

18 Pa. Cons. Stat. § 3201 to § 3220

43 Pa. Cons. Stat. § 955.2

40 Pa. Stat. § 1303.315

Restrictions | Penalties | Aiding & Abetting | State Constitution | Future Considerations

Restrictions

Abortions are permitted up to 24 weeks. 18 Pa. Cons. Stat. § 3211.

Abortion Restrictions:

- An abortion may not be performed after 24 weeks gestational age unless the procedure is necessary to prevent the death of the pregnant woman or substantial and irreversible impairment of a major bodily function. 18 Pa. Cons. Stat. § 3211(b).
  - A claim or diagnosis that a pregnant woman will harm herself in some way is not sufficient reason for performing an abortion after 24 weeks; i.e. no mental health emergencies.
- If a medical emergency exists that authorizes performance of an abortion past 24 weeks gestational age, then a physician must:
  - certify in writing that the abortion is necessary; 18 Pa. Cons. Stat. § 3211(c)(1)
  - get another physician to attest to the same in writing; 18 Pa. Cons. Stat. § 3211(c)(2) and
  - try to keep the fetus viable/alive; 18 Pa. Cons. Stat. § 3211(c)(4)
- If a medical emergency exists that authorizes performance of an abortion past 24 weeks gestational age, then the abortion must be performed in a hospital. 18 Pa. Cons. Stat. § 3211(c)(3).
- A second physician must be present during performance of an abortion past 24-weeks to try to give immediate medical care to the aborted fetus. 18 Pa. Cons. Stat. § 3211(c)(5).

Prohibitions:

- Abortions for sex selection are prohibited. 18 Pa. Cons. Stat. § 3204(c).

Physician Requirements:

- Abortions can only be performed by physicians. 18 Pa. Cons. Stat. § 3204(a).

- Prior to performing an abortion, a physician must determine that it is necessary and also hold a private, in-person consultation with the woman seeking an abortion. 18 Pa. Cons. Stat. § 3204.
- Physician must determine the probable gestational age of the fetus before performing an abortion. 18 Pa. Cons. Stat. § 3210.
- In the case of an infant born-alive during the course of an abortion, the attending physician must provide the infant with the same degree of care and treatment that would be provided to any other person. 18 Pa. Cons. Stat. § 3212.

Informed Consent:

- Required 24 hours before an abortion, in writing and signed by the pregnant woman. 18 Pa. Cons. Stat. § 3205(a).
- In the case of minors or incapcitated persons, consent from at least one parent/guardian. 18 Pa. Cons. Stat. § 3206.
    - Patient can bypass this requirement by obtaining consent from a court.
- If a married person seeks an abortion they must provide a signed statement that they notified the spouse of the abortion UNLESS the spouse is not the father of the child; the spouse cannot be located; the pregnancy is a result of spousal sexual assault; or the woman has reason to believe that the spouse or a third person would inflict harm upon her. 18 Pa. Cons. Stat. § 3209.

Facility Requirements:

- Facilities must maintain reports with the Department of Health related to their corporate ownership and structure. 18 Pa. Cons. Stat. § 3207.
- Public facilities are not allowed to provide, induce, or perform abortions unless the pregnant person's life is in danger or terminating the pregnancy is necessary because the pregnancy arose out of rape or incest. 18 Pa. Cons. Stat. § 3215(a).
- Abortion facilities are required to maintain patient safety policies. 40 Pa. Stat. § 1303.315.

Reporting Requirements:

- Physicians are required to submit a report for each abortion they perform and the physician or licensed abortion providing facility must transmit the report to the department within 15 days after each reporting month. 18 Pa. Cons. Stat. § 3214.
- Every facility in which abortions are performed shall report to the department the total number of abortions performed each quarter. 18 Pa. Cons. Stat. § 3214.

Penalties

Immunities: Pennsylvania does not hold a woman civil or criminally liable for undergoing or attempting to undergo an abortion. 18 Pa. Cons. Stat. § 3218.

Criminal Actions & Penalties:

- A third degree felony is punishable by imprisonment not exceeding 7 years and/or a fine of not less than $2,500 and not more than $15,000. 30 Pa. Cons. Stat. § 923. **The following are third-degree felonies:**
  - Any intentional, reckless, or knowledgeable violation of § 3204 (Medical Consultation and Judgment). 18 Pa. Cons. Stat. § 3204.
  - Performing an abortion after 24 weeks that does not fall under one of the enumerated exceptions in § 3211. 18 Pa. Cons. Stat. § 3211(d).
  - Failing to care for an infant born-alive after an abortion. 18 Pa. Cons. Stat. § 3212.
- A first-degree misdemeanor is punishable by a fine of $1,500 to $10,000 or imprisonment of less than 5 years, or both. 30 Pa. Cons. Stat. § 923. **The following are first degree misdemeanors:**
  - Any person who willfully delivers or discloses to the department any report, record, or information required under § 3214 known by him to be false.
  - Accepting a referral fee for abortion services. 18 Pa. Cons. Stat. § 3213.
    - For purposes of this section, "referral fee" means the transfer of anything of value between a physician who performs an abortion or an operator or employee of a clinic at which an abortion is performed and the person who advised the woman receiving the abortion to use the services of that physician or clinic.
- A second-degree misdemeanor is punishable by a fine of $500 to $5000, or imprisonment of less than 2 years, or both. **The following are second degree misdemeanors:**
  - A physician who, except in the case of medical emergency, fails to meet the conditions under § 3211(c). A physician is guilty of a first degree misdemeanor for every subsequent offense.
  - Accepting payment for abortion services before determining that the woman seeking services is actually pregnant. 18 Pa. Cons. Stat. § 3213.
  - Making false written statements to public officials about the performance of abortion services. 18 Pa. Cons. Stat. § 3218.
- A third degree misdemeanor is punishable by a fine that can range from $250 to $5,000, or imprisonment not exceeding 90 days, or both. 30 Pa. Cons. Stat. § 923. **The following are third degree misdemeanors:**
  - Intentional, knowing, or reckless falsification of any report pertaining to tests administered to determine probable gestational age or the actual probable gestational age of an unborn child upon which an abortion was performed. 18 Pa. Cons. Stat. § 3210.
  - Second and subsequent violations of § 3205 (Informed Consent). 18 Pa. Cons. Stat. § 3205(c).
- A first-degree summary offense consists of a $250 fine or 90 days imprisonment, and a fourth degree summary offense consists of a fine of $25. **The following is a summary offense:**

- While the degree of summary offense for violating § 3205 (Informed Consent) is not specified, any physician that does not obtain certification of consent will be guilty of a summary offense for the first offense and a third-degree misdemeanor for each subsequent offense. 18 Pa. Cons. Stat. § 3205

Civil Actions & Penalties:

- Any physician who knowingly violates any aspect of § 3204 (Medical Consultation), or § 3205 (Informed Consent), will be civilly liable for any incurred damages, attorney fees, and punitive damages in the amount of $5,000. 18 Pa. Cons. Stat. § 3217.
- Any physician who knowingly violates the provisions of § 3209 (Spousal Notice) is civilly liable to the spouse who is the father of the aborted child for any incurred damages, attorney fees, and punitive damages in the amount of $5,000. 18 Pa. Cons. Stat. § 3209.

Administrative Actions & Penalties:

- A physician guilty of "unprofessional conduct" is subject to suspension or revocation of a physician/facility's license. **The following is considered unprofessional conduct**:
  - Failure to make a determination of gestational age. Pa. Cons. Stat. § 3210.
    - Upon conviction the department must suspend the license for a period of at least three months.
  - Violation of 18 Pa. Cons. Stat. § 3204 (Medical Consultation and Judgement).
  - Violation of 18 Pa. Cons. Stat. § 3209 (Spousal Notice).
  - Violation of 18 Pa. Cons. Stat. § 3205 (Informed Consent).
  - Violation of 18 Pa. Cons. Stat. § 3206 (Parental Consent).
    - Upon conviction the department shall suspend the license for a period of at least three months.
  - Failure to meet the reporting requirements of 18 Pa. Cons. Stat. § 3214.
    - Any person, organization, or facility who willfully violates any of the provisions of this section requiring reporting shall upon conviction thereof (1) for the first offense, have its license suspended for a period of six mo.; (2) for the second time, have its license revoked for a period of one year; (3) for the third time, have its license revoked.
- When the board finds a physician has committed "unprofessional conduct," they shall punish accordingly: 19 Pa. Cons. Stat. § 3219.
  - For a first offense, prescribe any penalties it deems appropriate.
  - For a second offense, suspend the physician's license.
  - For a third office, revoke the physician's license.

Aiding & Abetting	No Provision.

State Constitution	While there is no provision in the state constitution that directly addresses abortion, there are provisions that speak to a right of privacy that has been held to cover certain aspects of abortion access. See *Fischer v. Commonwealth, Dep't of Public Welfare*, 482 A.2d 1148 (Pa. Commw. 1981) (holding that reporting requirements related to pregnancy caused by rape were overly intrusive and unconstitutional under Art. I, §§ 1, 26 and 28 of the state constitution). • Art. I, § 1: All men are born equally free and independent, and have certain inherent and indefeasible rights, among which are those of enjoying and defending life and liberty, of acquiring, possessing and protecting property and reputation, and of pursuing their own happiness. • Art. I, § 26: Neither the Commonwealth nor any political subdivision thereof shall deny to any person the enjoyment of any civil right, nor discriminate against any person in the exercise of any civil right. • Art. I, § 28: Equality of rights under the law shall not be denied or abridged in the Commonwealth of Pennsylvania because of the sex of the individual. Conservative members of the Pennsylvania legislature are looking to put a constitutional amendment denying abortion rights on the ballot for 2024.
Future Considerations	Governor Wolf, a former Planned Parenthood volunteer, issued a statement on June 24 to ensure the residents of Pennsylvania knew he would veto any abortion bans that may be adopted by the state legislature. See Governor's Press Release, "Gov. Wolf Reacts to Dismantling of Roe v. Wade: Elections Matter," (Jun. 24, 2022). On July 6, 2022, the Pennsylvania Senate adopted a bill approving a constitutional amendment that would guarantee no abortion rights under the state constitution. In order for the amendment to be placed on the ballot, it must now be adopted by the House. Then, after the November 2022 elections, the same amendment must be voted on again by the new legislature. If the bill is adopted once more, the initiative may be placed on the ballot for votes during the November 2024 election cycle. See The Hill.com, "Pennsylvania's GOP-led Senate advances constitutional amendment on abortion," (Jul. 8, 2022); see also, WHYY, "After advancing constitutional amendment, Pa. Republicans move closer to being able to restrict abortion access," (Jul. 9, 2022).

Puerto Rico

33 P.R. Leyes An. § 5147 to 33 P.R. Leyes An. § 5149 and

24 P.R. Leyes An. § 231 to 24 P.R. Leyes An. § 235

Restrictions | Penalties | Aiding & Abetting | Puerto Rican Constitution | Future Considerations

NOTE: In the case *Pueblo v. Duarte Mendoza*, 109 P.R. Dec. 596 (1980), the highest court in Puerto Rico granted a sweeping right to an abortion, essentially making any restrictions and penalties infringing a person's access to an abortion illegal with the exception of the reporting requirements by physicians and medical facilities. Thus, though there is a penal code on the books that bans abortions if not necessary for the life and health of the pregnant person, for practical purposes, abortions in Puerto Rico are legal throughout pregnancy. The below is a summary of the existing laws governing abortion in Puerto Rico, whether they contradict with each other or are not enforceable.

The Laws of Puerto Rico summarized below were translated from Spanish into English by Camilla Oliva and Eliany Dominguez and are ***current as of July 12, 2022****.*

Restrictions

No gestational age restrictions.

Prohibitions:

- According to the Penal Code of Puerto Rico, only physicians or the person seeking the abortion are mentioned as abortion providers, or receivers, who would breach the duty not to perform abortions unless the abortion is therapeutic or helps protect health or life. 33 P.R. Leyes An. §§ 5147 to 5149.

Reporting Requirements:

- Physicians must report abortions within 5 days to the Department of Health if they have performed the abortion, or even if they may have knowledge of any case of abortion, complete or incomplete, for therapeutic or any other purpose, on any patient treated or visited by the physician. 24 P.R. Leyes An. §§ 231, 232
- Any supervisor or person in charge of a private or public hospital, sanatorium, clinic or polyclinic, rest home, health home, convalescent home, or other like institution, who may have knowledge of any abortion, complete or incomplete, for actual or apparent therapeutic purposes or other purposes, of any person secluded in said institutions shall report the case to the Department of Health within the term of ten (10) days from the date it came to his knowledge. 24 P.R. Leyes An. § 232.

Penalties	**Criminal Penalties**: • Except when preserving the mental and physical health of themselves, any woman who procures a drug, and takes it, or who gets a procedure with the purpose to abort a fetus will be imprisoned for three (3) years. 33 P.R. Leyes An. § 5148. • Unless perpetuated to preserve the life and health of the pregnant person, any person who permits, indicates, induces, or performs an abortion, including medically induced abortions, and anyone who helps with the aforementioned acts will be imprisoned for three (3) years. 33 P.R. Leyes An. § 5147. • Any person who induces an abortion through force or violence towards the pregnant woman that leads to a premature birth will be imprisoned for eight (8) years. Should the violence or force towards the woman result in the death of the fetus, the penalty is fifteen (15) years in prison. 33 P.R. Leyes An. § 5148. • Physicians who fail to report pursuant to § 232 will be guilty of a misdemeanor and will be punished with a fine of up to $250, up to one year in jail, or both at the court's discretion. 24 P.R. Leyes An. § 235. **Administrative Penalties**: • The Medical Examiner's Tribunal has the power to suspend or cancel a physician's license who fails to report pursuant to the relevant provisions (§§ 231-235). 24 P.R. Leyes An. § 235. • The Secretary of Health may cancel the license or organize the closing of any hospital, sanatorium, clinic, etc. which fails to meet the reporting requirements. 24 P.R. Leyes An. § 235.
Aiding & Abetting	No provision.
Puerto Rican Constitution	In the case *Pueblo v. Duarte Mendoza*, 109 P.R. Dec. 596 (1980), the highest court in Puerto Rico granted a sweeping right to an abortion, essentially making any restrictions and penalties infringing a person's access to an abortion illegal with the exception of the reporting requirements by physicians and medical facilities. After this case, a right to privacy has been read into the constitution, guaranteeing women the right to choose to have an abortion. See Miami Herald, "In Puerto Rico, once an abortion haven for American women, history could repeat itself," (July 6, 2022).
Future Considerations	Leaning on the right to an abortion granted in *Roe*, the highest court of Puerto Rico upheld the right to an abortion with no restrictions in *Pueblo v. Duarte Mendoza*, 109 P.R. Dec. 596 (1980). There are currently bills being introduced in Puerto Rico seeking to impose a twenty-two week gestational age limit restriction. See Amnesty International, "Puerto Rico: Protect access to abortion," (April 18, 2022), available at: ; Refinery 29, "What Will the *Roe v. Wade* Decision Mean for Puerto Rico?" (June 24, 2022).

Rhode Island

R.I. Gen. Laws § 11-9-18

R.I. Gen. Laws § 23-4.7-1 to § 23-4.7-8

R.I. Gen. Laws § 23-4.13-2

Restrictions | Penalties | Aiding & Abetting | State Constitution | Future Considerations

Restrictions

Abortions are permitted at any time prior to fetal viability. R.I. Gen. Laws § 23-4.13-2.

Prohibitions:

- Generally, no abortion may be performed after fetal viability, except to preserve the life or health of the pregnant individual. R.I. Gen. Laws § 23-4.13-2(d).
- Though Rhode Island repealed its own partial-birth abortion laws in 2019, the Reproductive Privacy Act (§ 23-4.13-2) specifically states that the state right to a pre-viability abortion does not abrogate the federal Partial-Birth Abortion Ban Act of 2003, codified at 18 U.S.C. § 1531. R.I. Gen. Laws § 23-4.13-2(c)(3).

Physician Requirements:

- If a physician performs an abortion post-viability, then the basis for their medical judgment that termination was necessary must be recorded in the patient's medical records. R.I. Gen. Laws § 23-4.13-2(d)(2).

Consent Requirements:

- A pregnant woman must provide informed written consent. R.I. Gen. Laws §§ 23-4.7-2; R.I. Gen. Laws § 23-4.7-5.
  - Consent requirements are waived if there is an emergency requiring immediate action. The attending physician must certify in writing in the patient's medical record that an emergency exists and the basis for the opinion. R.I. Gen. Laws § 23-4.7-4.
- In the document the pregnant woman signs consenting to the procedure, the abortion provider must disclose and explain to the patient that: (1) the patient is pregnant, (2) the medical nature of an abortion (including the estimated gestational age of the fetus at the time of examination and at the time of the procedure), (3) the nature of the specific procedure, and (4) the associated risks to the procedure. R.I. Gen. Laws § 23-4.7-3.

	• The form that the pregnant woman signs including the abovementioned disclosures must also state the physician provided these disclosures, include a statement outlining adoption as an alternative, and be written in a language the patient understands. R.I. Gen. Laws § 23-4.7-5. • In the case of an unmarried minor seeking an abortion, both the minor and at least one parent must consent to the procedure. If the parents are not around or refuse, then a guardian can consent. If none of the above consent and the minor wishes to proceed, they can file a proceeding in family court. R.I. Gen. Laws § 23-4.7-6.
Penalties	**Criminal Penalties:** • Any physician, nurse or other licensed medical person who knowingly and intentionally fails to provide medical care and treatment to an infant born alive in the course of an abortion shall be guilty of a felony punishable by imprisonment not to exceed 5 years, a fine of $5,000, or both. R.I. Gen. Laws § 11-9-18. • Any physician, nurse, or other licensed medical person who knowingly and intentionally fails to provide reasonable medical care and treatment to an infant born alive in the course of an abortion, and, as a result of that failure, the infant dies, shall be guilty of the crime of manslaughter. R.I. Gen. Laws § 11-9-18. **Civil Actions & Penalties:** • Willful failure to provide information to the patient will also be prima facie evidence of failing to obtain informed consent in any action at law or in equity. R.I. Gen. Laws § 23-4.7-7. **Administrative Actions & Penalties:** • Physicians who knowingly violate the informed consent provisions are guilty of "unprofessional conduct." R.I. Gen. Laws § 23-4.7-7; R.I. Gen. Laws § 5-37-5.1. • A physician who performs an abortion post-viability and does not record the medical reasons for doing so in the patient's record may have their license revoked by the Department of Health. R.I. Gen. Laws § 23-4.13-2(d)(3).
Aiding & Abetting	No provision.
State Constitution	The Rhode Island constitution specifically denies the right to an abortion. • Art. I, § 2: … Nothing in this section shall be construed to grant or secure any right relating to abortion or the funding thereof.

Future Considerations	In 2019, Rhode Island enacted express statutory protections for abortion known as the Reproductive Privacy Act and repealed its pre-*Roe* abortion ban. The Act survived a legal challenge by anti-abortion activists in a ruling from the state supreme court in May 2022. See *Benson v. McKee*, 273 A.3d 121 (R.I. Sup. Ct. 2022). The ruling may be appealed to the U.S. Supreme Court. See U.S. News & World Report, "Rhode Island Supreme Court Decision Upholds Abortion Law," (May 4, 2022). The Governor signed an Executive Order on July 5, 2022 protecting non-residents who seek abortions in Rhode Island from legal liability in other states. Exec. Order 22-28. The Order --- • Prohibits executive agencies from cooperating with any inquiries into reproductive health services that are legal in Rhode Island. • Prohibits non-fugitive extradition in cases involving reproductive health services that are legal in Rhode Island. • Protects health care providers from disciplinary actions for providing reproductive health services. In October 2022, the U.S. Supreme Court declined to hear an appeal from two Rhode Island women who were attempting to argue that the Reproductive Privacy Act was unconstitutional in that it stripped their unborn fetuses of personhood. See CBS News, "Supreme Court declines to take up fetal personhood dispute," (Oct. 11, 2022).

South Carolina

S.C. Code Ann. § 40-47-37

S.C. Code Ann. § 44-41-20 to § 44-41-85

S.C. Code Ann. § 44-41-310 to § 44-41-380

S.C. Code Ann. § 44-41-410 to § 44-41-480

S.C. Code Ann. § 44-41-610 to § 44-41-740

Restrictions | Penalties | Aiding & Abetting | State Constitution | Future Considerations

NOTE: South Carolina has two main abortion statutes on the books, one that prohibits the procedure after detection of a fetal heartbeat, and another, older law that essentially codified the viability limits in *Roe*. The injunction blocking South Carolina's "heartbeat bill" was dissolved shortly after the release of *Dobbs*, but was then reinstated by the South Carolina Supreme Court pending their determination regarding its constitutionality. See *Planned Parenthood South Atlantic v. Wilson*, No. 2022-001062 (S.C. filed Jul. 7, 2022). The following summary of state law includes all relevant abortion laws currently enacted in South Carolina, regardless of whether they conflict with one another or are enforceable.

Restrictions

Fetal Heartbeat Abortion Ban (temporarily enjoined):

- No abortion may be performed once a fetal heartbeat has been detected. S.C. Code Ann. § 44-41-680.
  - **Exceptions:**
    - If there exists a fetal anomaly, defined as "a profound and irremediable congenital or chromosomal anomaly that, with or without the provision of life-preserving treatment, would be incompatible with sustaining life after birth." S.C. Code Ann. § 44-41-430(6).
    - Medical emergency. S.C. Code Ann. § 44-41-650.
    - If the pregnancy is a result of rape or incest, and the probable post-fertilization age of the fetus is fewer than 20 weeks, in which case, the physician must report the allegation to law enforcement. S.C. Code Ann. § 44-41-680(B)(1) and (2).
    - To prevent the death of the pregnant woman, or to prevent the serious risk of a substantial and irreversible impairment of a major bodily function. S.C. Code Ann. § 44-41-690.

- An ultrasound must be performed to, among other things, determine if there is a fetal heartbeat present prior to the abortion. S.C. Code Ann. § 44-41-630.
- The abortion may not be performed if the pregnancy is at least 8 weeks post-fertilization and the pregnant woman has not been informed that it may be possible for them to hear the fetal heartbeat and the abortion provider doesn't offer them the chance to hear it. S.C. Code Ann. § 44-41-640.
- In the case of abortions performed legally prior to detection of a fetal heartbeat, the physicians performing or inducing the abortion must make notations in the pregnant woman's medical records. S.C. Code Ann. § 44-41-660.
- Licensed facilities providing abortion procedures must report all abortions performed. S.C. Code Ann. § 44-41-460.
- A physician performing an abortion in violation of the heartbeat statute provisions pursuant to the exception for medical necessity, must declare doing so and place the declaration in the pregnant woman's medical records. S.C. Code Ann. § 44-41-690.

NOTE: The Fetal Heartbeat and Protection from Abortion Act contains language specifically stating that it does not repeal any other abortion statute in South Carolina law. S.C. Code Ann. § 44-41-710.

Additional Abortion Restrictions that have not been repealed:

- Abortions may be performed:
  - During the first trimester, if performed by the pregnant woman's physician with the pregnant woman's consent. S.C. Code Ann. § 44-41-20(a).
  - During the second trimester, if performed by the pregnant woman's physician in a certified hospital or clinic with the pregnant woman's consent and the consent of her husband if she is married. S.C. Code Ann. § 44-41-20(b).
  - During the third trimester, if two physicians are present and the abortion is necessary to preserve the life or health of the pregnant woman. S.C. Code Ann. § 44-41-20(c).
    - The mental health of the woman may be taken into account as a reason for performing a third trimester abortion, as long as additional certification from a psychiatrist is obtained.
- No abortion may be performed after 20 weeks post-fertilization age. S.C. Code Ann. § 44-41-450.
  - **Exceptions**:
    - Fetal anomaly, or
    - To avert death or serious risk of substantial or irreversible impairment of the pregnant woman.
  - Claims or diagnoses that a woman will physically harm herself shall not be considered; i.e., no mental health conditions.

- An abortion may not be performed if the physician does not first determine the probable post-fertilization age of the unborn fetus or does not rely upon such a determination made by another physician. S.C. Code Ann. § 44-41-440.
    - **Exceptions**:
        - Fetal anomaly, or
        - Medical emergency.
- Partial-birth abortions are not permitted. S.C. Code Ann. § 44-41-85.
    - **Exception:**
        - When necessary to save the life of the pregnant woman.

Drug-Induced Abortion Requirements: Abortion-inducing drugs may not be prescribed by a physician through telemedicine. S.C. Code Ann. § 40-47-37(C)(6).

Physician Requirements:

- Physicians working in facilities where any second trimester or at least 5 first trimester abortions are performed must comply with the following: S.C. Code Ann. § 44-41-330; S.C. Code Ann. § 44-41-370.
    - Certain disclosures and medical information must be provided to a woman seeking an abortion at least 24-hours prior to the procedure; the woman must certify that such disclosures have been provided.
    - Any certified document must be signed and dated.
    - If a fetal heartbeat has been detected, then the physician must notify the pregnant woman in writing.
    - If an ultrasound is performed, the abortion procedure must be postponed at least an hour.
    - For written disclosures that are mailed, there must be certification in writing of receipt.

Consent Requirements:

- The pregnant woman must consent to the abortion. S.C. Code Ann. § 44-41-30.
    - **Exceptions:**
        - In the case of a medical emergency.
        - If the pregnancy is a result of incest.
- If the pregnant woman is mentally incompetent and married, the spouse or legal guardian must provide consent. If she is unmarried, a legal guardian or parent must provide consent. S.C. Code Ann. § 44-41-30.
- If the pregnant woman is an unemancipated minor, the pregnant minor and either a parent, legal guardian, grandparent, or person acting in loco parentis for at least 60 days must consent. S.C. Code Ann. § 44-41-31.
    - Minors may petition a court for waiver of this consent requirement. S.C. Code Ann. § 44-41-31.; S.C. Code Ann. § 44-41-32; S.C. Code Ann. § 44-41-33; S.C. Code Ann. § 44-41-34; S.C. Code Ann. § 44-41-37.

Facility Requirements:

- A facility in which any second trimester or five or more first trimester abortions are performed in a month must be licensed by the department to

	operate as an abortion clinic and must comply with the provisions of Article 3. S.C. Code Ann. § 44-41-75. • If providing care for two or more unrelated persons, facilities wherein abortions are performed must comply with the licensing regulations stated in section 44-7-260. S.C. Code Ann. 44-7-260. **Reporting Requirements:** • Physicians must report each abortion performed within seven days of the procedure. S.C. Code Ann. § 44-41-60. • In the case of incest, the physician performing the abortion shall report the alleged incest to the local county department of social services or to a law enforcement agency. S.C. Code Ann. § 44-41-30; S.C. Code Ann. § 44-41-680.

Penalties	**Immunities under the Fetal Heartbeat Act (temporarily enjoined):**
	• A pregnant woman upon whom an abortion is performed in violation of "South Carolina Fetal Heartbeat and Protection from Abortion Act" shall not be held criminally or civilly liable. S.C. Code Ann. § 44-41-730.
	
	Criminal Penalties (temporarily enjoined):
	• The following constitute felonies punishable by a fine of $10,000 or imprisonment of not more than 2 years, or both:
	  o Performing an abortion with the intent of causing or abetting the termination of the life of the fetus whose fetal heartbeat has been detected. S.C. Code Ann. § 44-41-680.
	  o Performing an abortion before determining whether the fetus has a detectable fetal heartbeat. S.C. Code Ann. § 44-41-650.
	
	Civil Actions & Penalties (temporarily enjoined):
	• Physicians who perform or induce abortions in violation of the heartbeat bill provisions or who did so without providing the information required by Section 44-41-330 may be the subject of a civil action brought by the pregnant woman. S.C. Code Ann. § 44-41-740.
	
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	Immunities that have not been repealed:
	• A pregnant woman upon whom a partial-birth abortion has been performed may not be prosecuted for violation of the statute pertaining to partial-birth abortions. S.C. Code Ann. § 44-41-85.
	
	Criminal Penalties that have not been repealed:
	• The following constitute felonies punishable by a fine of no more than $5,000 or imprisonment for no less than 2 years and no more than 5 years, or both:
	  o Providing, supplying, prescribing or administering any substance to a pregnant woman or using a device or other means upon a

pregnant woman with the intent to produce an abortion. S.C. Code Ann. § 44-41-80.
    - Performing a partial-birth abortion. S.C. Code Ann. § 44-41-85.
- The following constitute misdemeanors with various penalties:
    - Those who, in loco parentis, sign an affidavit consenting to a minor's abortion and in doing so, make false representations. Accompanied by a fine of no more than $3,000 or imprisonment of no more than a year. S.C. Code Ann. § 44-41-31.
    - Those who perform illegal abortions on minors. Accompanied by a fine of up to $2,000 or imprisonment of no more than 3 years, or both. S.C. Code Ann. § 44-41-36.
    - Any pregnant woman who solicits or otherwise procures a drug-inducing substance and administers it to themselves or who submits to any operation or procedure or who uses any instrument or other means with the intent to produce an abortion. Accompanied by a fine of not more than $1,000 or imprisonment for a term of not more than 2 years, or both. S.C. Code Ann. § 44-41-80.
    - Physicians who know or should know that the provisions of Article 41 have not been complied with and perform an abortion anyway. S.C. Code Ann. § 44-41-350.
        - For a first or second offense, must be fined not more than $1,000. No term of imprisonment may be imposed for a first or second offense.
        - For a third or subsequent offense, must be imprisoned not more than 3 years or fined not more than $5,000, or both.
    - Physicians who intentionally or knowingly fail to conform to any requirement in Section 44-41-440 and Section 44-41-450. Accompanied by a fine of no less than $2,000 and no more than $10,000 or imprisonment for no more than 3 years, or both. No part of the minimum fine may be suspended. S.C. Code Ann. § 44-41-470.
        - For conviction of a third or subsequent offense, the sentence must be imprisonment for not less than 60 days nor more than 3 years, no part of which may be suspended. S.C. Code Ann. § 44-41-470.
    - Facilities that intentionally or recklessly falsify any report required after an abortion has been performed pursuant to post-fertilization age requirements. Accompanied by no more than one year in prison. S.C. Code Ann. § 44-41-460.

Civil Actions & Penalties that have not been repealed:

- Failure to obtain required consent constitutes prima facie evidence of interference with family relations in appropriate civil actions. S.C. Code Ann. § 44-41-35.
- Physicians who perform partial-birth abortions may be open to civil liability, and may be subject to actual damages (trebled), punitive damages and reasonable costs/attorney's fees. S.C. Code Ann. § 44-41-85.
- Any facility that fails to report abortions performed pursuant to the post-fertilization age requirements by the end of the 30 days following the due

	date is subject to a late fee of $1,000 for each additional 30-day period the report is overdue. If the facility has not submitted a report or has only submitted an incomplete report more than 6 months following the due date, may be directed by a court to submit a complete report or be subject to civil contempt. S.C. Code Ann. § 44-41-460.
Aiding & Abetting	**Third-Parties:** • Those who, in loco parentis, sign an affidavit consenting to a minor's abortion and in doing so make false representations are guilty of a misdemeanor and may be fined no more than $3,000 or imprisoned no more than 1 year. S.C. Code Ann. § 44-41-31. • Felony for any person who provides, supplies, prescribes, or administers any drug, medicine, prescription or substance to any pregnant woman or uses or employs any device, instrument or other means upon any woman, with the intent to produce an abortion shall be punished by imprisonment for a term of not less than 2 nor more than 5 years or fined not more than $5,000, or both. S.C. Code Ann. § 44-41-80.
State Constitution	There is no provision directly addressing abortion rights in the South Carolina constitution, however, there is language related to a general right to privacy. • Art. I, § 3: The privileges and immunities of citizens of this State and of the United States under this Constitution shall not be abridged, nor shall any person be deprived of life, liberty, or property without due process of law, nor shall any person be denied the equal protection of the laws. • Art. I, §10: The right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures and unreasonable invasions of privacy shall not be violated, …
Future Considerations	The South Carolina legislature failed to take up a total abortion ban before the legal end of the legislative session on November 13, 2022. This failure leaves the 20-week limit in place while the heartbeat bill is being considered by the South Carolina supreme court. See Politico, "Bitter GOP divisions leave abortion legal in South Carolina," (Nov. 9, 2022). The state supreme court heard oral arguments as to the constitutionality of the Fetal Heartbeat Act on October 19, 2022. Previously, the court reinstated a temporary injunction on the heartbeat bill while litigation is pending. See Reuters, "South Carolina top court puts abortion ban on hold as it hears challenge," (Aug. 17, 2022); WFAE 90.7, "South Carolina Supreme Court hears arguments over 6-week abortion ban," (Oct. 19, 2022).

South Dakota

S.D. Codified Laws § 34-23A-1 to S.D. Codified Laws § 34-23A-93

S.D. Codified Laws § 22-17-5 to S.D. Codified Laws § 22-17-14

S.D. Codified Laws § 36-11-70.

2022 S.D. Sess. Laws, ch.143.

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NOTE: With the release of the U.S. Supreme Court opinion in *Dobbs v. Jackson Women's Health Organization*, South Dakota has banned all abortions across the state with an exception for medical emergencies, but none for rape or incest. South Dakota adopted a trigger ban in 2005 that would eliminate all abortions, including those that are drug induced, except to preserve the life of the mother. Any performance of an abortion in violation of the ban would result in a Class 6 felony, which is punishable by imprisonment for two years, a fine of $4,000, or both. The trigger ban specifically repeals statutes that previously permitted abortion during the first 12 weeks of pregnancy, between 12 and 22 weeks if performed in an approved facility, and after 22 weeks if it is performed in a hospital and there is a medical emergency. Other statutes remain on the books although they conflict with the total ban triggered by the overturn of *Roe*. The following summary of state law includes the outright bans, the trigger ban, and all other laws currently enacted in South Dakota, regardless of whether or not they conflict with one another or are enforceable.

Restrictions

Abortion Ban:

- Any person who administers to any pregnant female or who prescribes or procures for any pregnant female any medicine, drug, or substance or uses or employs any instrument or other means with intent thereby to procure an abortion, unless there is appropriate and reasonable medical judgement that performance of an abortion is necessary to preserve the life of the pregnant female, is guilty of a Class 6 felony. S.D. Codified Laws § 22-17-5.1.

Drug-Induced Abortion Ban:

- Medical abortion by telemedicine is prohibited. 2022 S.D. Sess. Laws, ch. 143, § 2, at 257 (to be codified in chapter 36-4- of the S.D. Codified Laws).
- A pregnant mother may take the medications Mifepristone or Misoprostol in the physical presence of a physician up to 9 weeks after conception. 2022 S.D. Sess. Laws, ch. 143, § 2, at 257 (to be codified in chapter 36-4- of the S.D. Codified Laws).

Additional Abortion Restrictions that have not been repealed:

- Partial birth abortions are prohibited. S.D. Codified Laws § 34-23A-27.
- Sex-selective abortions are prohibited. S.D. Codified Laws § 34-23A-64.
- Abortions are prohibited on a pain-capable unborn child, generally 20 or more weeks post-fertilization, unless there is a medical emergency and the physician delivers the fetus in the manner which gives it the best chance to survive without endangering the life or health of the patient. S.D. Codified Laws § 34-23A-70; S.D. Codified Laws § 34-23A-71; S.D. Codified Laws § 34-23A-72.
- Abortions for Down syndrome are prohibited, except if necessary to save the life of the pregnant woman because her life is endangered by a physical disorder, illness, or injury, including a life-endangering condition caused by or arising from the pregnancy itself, if no other medical procedure would suffice for that purpose. S.D. Codified Laws § 34-23A-90.

Drug-Induced Abortion Requirements that have not been repealed:

- A pharmacist cannot be required to dispense medication if there is reason to believe that the medication would be used to cause an abortion or destroy an unborn child. An unborn child is defined as "an individual organism of the species homo sapiens from fertilization to live birth." This means pharmacists can legally refuse to sell the "morning after" pill. S.D. Codified Laws § 36-11-70; S.D. Codified Laws § 22-1-2.

Physician Requirements that have not been repealed:

- Abortions may be performed only by licensed physicians. S.D. Codified Laws § 34-23A-56.
- If an abortion must be performed due to a medical emergency, a physician shall inform the patient, prior to the abortion if possible, of the medical indications supporting his judgment that an abortion is necessary to avert her death or that a delay will create serious risk of substantial and irreversible impairment of a major bodily function. S.D. Codified Laws § 34-23A-2.1.
- At least 72-hours before any abortion may be scheduled, a physician must hold an initial consultation with the woman to assess her medical and personal circumstances, including an assessment of several "risk factors" that could lead to an adverse psychological outcome post-abortion, and provide her with informational disclosures; a report on this consultation must be kept as a permanent part of the woman's medical record. S.D. Codified Laws § 34-23A-56.
- A physician has a duty to preserve the life of a child born alive after an abortion procedure, and will be considered to have a physician-patient relationship with such child. S.D. Codified Laws § 34-23A-16.1.

Informed Consent Requirements that have not been repealed:

- A physician must obtain voluntary and informed written consent from the woman upon whom an abortion will be performed, unless there is a medical emergency and delaying the performance of the abortion in order to obtain consent is impossible due to the emergency. S.D. Codified Laws § 34-23A-10.1; S.D. Codified Laws § 34-23A-57.

	• Informed consent materials and disclosure must be given to a women at least 24-hours prior to the performance of an abortion. S.D. Codified Laws § 34-23A-10.1. • Written notice to the parents of a minor or guardian of an incompetent woman must be provided at least 48-hours prior to the performance of an abortion. S.D. Codified Laws § 34-23A-7. o Exception: Based upon a physician's good faith clinical judgment, a medical emergency exists and there is insufficient time to provide written notice. • Informed consent is incomplete unless the physician first offers the woman an opportunity to view a sonogram and hear the heartbeat of her unborn child. S.D. Codified Laws § 34-23A-52. • Only the physician who will perform the abortion is authorized to take a woman's voluntary and informed consent. S.D. Codified Laws § 34-23A-57. **Record/Reporting Requirements that have not been repealed:** • Physicians and facilities must report certain data and statistics on abortions performed to the Department of Health. S.D. Codified Laws § 34-23A-19; S.D. Codified Laws § 34-23A-38; S.D. Codified Laws § 34-23A-39; S.D. Codified Laws § 34-23A-40. • Physicians are required to file annual reports with the Department of Health that provide a detailed list of statistics and other information regarding abortions they have performed during the previous calendar year. S.D. Codified Laws § 34-23A-34; S.D. Codified Laws § 34-23A-35. • All reports made under §§ 34-23A-34 to 34-23A-45, inclusive, must preserve the anonymity of the female having an abortion. S.D. Codified Laws § 34-23A-44. **Facility Requirements that have not been repealed:** • No abortion facility may be established or operate without a valid, non-transferrable license issued by the Department of Health. S.D. Codified Laws § 34-23A-46; S.D. Codified Laws § 34-23A-47.
Penalties	**Immunities that have not been repealed:** • No penalty may be assessed against the woman upon whom an abortion on an unborn child capable of feeling pain is performed, or attempted to be performed. S.D. Codified Laws § 34-23A-69. • A mother of a child born alive cannot be held criminally or civilly liable for consenting to an abortion or for the acts of the physician, the physician's agents, or the abortion facility for violating S.D. Codified Laws § 34-23A-16.1. S.D. Codified Laws § 34-23A-16.2. • No person upon whom a partial-birth abortion is performed may be prosecuted under §§ 34-23A-27 to 34-23A-33, inclusive, for ***conspiracy*** to violate § 34-23A-27. S.D. Codified Laws § 34-23A-31. • No penalty may be assessed against a pregnant mother upon whom a sex-selective abortion is performed or attempted to be performed. S.D. Codified Laws § 34-23A-64;.

Criminal Penalties that have not been repealed:

- Any person who intentionally kills a human fetus by causing injury to its mother, which is not authorized by § 34-23A is guilty of a Class 4 felony, punishable by ten years imprisonment and a possible fine of $20,000. S.D. Codified Laws § 22-17-6; S.D. Codified Laws § 22-6-1.
- The following is a Class 6 felony, which is punishable by imprisonment for two years, a fine of $4,000, or both S.D. Codified Laws § 22-6-1.
    - A physician who performs a partial-birth abortion in the absence of a medical emergency to save the life of the mother. S.D. Codified Laws § 34-23A-27; S.D. Codified Laws § 34-23A-28.
    - A physician who knowingly or in reckless disregard performs or attempts to perform a sex-selective abortion. S.D. Codified Laws § 34-23A-64.
    - A physician who violates S.D. Codified Laws § 34-23A-90. (Down Syndrome-Abortion Prohibited-Penalty). S.D. Codified Laws § 34-23A-90.
    - A physician who intentionally or recklessly performs or attempts to perform an abortion on a pain-capable unborn child, unless in the case of a medical emergency. S.D. Codified Laws § 34-23A-42.
- Any person who coerces or compels a woman to undergo an abortion by threatening to commit against the pregnant woman or anyone else in her physical presence homicide, murder, manslaughter, aggravated assault, or kidnapping, ***and that threat results in the death of the unborn child***, then that person commits a Class B felony, which is punishable by life imprisonment, a $50,000 fine, or both. S.D. Codified Laws § 22-17-13; S.D. Codified Laws § 22-6-1.
- Any person who coerces or compels a woman to undergo an abortion by threatening to commit against the pregnant woman or anyone else in her physical presence homicide, murder, manslaughter, aggravated assault, or kidnapping, then that person commits a Class 5 felony, which is punishable by imprisonment for five years, and an additional $10,000 fine may also be imposed. H.B. 1113, § 2; S.D. Codified Laws § 22-6-1.
- The following is a Class 2 misdemeanor, which is punishable by imprisonment in a county jail for 30 days, a $500 fine, or both. S.D. Codified Laws § 22-6-2.
    - A physician who, knowingly or in reckless disregard, violates any informed consent disclosure requirements under §§ 34-23A-2.1, 34-23A-7, or 34-23A-10.1. S.D. Codified Laws § 34-23A-10.2
        - A guilty conviction under this section shall be reported to the board of medical and osteopathic examiners.
    - Any person who knowingly or recklessly fails to comply with reporting requirements or submits false information. S.D. Codified Laws § 34-23A-42.

Civil Actions & Penalties that have not been repealed:

- A cause of action for medical malpractice may be maintained against a physician who performs an abortion without obtaining informed consent as described in §§ 34-23A-1.2 through 34-23A-1.7; the common law cause of

action for medical malpractice applies to all abortion procedures. S.D. Codified Laws § 34-23A-1.7.

- A civil action for punitive damages not to exceed $10,000 may be brought against any physician who performs an abortion willfully, wantonly or maliciously in violation of the informed consent requirements under the law. S.D. Codified Laws § 34-23A-22.
    - Persons who may bring a claim under this section:
        - The woman on whom the abortion was performed.
        - Parents of a minor on whom an abortion was performed.
    - If judgment is rendered against the physician, an award of reasonable attorney's fees will also be assessed.
- A civil action may be brought against any physician who fails to meet the requirements of § 34-23A-16.1 (child born alive after abortion); such physician shall be fined $10,000 for each offense and ordered to pay reasonable attorney's fees; money damages may be recovered from the physician in a civil action under this section. S.D. Codified Laws § 34-23A-16.2.
    - A guilty conviction under this section shall be reported to the board of medical and osteopathic examiners.
    - Persons who may bring a claim under this section:
        - The woman on whom the abortion was performed.
        - The child born alive.
        - The State Attorney General.
- A civil action may be brought by the father or, in the case of a minor, her parents, against a physician who performs a partial-birth abortion in the absence of a medical emergency to save the life of the mother that results in the death of the fetus. S.D. Codified Laws § 34-23A-29.
    - An action may not be brought under this section if:
        - The plaintiff consented to the abortion.
        - The plaintiff's criminal conduct caused the pregnancy.
    - Money damages for all proximately caused injuries, both physical and psychological, may be recovered against a physician in a civil action under this section. S.D. Codified Laws § 34-23A-30.
- A civil action may be brought by the Department of Health against any physician who fails to comply with reporting requirements; a court may direct the physician to complete the required reports or by subject to civil sanctions; a penalty of $500 for each violation may be levied. S.D. Codified Laws § 34-23A-41.
- A civil action may be brought by a woman who undergoes an abortion, or her survivors, against any physician or facility who intentionally, knowingly, or negligently fails to comply with informed consent requirements under §§ 34-23A-56 and 34-23A-57; a penalty of $10,000 plus reasonable attorney's fees may be awarded. S.D. Codified Laws § 34-23A-60.
- If a child is born alive in the course of an abortion procedure, the decision to obtain an abortion and the procedure is considered relevant and material evidence in any proceeding for termination of parental rights or adjudication of dependency. S.D. Codified Laws § 34-23A-18.
- A pregnant woman who undergoes an abortion, or her surviviors, may bring civil action and obtain liquidated damages in the amount of $10,000

	plus reasonable attorney's fees against a physician who intentionally, knowingly, or negligently fails to comply with the provisions of Chapter 34-23A. This is in addition to any damages entitled to such persons under any common law or statutory provisions. S.D. Codified Laws § 34-23A-91. **Administrative Actions & Penalties that have not been repealed:** • Any physician or facility who fails to meet the requirements of § 34-23A-16.1 (child born alive after abortion) must be reported to the South Dakota Board of Medical and Osteopathic Examiners; sanctions, including suspension or revocation of licenses, may be assessed. S.D. Codified Laws § 34-23A-16.2.
Aiding & Abetting	**Third-Parties:** • No counselor, social worker, or other similarly situated individual is liable to any person for advising or helping to arrange an abortion. Individuals whose scope of employment involves such questions/counseling on abortion are also protected from retaliation by their employer. S.D. Codified Laws § 34-23A-11.
State Constitution	There are no provisions in the state constitution directly addressing abortion or a right to privacy, nor has the state Supreme Court ruled on these issues. The following provisions imply a right to privacy, due process or equal protection: • Art. IV, § 1: All men are born equally free and independent, and have certain inherent rights, among which are those of enjoying and defending life and liberty, of acquiring and protecting property and the pursuit of happiness. To secure these rights governments are instituted among men, deriving their just powers from the consent of the governed. • Art. IV, § 2: No person shall be deprived of life, liberty or property without due process of law. • Art. VI, § 11: The right of the people to be secure in their persons, houses, papers and effects, against unreasonable searches and seizures shall not be violated, and no warrant shall issue but upon probable cause supported by affidavit, particularly describing the place to be searched and the person or thing to be seized. • Art. VI, § 26: All political power is inherent in the people, and all free government is founded on their authority, and is instituted for their equal protection and benefit, and they have the right in lawful and constituted methods to alter or reform their forms of government in such manner as they may think proper.
Future Considerations	The Governor of South Dakota has defended the state's abortion ban and has stated she would not be in favor of amending the law to include an exception for rape or incest. Gov. Noem and legislative leaders have called the South Dakota Legislature back for a special session to enact further abortion restrictions, such as criminalizing the use and shipment of abortion drugs, prohibiting advertisements

	for abortion services in the state, banning employers from paying travel costs for employees seeking abortions, and requiring doctors outside the state to refer South Dakota residents to third-party counselors prior to performing an abortion. See KHN.org, "The Push for Abortion Lawmaking After 'Dobbs' is Unique, Legal and Political Experts Say," (Jul. 8, 2022). Grassroots healthcare organizations in the state are looking to put a constitutional amendment on the ballot during the next election cycle that would make the near-total ban on abortion less restrictive. See AP News, "Healthcare group wants abortion issue on the ballot in South Dakota," (Jun. 30, 2022); South Dakota Public Broadcasting (SDPB), "Abortion rights backers optimistic about petition drive following mid-term elections," (Nov. 18, 2022). There have been no court cases filed to attempt to enjoin the ban at this time.

Tennessee

Tenn. Code Ann. § 37-10-301 to § 37-10-308

Tenn. Code Ann. § 39-15-201 to § 39-15-219

Tenn. Code Ann. § 63-6-214

Tenn. Code Ann. § 63-6-241 (repealed, eff. Jan. 1, 2023)

Tenn. Code Ann. § 63-6-1102 to § 63-6-1108 (eff. Jan. 1, 2023)

Tenn. Code Ann. § 68-3-505 to § 68-3-506

Tenn. Code Ann. § 68-11-210

Tenn. Code Ann. § 68-11-223

Restrictions | Penalties | Aiding & Abetting | State Constitution | Future Considerations

NOTE: The Tennessee state constitution includes a provision explicitly denying the right to an abortion. In addition, Tennessee adopted a trigger ban in 2019 that prohibits all abortions with no exceptions. Instead, the law provides an affirmative defense for physicians who perform an abortion to save the life of the pregnant person. In 2020, a fetal heartbeat ban along with several cascading bans were also adopted. These and other varying abortion restrictions remain on the books and were not expressly repealed by the trigger ban even though they conflict. Finally, new laws related to abortion-inducing drugs were adopted in May 2022 to take effect on January 1, 2023, repealing and replacing older provisions on the same topic. These new laws are described under Future Considerations. The following summary of state law includes the trigger ban, the fetal heartbeat ban, the cascading bans and all other abortion laws currently enacted in Tennessee, regardless of whether or not they conflict with one another or are enforceable.

Restrictions

Abortion Ban (the Human Life Protection Act):

- A person who performs or attempts to perform an abortion commits the offense of criminal abortion; there are no exceptions. Tenn. Code Ann. § 39-15-213.
  - **Affirmative Defenses**:
    - The abortion was performed by a licensed physician,
    - It was necessary to prevent the death of the pregnant woman, or to prevent serious risk of substantial and irreversible impairment of a major bodily function, and
    - The physician performed the abortion in a manner that gives the best opportunity for the unborn child to survive.

- There is no affirmative defense if the abortion was performed on the basis of the pregnant woman's mental health, or a claim or diagnosis that the woman would engage in self-harm.

Additional Abortion Restrictions that have not been repealed:

- A person who performs an abortion commits the crime of criminal abortion, unless the procedure is performed under the following circumstances: Tenn. Code Ann. § 39-15-201(b).
  - Abortions may be performed during the first 3 months of pregnancy by a licensed physician after consent is given. Tenn. Code Ann. § 39-15-201(c)(1).
  - Abortions may be performed after the first 3 months of pregnancy, but before viability, by a licensed physician in a hospital after consent is given. Tenn. Code Ann. § 39-15-201(c)(2).
- No abortion may be performed on a woman who cannot produce evidence that she is a bona fide resident of Tennessee. Tenn. Code Ann. § 39-15-201; Tenn. Code Ann. § 39-15-209.
- Partial birth abortions are prohibited. Tenn. Code Ann. § 39-15-209.
  - **Exception**: Permitted to save the life of the mother whose life is endangered by a physical disorder, illness, or injury.
- No abortion may be performed when the unborn child is viable. Tenn. Code Ann. § 39-15-211.
  - **Affirmative Defenses**: Tenn. Code Ann. § 39-15-211(b)(2).
    - The unborn child was not viable, or
    - The abortion was necessary to prevent the death of the pregnant woman, or to prevent serious risk of substantial and irreversible impairment of a major bodily function.
  - There is no affirmative defense if the abortion was performed on the basis of the pregnant woman's mental health, or a claim or diagnosis that the woman would engage in self-harm.
  - **Predicate Requirements**: Tenn. Code Ann. § 39-15-211(b)(4).
    - Both the physician performing the procedure and another, unassociated physician certify in writing their medical reasons why the abortion is necessary,
    - The abortion is performed in a hospital with a NICU,
    - All opportunities are provided for the unborn child to survive, and
    - A second physician is in attendance who can take care of the infant if born alive.
- No abortion may be performed after the beginning of the twentieth (20th) week of pregnancy, or once the unborn fetus is viable, except in a medical emergency or to save the life of the mother. Tenn. Code Ann. § 39-15-212.
- No person shall perform an abortion upon a pregnant woman whose unborn child has a fetal heartbeat. Tenn. Code Ann. § 39-15-216(c).
  - **Exception**: The physician determines that there is no fetal heartbeat.

- This provision also includes cascading abortion bans at 6, 8, 10, 12, 18, 20, 21, 22, 23, and 24 weeks. Tenn. Code Ann. § 39-15-216(c)(2) through (c)(12).
    - **NOTE**: Although the fetal heartbeat ban and the cascading abortion bans have not been expressly repealed by the Human Life Protection Act, the abortion ban located at § 39-15-213 "shall control." Tenn. Code Ann. § 39-15-215(k)(4).
- Abortions performed on the basis of race, sex selection or a diagnosis of Down syndrome are prohibited. Tenn. Code Ann. § 39-15-217.
    - **Affirmative defenses** are available, subject to several predicate requirements.
    - **NOTE**: Although the bans for race, sex selection and Down syndrome diagnosis have not been expressly repealed by the Human Life Protection Act, the abortion ban located at § 39-15-213 "shall control." Tenn. Code Ann. § 39-15-217(j)(4).

Drug-Induced Abortion Requirements that have not been repealed:

- Except in the case of a medical emergency, abortion inducing drugs may not be prescribed until at least 48-hours after a physician informs the pregnant woman that it may be possible to reverse the chemical abortion if she acts quickly. Tenn. Code Ann. § 39-15-218.
    - Medical emergency does not include threats of self-harm or mental health issues.
- No nurse practitioner or physician's assistant may write or sign a prescription for or dispense any medication or provide any procedure involving a medication whose sole purpose is to cause an abortion. Tenn. Code Ann. § 53-10-104.

Physician Requirements that have not been repealed:

- Abortions may only be performed by licensed physicians. Tenn. Code Ann. § 39-15-201.
- Physicians may not perform abortions unless they have admitting privileges at a licensed hospital in the county in which the procedure is to be performed, or a county adjacent. Tenn. Code Ann. § 39-15-202(j).
- Physicians must exercise professional skill, care, and diligence to preserve the life and health of a child born alive during the course of an abortion. Tenn. Code Ann. § 39-15-206.
- Prior to taking informed consent, physicians must determine the gestational age of the fetus, perform an ultrasound, explain and display the ultrasound to the woman seeking an abortion, and make audible the fetal heartbeat, if any. Tenn. Code Ann. § 39-15-215.
- The physician must be physically present during the performance of the abortion or the administration or dispensation of an abortion-inducing drug. Tenn. Code Ann. § 63-6-241 (to be repealed, eff. Jan. 1, 2023).

Informed Consent Requirements that have not been repealed:

- Except in a medical emergency, the woman must provide her informed, written consent. Tenn. Code Ann. § 39-15-202.
    - "Informed" means that the woman was informed of the gestational age, that the fetus may be viable if applicable, that there are

agencies that can assist; and there are medical benefits, risks, or both to undergoing the procedure

- There is a 48-hour waiting period prior to the performance of an abortion, including a drug-induced abortion, unless there is a medical emergency. Tenn. Code Ann. § 39-15-202(d); Tenn. Code Ann. § 39-15-218.
- Prior to performing the abortion, the physician must first determine and inform the woman of the gestational age, perform an ultrasound, auscultate the fetal heartbeat (if there) so that the pregnant person may hear it, explain the ultrasound, display the images, record the presence or absence of a fetal heartbeat in the person's medical record, and get written consent thereof. Tenn. Code Ann. § 39-15-215.
- At least one parent or legal guardian must provide written consent if the mother is an unemancipated minor. Moreover, the person performing the abortion or their agent must also verify the relationship through some form of documentation and retain it for at least one year.
    - **Exception:** for medical emergencies "that so complicates the surgery as to require an immediate abortion." Tenn. Code Ann. § 37-10-303.

Facility Requirements that have not been repealed:

- Any hospital, private office, ambulatory surgical center, facility or clinic that provides more than 50 abortions in a year must post a sign related to the possible reversal of a drug-induced abortion. Tenn. Code Ann. § 39-15-218.
- Any facility that performs more than fifty (50) surgical abortions per year must conduct mandatory interim assessments of their compliance with standards set by department and board. Tenn. Code Ann. § 68-11-210.
- An ambulatory surgical center that terminates pregnancies must maintain $2,000,000.00 of health care liability insurance, satisfy regulation phases, cannot be in violation of departmental regulations, and the administrator must be a licensed physician, licensed practical nurse, or have a degree from a four-year institution and health-related experience, and be of good moral character. Tenn. Code Ann. § 68-11-223.

Reporting Requirements that have not been repealed:

- Physicians shall keep a record of all abortions performed, except for drug-induced abortions where the expulsion of the aborted fetus or fetal tissue did not take place at the physician's facility. Tenn. Code Ann. § 39-15-203.
- If a physician is performing an abortion on a minor who is less than 13 years old and has a reasonable cause to report the sexual abuse of a minor pursuant to § 37-1-605, the physician will notify the official to whom the report is made of the date and time of the scheduled abortion and that sample of embryonic tissue will be preserved and available for law enforcement to investigate the rape of the minor. Tenn. Code Ann. § 39-15-210.
- A physician criminally charged with violating the informed consent requirements under § 39-15-215 must report the charges within seven days of learning of them to the medical board. Tenn. Code Ann. § 39-15-215.

	• A physician criminally charged with performing an abortion due to the sex, race or Down syndrome status of the fetus must report the charges within seven days of learning of them to the medical board. Tenn. Code Ann. § 39-15-217. • Attending physicians and persons in charge of facilities where abortions are performed are required to file reports with the Department of Health each time an abortion is performed. Tenn. Code Ann. § 68-3-505.

Penalties	**Immunities:** A woman will not be prosecuted for seeking an abortion, or for refusing to look at an ultrasound or listen to a fetal heartbeat, Tenn. Code Ann. § 39-15-206; Tenn. Code Ann. § 39-15-211; Tenn. Code Ann. § 39-15-215; Tenn. Code Ann. § 39-15-216; Tenn. Code Ann. § 39-15-217; Tenn. Code Ann. § 39-15-218.
	
	Criminal Penalties:
	• Class C felonies are punishable by not less than three years but not more than fifteen years imprisonment and a possible fine not more than $10,000. Tenn. Code Ann. § 40-35-111. **The following are considered Class C felonies**:
	  o Performing or attempting to perform an abortion without a license and that is not for the purpose of preventing the death of the pregnant woman or preventing serious risk of substantial and irreversible impairment of a major bodily function of the pregnant woman. Tenn. Code Ann. § 39-15-213.
	• **Class C felony penalties that have not been repealed:**
	  o Performing an abortion without complying with the requirements under § 39-15-201(c). Tenn. Code Ann. § 39-15-201.
	  o Performing an abortion on a non-resident of Tennessee, or failing to obtain evidence that the woman is a resident of Tennessee. Tenn. Code Ann. § 39-15-201.
	  o Knowingly or recklessly performing a partial-birth abortion. Tenn. Code Ann. § 39-15-209.
	  o Purposely performing or attempting to perform an abortion when the fetus is viable. Tenn. Code Ann. § 39-15-211.
	  o Performing an abortion in violation of consent requirements. Tenn. Code Ann. § 39-15-215.
	  o Performing an abortion without first determining the gestational age of the fetus. Tenn. Code Ann. § 29-15-216.
	  o Performing or attempting to perform an abortion when there is a fetal heartbeat. Tenn. Code Ann. § 39-15-216.
	  o Performing or attempting to perform or induce an abortion at 8, 10, 12, 15, 18, 20, 21, 22, 23, 24 weeks gestational age. Tenn. Code Ann. § 39-15-216.
	  o Knowingly performing an abortion for reasons related to the sex, race or Down syndrome status of the fetus. Tenn. Code Ann. § 39-15-217.
	  ▪ It shall be an affirmative defense to charges brought under § 39-15-217 that a medical emergency has required the

abortion and a physician has complied with related requirements under the statute.

- Class E felonies are punishable by not less than one year but not more than six years imprisonment and a possible fine of not more than $3,000. Tenn. Code Ann. § 40-35-111. **The following are considered Class E felony penalties that have not been repealed:**
  - Attempting to procure a criminal miscarriage, unless such attempt is performed in compliance with the requirements of the section. Tenn. Code Ann. § 39-15-201.
  - Failing to take all steps necessary to preserve the life and health of an infant born alive during an abortion, except if it can be determined that the fetus is severely malformed, then the use of life support measures need not be attempted. Tenn. Code Ann. § 39-15-206.
  - Violating ultrasound requirements. Tenn. Code Ann. § 39-15-215.
  - Intentionally or knowingly performing an abortion in violation of the informed consent requirements under § 39-15-202(a) - (d), or § 39-15-215. Tenn. Code Ann. § 39-15-202(h)(1); Tenn. Code Ann. § 39-15-215.
    - It shall be an affirmative defense to charges brought under § 39-15-215 that a medical emergency has required the abortion and a physician has complied with related requirements under the statute. Tenn. Code Ann. § 39-15-215(e)(2).
  - Knowingly or recklessly performing a drug-induced abortion in violation of the notice requirements under § 39-15-218. Tenn. Code Ann. § 39-15-218.
- Class A misdemeanors are punishable by not greater than 11 months, 29 days imprisonment or a fine not to exceed $2,500 or both. Tenn. Code Ann. § 40-35-111. **The following are considered Class A misdemeanors that have not been repealed**:
  - Failing to provide a duplicate copy of the signed consent form to a woman on whom an abortion was performed. Tenn. Code Ann. § 39-15-202(h)(1).
  - Failing to make a viability determination before performing or inducing an abortion after the 20th week of pregnancy. Tenn. Code Ann. § 39-15-212.
  - Intentionally performing an abortion in violation of requirements related to unemancipated minors. Tenn. Code Ann. § 37-10-306.
- Class B misdemeanors are punishable only be a fine (as specified in the applicable statute). Tenn. Code Ann. §§ 40-35-111; 37-10-303. **The following are considered Class B misdemeanors that have not been repealed**:
  - Performing an abortion on an unemancipated minor who fails to retain the required documentation proving the relationship between the minor and the parent or legal minor. Tenn. Code Ann. § 37-10-303.
- For the purposes of the "Part 2 Criminal Homicide" code, "another" or "another person" include a human embryo or fetus at any stage of gestation

in utero when the term refers to the victim of any act made criminal. Tenn. Code Ann. § 39-13-214.

Civil Action & Penalties that have not been repealed:

- Any person who has been requested to perform an abortion on a minor who is less than 13 years old must report it to the proper officials. A first violation is subject to a civil penalty of not less than $500, a second violation is subject to a civil penalty of not less than $1,000, and a third or subsequent violation is a Class A misdemeanor. Tenn. Code Ann. § 39-15-210.
- A civil action under § 39-15-218, related to proper notice requirements for drug-induced abortions, may be maintained by a woman upon whom an abortion has been performed, the father of the unborn child, or grandparents, if the woman was a minor or died during the procedure. Tenn. Code Ann. § 39-15-218.
    - Damages will not be awarded when the plaintiff's criminal conduct resulted in the pregnancy.
- Any person who fails to obtain parental consent and performs an abortion an unemancipated minor may be subject to civil liability including exemplary damages in appropriate civil actions. Tenn. Code Ann. § 37-10-307.

Administrative Action & Penalties that have not been repealed:

- The State Board of Medical Examiners has the power to reprimand a physician, and suspend, revoke or delay the issuance of a license for violations of the abortion laws. Tenn. Code Ann. § 63-6-214(b)(6).
- Any physician who violates the informed consent requirements under § 39-15-202 is guilty of unprofessional conduct and may have their license suspended or revoked. Tenn. Code Ann. § 39-15-202.
- If a physician who performs abortions in their private office does not follow informed consent requirements under § 39-15-201(i)(1)(A) that mandate the posting of a sign related to unlawful coercion of an abortion, that physician shall be assessed a civil penalty of $1,000 dollars by the medical licensing board for each day such violation continues. Tenn. Code Ann. § 39-15-201(i)(2)(B).
- Any licensed abortion facility that does not follow informed consent requirements under § 39-15-201(i)(1)(A) that mandate the posting of a sign related to unlawful coercion of an abortion, that physician shall be assessed a civil penalty of $2,500 dollars by the medical licensing board for each day such violation continues. Tenn. Code Ann. § 39-15-201(i)(2)(A).
- Any physician who performs an abortion after viability shall have their license revoked. Tenn. Code Ann. § 39-15-211.
- Any physician who fails to make a viability determination before performing or inducing an abortion after the beginning of the 20th week of pregnancy shall have their license suspended for no less than six (6) months. Tenn. Code Ann. § 39-15-212.
- Any private office, ambulatory surgical center, facility or clinic that negligently fails to post the notice requirements related to drug-induced abortions under § 39-15-218 shall be assessed a civil penalty of $10,000 by

	the Department of Health for each violation. Tenn. Code Ann. § 39-15-217.
Aiding & Abetting	**Third-Parties:** • Impersonating a parent or legal guardian for the purpose of circumventing the consent requirements for an unemancipated minor is a Class A misdemeanor punishable by not greater than 11 months, 29 days imprisonment or a fine not to exceed $2,500 or both. Tenn. Code Ann. § 40-35-111; Tenn. Code Ann. § 37-10-303.
State Constitution	The state constitution includes a provision stating that there is no constitutionally protected right to an abortion: • Section 36 directly addresses abortion and states that nothing in the state constitution "secures or protects the right to an abortion or requires the funding of an abortion." Tenn. Const. art. I, § 36.
Future Considerations	In May 2022, the Tennessee legislature adopted the Tennessee Abortion-Inducing Drug Risk Protocol Act, which will become effective on January 1, 2023. There are no provisions addressing conflicts with the Human Life Protection Act. While the Act does not provide a gestational age limit, it includes the following relevant provisions: • Abortion inducing drugs shall not be provided to a patient via courier, delivery or mail service. Tenn. Code Ann. § 63-6-1103(eff. Jan. 1, 2023). • Prior to dispensing or prescribing abortion-inducing drugs, the physician must examine the pregnant woman in person. Tenn. Code Ann. § 63-6-1104(eff. Jan. 1, 2023). • The physician must schedule follow-up visits at approximately 7 and 14 days after administration of the drugs to confirm the pregnancy has been terminated and use their best efforts to get the patient to comply. Tenn. Code Ann. § 63-6-1104(eff. Jan. 1, 2023). • Causes of action for wrongful death, civil malpractice and injunctive relief are available to the patient, the spouse, parent or former healthcare provider, or a prosecuting attorney. Tenn. Code Ann. § 63-6-1106 (eff. Jan. 1, 2023). o If either party prevails, attorney's fees may be awarded. • Intentionally, knowingly, or recklessly violating abortion-inducing drug protocols will result in a fine of not more than $50,000 or between 1 and 6 years imprisonment, or both. Tenn. Code Ann. § 63-6-1105 (eff. Jan. 1, 2023). Hours after the *Dobbs* decision was released, the Tennessee Attorney General filed an emergency motion to lift the injunction on the fetal heartbeat ban. That ban became moot on August 28, 2022, when the near-total ban took effect. See Tennessean, "Tennessee 6-week abortion ban can now take effect following court

	order," (Jun. 28, 2022); Tennessean, "Tennessee's near-total abortion ban goes into effect Thursday. Here's what to know about the law," (Aug. 25, 2022). In October 2022, the Tennessee Attorney General issued an opinion clarifying that the Human Life Protection Act (the near-total ban) does not apply to the disposal of unused IVF embryos. See AP, "AG: Disposing embryos outside uterus not against Tennessee law," (Nov. 4, 2022); see also *Applicability of the Human Life Protection Act to the Disposal of Human Embryos that Have Not Been Transferred to a Woman's Uterus*, Op. Atty. Gen. No. 22-12 (Oct. 20, 2022). Conversations have begun among members of the legislature that the abortion ban should be amended to include actual exceptions and not the current affirmative defense language. These changes are likely to be proposed on a bipartisan basis in 2023. See WKRN, "Senator plans to file bill adding exceptions to Tennessee abortion law, remove 'affirmative defense' clause," (Dec. 6, 2022); Tennessean, "Abortion legislation pending to provide exceptions, save life of the mother," (Nov. 22, 2022); AP, "Lawyer's mission: Translate Tennessee's bewildering abortion ban," (Sep. 5, 2022).

Texas

Tex. Health & Safety Code § 170.001 to § 170.002

Tex. Health & Safety Code § 170A.001 to § 170A.007

Tex. Health & Safety Code § 171.001 to § 171.212

Tex. Health & Safety Code § 245.001 to § 245.025

Tex. Occ. Code § 103.001 to § 103.002

Tex. Occ. Code § 164.052; § 164.055 and § 164.0551

Tex. Fam. Code § 33.001 to § 33.014

Vernon's Ann. Texas Civ.St. Art. 4512.1

Restrictions | Penalties | Aiding & Abetting | State Constitution | Future Considerations

NOTE: With the release of the U.S. Supreme Court opinion in *Dobbs v. Jackson Women's Health Organization*, Texas has banned all abortions with an exception for medical emergencies, but none for rape or incest. The medical emergency exception also specifically excludes mental health emergencies and forbids physicians from performing abortion if the pregnant person's mental state puts them at a risk for self-harm. The trigger law that creates this ban went into effect on August 25, 2022. Prior to that point, the Texas Supreme Court had allowed enforcement of an old 1925, pre-*Roe* ban to begin. Neither the pre-*Roe* ban nor the trigger ban specifically repeal any of the other abortion-related statutes in Texas. The following summary of state law includes the trigger ban and all other laws currently enacted in Texas, regardless of whether they conflict with one another or are enforceable.

Restrictions

Pre-*Roe* Abortion Ban:

- If any person shall designedly administer to a pregnant woman or knowingly procure to be administered with her consent any drug or medicine or shall use towards her any violence or means whatever externally or internally applied, and thereby procure an abortion, they shall be confined in the penitentiary not less than two nor more than five years. Vernon's Ann. Texas Civ.St. Art. 4512.1.

Trigger Ban (eff. Aug. 25, 2022):

- A person may not knowingly perform, induce, or attempt an abortion, unless the pregnant female has a life-threatening physical condition aggravated by, caused by, or arising from a pregnancy that places the female at risk of death or poses a serious risk of substantial impairment of a major bodily function. The method of abortion must provide the unborn child with the best opportunity to survive unless it would pose greater harm to the pregnant female. Tex. Health & Safety Code § 170A.002.

Additional Abortion Restrictions that have not been repealed:

- A physician may not knowingly perform or induce an abortion if the physician has detected a fetal heartbeat except in cases where medical emergency necessitates the abortion. Tex. Health & Safety Code §§171.204-171.205.
- Abortion is prohibited if the probable post-fertilization age of the fetus is 20 or more weeks, unless the abortion is necessary to avoid death or serious risk of substantial and irreversible physical impairment of a major bodily function or the child has a severe and irreversible fetal abnormality. In such instances the method of abortion must be that which provides the best opportunity for the unborn child to survive. Tex. Health & Safety Code §§ 171.044 - 171.046.
- An abortion is prohibited during the third trimester when the fetus is viable unless the abortion is necessary to prevent the death or a substantial risk of serious impairment to the physical or mental health of the woman; or the fetus has a severe and irreversible abnormality. Tex. Health & Safety Code § 170.002.
- Abortions are prohibited against pregnant unemancipated minors unless there is a court order or parental/guardian consent and a 48-hour waiting period, unless there is a medical emergency (which must be certified and recorded) Tex. Fam. Code § 33.002.
- Partial-birth abortions are prohibited, unless necessary to save the life of a mother who is endangered by a physical disorder, physical illness, or physical injury, including a life-endangering physical condition caused by or arising from the pregnancy. Tex. Health & Safety Code § 171.102.
- Dismemberment abortions are prohibited unless necessary in a medical emergency. Tex. Health & Safety Code § 171.152.

Drug-Induced Abortion Requirements that have not been repealed: Abortion-inducing drugs may only be provided by a physician. In addition, the physician must ---

- Examine the pregnant woman in person,
- Ensure that the pregnancy is not more than 49 days in gestational age.
- Determine the woman's blood type and provide advice regarding Rh incompatibility
- Schedule a follow-up visit no later than 14 days after the abortion-inducing drug is administered to confirm that the pregnancy has been terminated.

Tex. Health & Safety Code § 171.063.

Physician Requirements that have not been repealed:

- Physicians performing abortions must be licensed to practice medicine in Texas. Tex. Health & Safety Code § 171.003
- In order to satisfy informed consent requirements, physicians must make available at least 24-hours before the abortion a variety of informational materials, including a sonogram image, and must also explain that sonogram image, determine the age of the fetus, and perform a heart auscultation, unless the women waives her right to hear it. Tex. Health & Safety Code § 171.012; Tex. Health & Safety Code § 171.0122.
- Physicians must determine the probable gestational age of the baby, or obtain a determination of the age, before performing an abortion. Tex. Health & Safety Code § 171.043.
- Physicians must determine whether a fetal heartbeat exists before performing an abortion. Tex. Health & Safety Code § 171.203.
- Physicians have a responsibility to perform medically necessary abortions even in unlicensed abortion facilities. Tex. Health & Safety Code § 245.016.

Informed Consent Requirements that have not been repealed:

- A person may not perform an abortion without the voluntary and informed consent of the woman on whom the abortion is to be performed. Consent must be signed and in writing and retained for at least 7 years. Tex. Health & Safety Code § 171.011; Tex. Health & Safety Code § 171.012; Tex. Health & Safety Code § 171.0121.
- An abortion may not be performed until 24-hours after the physician provides the patient with the required informed consent materials unless there is a medical emergency. Tex. Health & Safety Code § 171.013.

Facility Requirements that have not been repealed:

- Abortion of a fetus age 16 weeks or more may be performed only at an ambulatory surgical center or hospital licensed to perform the abortion. Tex. Health & Safety Code § 171.004.
- Employees of abortion facilities are required to complete training to identify victims of human trafficking. Tex. Health & Safety Code § 171.082.
- Facilities must be licensed. Licenses are not transferrable or assignable. Tex. Health & Safety Code § 245.003.
    - **Exception:** hospital, doctor's office, or ambulatory surgery center. Tex. Health & Safety Code § 245.004.
    - **Unless**:
        - Doctor's office performs more than 50 abortions in a year. Tex. Health & Safety Code § 245.004;
        - Hospital, doctor's office, or ambulatory surgery center performs more than 10 abortions in a month (or if they operate less than 20 days that month, they would have if they extrapolate). Tex. Health & Safety Code § 245.004; OR
        - Hospital, doctor's office, or ambulatory surgery center performs more than 100 abortions in a year. Tex. Health & Safety Code § 245.004.
    - Abortion facilities must file annual report, or lose their license. Tex. Health & Safety Code § 245.005.

- Abortion facilities are subject to random, unannounced inspections to insure compliance. Tex. Health & Safety Code § 245.006.
- Abortion facilities must include their license number whenever they use their name and say they provide abortion services. § 245.0105.

Reporting Requirements that have not been repealed:

- In the case of an abortion after viability, a physician shall certify to the Health Department within 30 days of performing the abortion the specific exception that made the abortion lawful. Tex. Health & Safety Code § 170.002
- In the case of a medical emergency, a physician shall certify to the Health Department within 30 days of performing the abortion the specific medical condition that constituted the emergency. Tex. Health & Safety Code § 171.0124.
- In the case of a medical emergency, a physician shall execute a written document certifying the medical necessity of the abortion and specifying the woman's medical condition. If maternal health or emergency is not the reason for the abortion, the physician shall note this instead. A copy of this certification shall be maintained in the patient's records and at the physician's office. Tex. Health & Safety Code § 171.008.
- Physicians must report any abortion complications in extreme high, specific detail to the Texas Health and Human Services Commission within 30 days of the diagnosis or treatment of the complication. Tex. Health & Safety Code § 171.006.

Penalties

Criminal Penalties:

- Second degree felony for a physician who performs or induces an abortion, which is punishable by no more than 20 years or less than 2 years in state prison and may be punishable by a fine not to exceed $10,000. Tex. Health & Safety Code § 170A.004; Tex. Health & Safety Code § 170A.005; Tex. Penal Code § 12.32; Tex. Penal Code § 12.33.
  - If the unborn child dies as a result of the abortion, the penalty could be enhanced to a first-degree felony, which is punishable by no more than 99 years or less than 5 years in state prison and may be punishable by a fine not to exceed $10,000 and an additional fine of at least $100,000.
- Any person who performs or induces an abortion shall be imprisoned for a period of not less than two nor more than five years. Vernon's Ann,Texas Civ,St. Art. 4512.1.

Civil Actions & Penalties:

- Not less than $100,000 for each violation as well as attorneys' fees and costs associated with bringing an action. The attorney general shall file an action to recover a civil penalty assessed under this section. Tex, Health and Safety Code § 170A.005.

Criminal Penalties that have not been repealed:

- A state jail felony in Texas is punishable by between 180 days and 2 years in state prison and a possible fine of not more than $1,000. Tex. Penal Code § 12.35. **The following is a state jail felony:**
  - A physician who performs a dismemberment abortion. Tex. Health & Safety Code § 171.103.
  - A physician who performs a partial birth abortion.
  - A person who intentionally, knowingly or recklessly provides a drug-induced abortion in violation of Texas law. Tex. Health & Safety Code § 171.065
- Class A misdemeanor is punishable by a fine of no more than $4,000 and/or imprisonment for up to one year. Tex. Penal Code § 12.21. **The following are class A misdemeanors:**
  - A physician who violates the requirements of § 171.0031 (related to licensing, admitting privileges, and information to be provided to women seeking abortions) – FINE ONLY. Tex. Health & Safety Code § 171.0031.
  - A physician who does not fill out a complete report as required by the abortion facility requirements. Tex. Health & Safety Code § 245.011.
  - A person who operates/establishes an abortion facility without a license. Tex. Health & Safety Code § 245.014.
    - Each day of unlicensed operation is a separate violation. Tex. Health & Safety Code § 245.014.
    - Also liable for civil penalties of between $100 and $500 for each day. Tex. Health & Safety Code § 245.015.
- A physician who intentionally performs an abortion on a woman without fulfilling the informed consent requirements of §§ 171.011 to 171.018 commits a misdemeanor and shall be punished with a fine not to exceed $10,000. Tex. Health & Safety Code § 171.018.
  - Same penalty if performing an abortion on an unemancipated minor without parental consent. Tex. Fam. Code § 33.002.

Civil Actions & Penalties that have not been repealed:

- A civil action may be brought against a physician who performs an abortion or intends to perform an abortion once a fetal heartbeat has been detected. A successful claimant under this provision shall be awarded an amount not less than $10,000 in damages, plus costs and attorney fees. Tex. Health & Safety Code § 171.207; Tex. Health & Safety Code § 171.208.
  - Persons who may not bring an action under § 171.208:
    - An officer or employee of a state or local government entity; or
    - A person who impregnated the abortion patient through rape, sexual assault or incest, or any other prohibited conduct.
  - A claim brought under § 171.208 must be brought within 4 years.
- A civil action may be brought against a physician who performs a partial-birth abortion by the father of the fetus or, if the woman is a minor, by her parents. Tex. Health & Safety Code § 171.104.
  - Persons may not bring an action under § 171.104 if:
    - The person consented to the abortion; or

- The person's criminally injurious conduct (i.e. rape, sexual assault, or incest) resulted in the pregnancy. Violating the parental consent and minor abortion requirements through intention or gross negligence subjects the physician to a civil fine between $2,500 and $10,000. Tex. Fam. Code § 33.012
    - Consent of the minor is not a defense. Tex. Fam. Code § 33.012.

Administration Actions & Penalties that have not been repealed:

- The Texas Medical Board may take disciplinary action or assess an administrative penalty against a physician who administers abortion-inducing drugs in violation of the Texas Code. Tex. Health & Safety Code § 171.064.
- Health department has broad powers to deny, suspend, or revoke an abortion facility's license – either for violations of the regulations, or "when the health and safety of persons are threatened." Tex. Health & Safety Code § 245.012. Violations of licensing requirements subject people to administrative penalties. Tex. Health & Safety Code § 245.017.
- Violations of abortion regulations is prohibited practice. Tex. Occ. Code § 164.052. Prohibited practice may subject a physician to license revocation. Tex. Occ. Code § 164.051.
- Violations of abortion regulations will subject a physician to a refusal to examine or a refusal to renew a medical license. Tex. Occ. Code § 164.055.

Aiding & Abetting

Third-Parties:

- Civil action can be brought against any person who:
    - Knowingly engages in conduct that aids or abets the performance or inducement of an abortion after detection of a fetal heartbeat, including paying for or reimbursing the costs of an abortion through insurance or otherwise, if the abortion is performed or induced in violation of this subchapter, regardless of whether the person knew or should have known that the abortion would be performed or induced in violation of this subchapter or;
    - Intends to engage in conduct described by Subdivision (1) or (2) of the statute.

  Tex. Health & Safety Code § 171.208.

Penalties:

- Injunctive relief to prevent defendant from violating statute or aiding or abetting such a violation.
- Statutory damages in an amount not less than $10,000 for each abortion that the defendant performed or induced in violation of the statute.
- Reimbursement for costs and attorney's fees.
  Tex. Health & Safety Code § 171.208.

Persons who may not bring an action:

- An officer or employee of a state or local government entity; or
- A person who impregnated the abortion patient through an act of rape, sexual assault, incest or any other prohibited act.

	Tex. Health & Safety Code § 171.208.
State Constitution	The state constitution provides no direct language addressing abortion or a right to privacy. • Art. I, § 3a: Equality under the law shall not be denied or abridged because of sex, race, color, creed, or national origin. This amendment is self-operative. • Art. I, § 19, Part 1: No citizen of this State shall be deprived of life, liberty, property, privileges or immunities, or in any manner disfranchised, except by the due course of the law of the land.
Future Considerations	In August 2022, the trigger ban became fully enforceable. Now there are three significant abortion restrictions on the books in Texas that potentially conflict with one another. Once the trigger law went into effect, Whole Women's Health voluntarily dismissed their lawsuit that had been seeking to enjoin the trigger. See Texas Tribune, "Texans who perform abortions now face up to life in prison, $100,000 fine," (Aug. 25, 2022); see also the Texas entry on the Brennan Center's State Court Abortion Litigation Tracker. On July 8, 2022, it was reported that Texas lawmakers have issued warnings to the law firm Sidley Austin related to the firm's announcement that it will provide funds for their employees to travel out of state for abortion access. The warnings suggested that further legislation in Texas was being discussed that would disbar any attorneys who seek to assist others to obtain abortions out of the state. See Reuters, "Texas lawmakers target law firms for aiding abortion access," (Jul. 8, 2022). On July 10, 2022, news outlets reported that a California doctor plans to offer abortion services on a floating clinic that will operate in federal waters off the Gulf Coast. See AL.com, "Floating abortion clinic planned off Alabama coast in Gulf of Mexico," (Jul. 10, 2022).

Utah

Utah Code Ann. § 26-21-11

Utah Code Ann. § 26-2-23

Utah Code Ann. § 62A-4a-408

Utah Code Ann. § 76-5-201

Utah Code Ann. § 76-7-301 to § 76-7-331

Utah Code Ann. § 76-7a-101 to § 76-7a-301

Restrictions | Penalties | Aiding & Abetting | State Constitution | Future Considerations

NOTE: In 2020, Utah enacted a trigger ban to prohibit all abortions, but enumerated several exceptions, including for medical emergencies and several fetal abnormalities under certain circumstances. The ban also includes a clause stating that if any other provision of the Utah Code conflicts with the ban, then those conflicting provisions are superseded. The ban becomes enforceable once the legislative general counsel certifies to the Legislative Management Committee that a court of binding authority has ruled that the states may freely prohibit abortion, a process that began shortly after the *Dobbs* ruling was issued. The process stalled, however, when Planned Parenthood sued to enjoin the ban as a violation of rights guaranteed by the Utah Constitution. A court agreed with Planned Parenthood, and the ban has been enjoined pending that litigation. It is beyond the scope of this survey to determine which of Utah's laws are now operating. Thus, the following summary includes the ban and all other currently enacted laws, whether or not they conflict with the ban or are otherwise enforceable.

Restrictions

Abortion Ban (currently enjoined):

- Abortions may not be performed. Utah Code Ann. § 76-7a-201.
  - **Exceptions**:
    - To avert the death or serious risk of substantial and irreversible impairment of a major bodily function of the woman;
    - In the case of a lethal fetal defect or severe brain abnormality, but only if two physicians concur in writing; or
    - If the pregnancy was the result of rape or incest, and before the abortion the attending physician verifies that the incident has been reported to law enforcement.

All permitted abortions would have to be performed by a physician in either an abortion clinic or hospital, unless a medical emergency required otherwise. Utah Code Ann. § 76-7a-201.

Any violation of the ban is a second-degree felony punishable by 1 to 15 years in prison and a fine of as much as $10,000. Utah Code Ann. § 76-7a-201; Utah Code Ann. § 76-3-301.

Additional Abortion Restrictions that have not been repealed:

- No abortion may be performed on a viable unborn child. Utah Code Ann. § 76-7-302.
    - **Exceptions:**
        - The abortion is necessary to avert the death or substantial and irreversible impairment of a major bodily function of the woman.
        - The fetus has a defect that is "uniformly diagnosable and uniformly lethal," or a brain abnormality that is "uniformly diagnosable" and such defect or abnormality is certified by two physicians.
        - The woman is pregnant as the result of rape or incest, which the physician must verify and report to law enforcement.
- No abortion may be performed after 18 weeks gestational age, unless the abortion is permissible for the reasons described in § 76-7-302(3)(b). Utah Code Ann. § 76-7-302.5.
- If the abortion is performed when the fetus is viable the abortion procedure must be that which will give the unborn child the greatest chance of survival. Utah Code Ann. § 76-7-307.
- All abortions must be performed in an abortion clinic or a hospital unless it is necessary to perform it in a different location to save the mother's life. Utah Code Ann. § 76-7-302.
- In general, abortions in Utah may be performed at any time to save the life of the mother or prevent substantial injury. See Utah Code Ann. § 76-7-315.
- No abortion is allowed if the only reason for seeking the abortion is because the fetus has or potentially has Down syndrome. Utah Code Ann. §76-7-302.4.
- Saline abortions, which involve the injection of saline into the amniotic sac, are prohibited after viability unless other abortion methods would pose a risk of death or injury to the woman. Utah Code Ann. § 76-7-310.5.
- No person shall intimidate or coerce a person into obtaining an abortion. Utah Code Ann. § 76-7-312.
- Partial-birth abortions are prohibited. Utah Code Ann. § 76-7-326.

Physician Requirements that have not been repealed:

- An abortion may only be performed by a physician. Utah Code Ann. 76-7-302.

- Any physician performing an abortion must use all of their medical skills to preserve the life of the unborn child. Utah Code Ann. § 76-7-308.
- A physician performing an abortion on an unborn child of at least 20 weeks gestational age must use anesthesia to alleviate pain to the unborn child. Utah Code Ann. § 76-7-308.5.

Consent Requirements that have not been repealed:

- A physician must notify the parents of the minor at least 24-hours prior to performing an abortion. Utah Code Ann. § 76-7-304.
    - **Exceptions**:
        - The abortion is required immediately to save the life of the minor, or prevent a serious risk of substantial and irreversible impairment of a major bodily function.
        - The minor has been abused by the parent or guardian, or is pregnant as a result of incest to which the parent or guardian was a party.
        - The parents or guardians have not assumed responsibility for the minor's care and upbringing.
- A physician must obtain the consent of at least one parent/guardian if the patient is a minor. Utah Code Ann. § 76-7-304.5.
- At least 72 hours before an abortion, the woman must give informed and voluntary consent consistent with the American Medical Association's Code of Medical Ethics and the provisions of Utah Code Ann. § 76-7-305.

Reporting Requirements that have not been repealed:

- No later than the tenth day of each month, institutions must send a list of all births, deaths, fetal deaths, and induced abortions that occurred during the preceding month to the local registrar and department. Utah Code Ann. § 26-2-23.
- If a child abuse or incest report is made in connection with an intended or completed abortion by a minor, a physician must make a report of incest or abuse of the minor and MAY NOT INCLUDE that the report was made in connection with an abortion or a consultation for an abortion. Utah Code Ann. § 62A-4a-408 (to be renumbered as Utah Code Ann. § 80-2-206, eff. Sept. 1, 2022).
- All abortions must be reported to the Health and Human Services Interim Committee by December 31 of each year. Utah Code Ann. § 76-7-305.7.
- The physician must provide a report containing all the information laid out in Utah Code Ann. § 76-7-313 to the department within 30 days after the day on which the abortion is performed.
- If a minor is pregnant as a result of incest to which a parent or guardian was a party, the physician must make a report to the Division of Child and Family Services within Department of Human Services. Utah Code Ann. § 76-7-304.

Penalties

Immunities that have not been repealed:

- A woman is not criminally liable for seeking to obtain or obtaining an abortion that is permitted under the law. Utah Code Ann. § 76-7-314.5(2).

- A person is not guilty of criminal homicide for the death of an unborn child if the death is (a) caused by the abortion; (b) if the sole reason for the death is either that the actor did not consent to medical treatment and/or a cesarean section or failed to follow medical advice; (c) the pregnant person causes the death unintentionally or through a criminally negligent or reckless act of the pregnant person. Utah Code Ann. § 76-5-201.

Criminal Penalties that have not been repealed:

- Any person who performs an abortion on a viable fetus and without any of the exceptions listed under § 76-7-302(3) is guilty of killing an unborn child. Utah Code Ann. § 76-7-314.5.
- Any abortion performed after the unborn child reaches 18 weeks gestational age is a **second degree felony** punishable by one to fifteen years in prison and a fine of as much as $10,000. Utah Code Ann. § 76-7-314; Utah Code Ann. § 76-7-314.5; Utah Code Ann. § 76-3-203; Utah Code Ann. § 76-3-301.
    - **Exception**: the abortion is permissible for any reason described in § 76-7-302(3)(b).
- A third-degree felony is punishable by a prison term of up to five years and a fine of as much as $5,000. Utah Code Ann. § 76-3-203; Utah Code Ann. § 76-3-301. **The following are third degree felonies:**
    - Failing to use anesthesia to perform an abortion after 20 weeks gestational age. Utah Code Ann. § 76-7-307; Utah Code Ann. § 76-7-314.
    - Failing to preserve the life of a viable unborn child. Utah Code Ann. § 76-7-308; Utah Code Ann. § 76-7-314.
    - Experimentation with "live" unborn children unless the physician determines that testing for genetic defects is advisable. Utah Code Ann. § 76-7-310; Utah Code Ann. §76-7-314.
    - Intentional, knowing, and willful performance of a saline abortion after viability. Utah Code Ann. § 76-7-310.5; Utah Code Ann. § 76-7-314.
    - Buying or selling unborn children. Utah Code Ann. § 76-7-311; Utah Code Ann. § 76-7-314.
    - Intimidating or coercing anyone to get an abortion. Utah Code Ann. § 76-7-312; Utah Code Ann. § 76-7-314.
    - Performing a partial-birth abortion. Utah Code Ann. § 76-7-326; Utah Code Ann. § 76-7-314.
- A violation of any other provision in this chapter is a **Class A misdemeanor** punishable by up to 364 days in jail and a fine of up to $2,500. Utah Code Ann. § 76-7-314; Utah Code Ann. § 76-3-204; Utah Code Ann. § 76-3-301.

Civil Actions and Penalties that have not been repealed:

- Civil action may be brought by the father or the maternal grandparents of the fetus against a mother who receives a partial birth abortion if they were married at the time of the abortion unless the pregnancy results from the patient's criminal conduct or the plaintiff consented to the abortion. Utah Code Ann. § 76-7-327.

	Administrative Actions and Penalties that have not been repealed: • Performing a criminal abortion is considered unprofessional conduct and may be punished accordingly. Utah Code Ann. § 58-73-501. • A physician who violates informed consent requirements is guilty of unprofessional conduct and subject to suspension or revocation of their license and administrative penalties. Utah Code Ann. § 58-67-102; Utah Code Ann. § 58-68-102; Utah Code Ann. § 76-7-305. • If a physician/facility does not comply with the reporting requirements under Utah Code Ann. § 76-7-313, the department shall pursue all administrative and legal remedies. • The department may deny or revoke a license of a physician or abortion clinic/facility for any failure to comply with the rules of this chapter. Utah Code Ann. § 26-21-11.
Aiding & Abetting	No Provision.
State Constitution	There are no provisions directly related to abortion in the Utah constitution. However, abortion-rights advocates have asserted in court that several provisions cover the right to an abortion. • Art. I, § 1: All persons have the inherent and inalienable right to enjoy and defend their lives and liberties; to acquire, possess and protect property; to worship according to the dictates of their consciences; to assemble peaceably, protest against wrongs, and petition for redress of grievances; to communicate freely their thoughts and opinions, being responsible for the abuse of that right. • Art. I, § 2: All political power is inherent in the people; and all free governments are founded on their authority for their equal protection and benefit, and they have the right to alter or reform their government as the public welfare may require. • Art. I, § 4: The rights of conscience shall never be infringed. … • Art. I, § 7: No person shall be deprived of life, liberty or property, without due process of law. • Art. I, § 11: All courts shall be open, and every person, for an injury done to the person in his or her person, … • Art. I, § 14: The right of the people to be secure in their persons, houses, papers and effects against unreasonable searches and seizures shall not be violated; … • Art. I, § 25: This enumeration of rights shall not be construed to impair or deny others retained by the people. • Art. I, § 27: Frequent recurrence to fundamental principles is essential to the security of individual rights and the perpetuity of free government. • Art. IV, § 1: The rights of citizens of the State of Utah to vote and hold office shall not be denied or abridged on account of sex. Both male and female citizens of this State shall enjoy equally all civil, political and religious rights and privileges.

Future Considerations	On June 24, 2022, once the U.S. Supreme Court had issued their ruling in *Dobbs*, John Fellows, the General Counsel of the Utah Legislature, sent an email to the Legislative Management Committee certifying that Utah's abortion ban could come into effect. See Email from John J. Fellows to the Legislative Management Committee, as obtained by National Public Radio. The day after the certification email, Planned Parenthood of Utah sued to enjoin the state's trigger ban based on an argument that prohibiting abortions violates rights guaranteed by the Utah Constitution. See *Planned Parenthood v. Utah*, No. 220903886 (Utah Dist. Ct. Jun. 25, 2002). See also Reuters, "Planned Parenthood of Utah sues to block abortion ban," (Jun. 27, 2022). On July 11, 2022, a state court judge blocked the ban from coming into effect pending resolution of the litigation, and the Utah Supreme Court recently upheld that injunction. See Reuters, "Utah judge blocks state's sweeping new abortion ban," (Jul. 11, 2022); KSL.com, "Utah Supreme Court allows halt on trigger law to remain in place," (Oct. 14, 2022).

Vermont

18 Vt. Stat. Ann. § 9493 to § 9498

18 Vt. Stat. Ann. § 5222

Restrictions	**Abortions are permitted** regardless of gestational age: • Every individual who becomes pregnant has the fundamental right to have an abortion. 18 Vt. Stat. Ann. § 9493. • Restricting access to abortion is prohibited. 18 Vt. Stat. Ann. § 9497. • No public entity, including the Legislative, Executive or Judicial branches of the state of Vermont, shall deny or interfere with an individual's fundamental rights to choose or to refuse certain reproductive related medications or procedures, including abortion. 18 Vt. Stat. Ann. § 9494; 18 Vt. Stat. Ann. § 9496. **Reporting Requirements:** Physicians and facilities must report to the Health Commissioner within seven days of performing any abortion. 18 Vt. Stat. Ann. § 5222.
Penalties	There are no penalties for performing an abortion. Instead, there are penalties for entities that attempt to regulate abortion. **Civil Actions & Penalties:** A person whose right to access an abortion has been restricted may bring a private cause of action against a public entity for injunctive relief. Courts may award costs and reasonable attorney's fees to a person who prevails in such an action. 18 Vt. Stat. Ann. § 9498.
Aiding & Abetting	No Provisions.
State Constitution	In November 2022, Vermonters adopted a constitutional amendment to enshrine abortion rights into the state constitution. • Art. 22: [Personal reproductive liberty] That an individual's right to personal reproductive autonomy is central to the liberty and dignity to determine one's own life course and shall not be denied or infringed unless justified by a compelling State interest achieved by the least restrictive means.

Virgin Islands

V.I. Code Ann. tit. 14, § 151 to § 156

V.I. Codd Ann. tit. 14, § 2 to § 3

Restrictions | Penalties | Aiding & Abetting | Constitution | Future Considerations

NOTE: The Virgin Islands does not have a trigger ban or pre-*Roe* ban on the books, so abortion remains legal up to 24 weeks unless new legislation is introduced. The following summary of state law includes all laws currently enacted in the Virgin Islands.

Restrictions

Abortions can be performed:

- Up to and including 12 weeks after commencement of pregnancy. V.I. Code Ann. tit. 14, § 151(b)(1).
- After 12 weeks, up to and including 24 weeks, but only if the abortion is performed in a licensed hospital by a surgeon or gynecologist. V.I. Code Ann. tit. 14, § 151(b)(2).
- After 24 weeks of pregnancy, but only if the abortion is performed in a licensed hospital by a surgeon or gynecologist AND there is reasonable cause to believe that there is substantial risk that the pregnancy will endanger the life or health of the mother. V.I. Code Ann. tit. 14, § 151(b)(3).

Prohibitions:

- No public or private organization or society shall be created for the purpose of soliciting candidates for abortion. V.I. Code Ann tit. 14, § 153.

Physician Requirements:

- Only a licensed physician or surgeon may perform an abortion. V.I. Code Ann. tit. 14, § 151.

Informed Consent:

- Before an abortion may be performed, voluntary written consent of the pregnant woman must be obtained. V.I. Code Ann. tit. 14, § 151(a).

Penalties	**Criminal Penalties:**
	• A felony is punishable by imprisonment for more 1 one year, but not exceeding 5 years, and a fine not exceeding $1,000, or both. V.I. Code Ann. tit. 14, § 2. **The following are considered felonies:**
	  o Any person who performs an abortion other than in a manner authorized by § 151. V.I. Code Ann. tit. 14, § 156.
	  o Any person who procures an abortion other than in a manner authorized by § 151. V.I. Code Ann. tit. 14, § 156.

Aiding & Abetting	**Third Party Restrictions:** • Any person who procures an abortion in violation of § 151 commits a felony punishable by imprisonment not exceeding 5 years, and a fine not exceeding $1,000. V.I. Code Ann. tit. 14, § 156.
Territory Constitution	The Virgin Islands became a territory of the United States in 1917, but has yet to adopt its own Constitution. It is governed by the Organic Act, which was amended in 1968 to extend due process and equal protection rights to citizens of the islands. See 48 U.S.C. § 1548.
Future Considerations	Governor Bryan released a statement calling the decision in *Dobbs* "disappointing" and "disturbing." He also vowed to veto any legislation that might attempt to restrict abortion on the Islands. See Governor's Press Release, "Governor Bryan Issues Statement on U.S. Supreme Court Decision to Overturn Roe v. Wade," (Jun. 24, 2022).

Virginia

Va. Code Ann. § 18.2-71 to § 18.2-76.1

Va. Code Ann. § 16.1-241

Va. Code Ann. § 32.1-264

Va. Code Ann. § 54.1-2915

Va. Admin. Code § 5-550-120

Restrictions | Penalties | Aiding & Abetting | State Constitution | Future Considerations

Restrictions

There is a general exception for abortions performed to prevent death of the mother. Va. Code § 18.2-74.1.

Abortion bans:

- Partial birth abortions are prohibited. Va. Code § 18.2-741.1.

Abortions can be performed

- During the first trimester. Va. Code § 18.2-72.
- During the second trimester provided it is performed in a licensed hospital by a licensed physician. Va. Code § 18.2-73.
- After the second trimester provided it is performed in a hospital licensed under § 18.2-72 and the performing physician and two consulting physicians certify that the abortion is necessary to prevent death or substantial and irremediable impairment to the mental or physical health of the woman. Va. Code § 18.2-74.
    - Lifesaving measures must be used for the fetus if there is any clearly visible evidence of viability. Va. Code § 18.2-74(c).

Physician Requirements: Any physician licensed by the Board of Medicine to practice medicine and surgery or any nurse practitioner jointly licensed by the Board of Medicine and Nursing acting within their scope of practice may perform or assist termination of a pregnancy. Va. Code § 18.2-72.

Informed Consent:

- Informed written consent is required 24 hours before the abortion.
    - **Exception**: Informed consent is not required if the woman has been deemed incapacitated, or if there is permission given in writing by a

parent, guardian, committee or other person standing in loco parentis to the woman. Va. Code § 18.2-76.

- A minor may petition the court to authorize an abortion without consent from the minor's parents. Va. Code § 16.1-241(W).

Reporting Requirements: A fetal death or induced termination of pregnancy report shall be filed with the State Registrar within three days after any abortion, and the medical certification portion of the fetal death report shall be completed and signed within 24 hours after abortion by the attending physician. Va. Code Ann. §32.1-264; Va. Admin. Code § 5-550-120.

Penalties

Immunities: A pregnant mother may not be prosecuted for any criminal offense based on the performance of any act or procedure in violation of this section. Va. Code § 18.2-71.1.

Criminal Penalties:

- A Class 4 felony is punishable by at least two years in prison and a possible fine of up to $100,000. **The following are Class 4 felonies:**
  - Any person who attempts to or produces an abortion or miscarriage except as permitted by the statute is guilty of a Class 4 felony. Va. Code § 18.2-71.
  - Any person who performs a "partial birth infanticide." Va. Code § 18.2-71.1.
    - Partial birth infanticide is defined as any deliberate act that is intended to and does kill a human infant who has been born alive, but who has not been completely extracted or expelled from its mother, regardless of whether death occurs before or after extraction or expulsion from its mother has been completed.
    - Partial birth infanticide **does not** include (1) suction curettage abortion procedure; (2) suction aspiration abortion procedure; (3) dilation and evacuation abortion procedure involving dismemberment of the fetus prior to removal from the mother; or (4) completing delivery of a live human infant and severing the umbilical cord of any infant who has been completely delivered.
- A Class 2 felony is punishable by not less than five and not more than 40 years in prison. **The following is a Class 2 felony:**
  - Any person who unlawfully, deliberately, maliciously and with premeditation kills the fetus of another.
- A Class 3 misdemeanor is punishable by a fine of not more than $500. Va. Code § 18.2-11. **The following is a Class 3 felony:**
  - Any person who, by publication, lecture, advertisement, or by sale or circulation of any publication, or through the use of a referral agency for profit, or any other manner encourages or promotes performing an abortion or inducing a miscarriage that is prohibited under the Code. Va. Code § 18.2-76.1.

	Administrative Actions and Penalties: • The Board may refuse to issue a certificate or license to any person, place any person on probation for such time as it may designate; impose a monetary penalty, suspend or revoke any license for acts of unprofessional conduct which includes: undertaking any manner or by any means whatsoever to procure or perform or aid or abet in procuring or performing a criminal abortion. Va. Code Ann. § 54.1-2915.
Aiding & Abetting	No Provision.
State Constitution	There is no provision directly addressing abortion rights, or a right to privacy. • Art. I, §1: That all men are by nature equally free and independent and have certain inherent rights, of which, when they enter into a state of society, they cannot, by any compact, deprive or divest their posterity; namely, the enjoyment of life and liberty, with the means of acquiring and possessing property, and pursuing and obtaining happiness and safety. • Art. I, § 11: That no person shall be deprived of his life, liberty, or property without due process of law; that the General Assembly shall not pass any law impairing the obligation of contracts; and that the right to be free from any governmental discrimination upon the basis of religious conviction, race, color, sex, or national origin shall not be abridged, except that the mere separation of the sexes shall not be considered discrimination.
Future Considerations	On the day the Dobbs decision was handed down, Governor Youngkin stated he will seek to ban abortions after 15 weeks of pregnancy, but supports exceptions for medical emergencies, rape and incest. See Politico, "Youngkin will pursue 15-week abortion ban in Virginia," (Jun. 24, 2022). Meanwhile, Republican lawmakers in the state are calling for no compromises. See WTVR, "Congressman calls for abortion ban in Virginia: 'Republicans should not be negotiating'," (Jul. 9, 2022). Republican Del. Marie March has pre-filed a fetal personhood bill that would effectively ban all abortions in the state. The bill may be considered in 2023. See 13 News Now, "Virginia to consider bill that would make the state's stance: 'life begins as conception'," (Dec. 12, 2022).

Washington

Wash. Rev. Code § 9.02.100 to § 9.02.170

Wash. Admin. Code § 246-490-100

Restrictions | Penalties | Aiding & Abetting | State Constitution | Future Considerations

Restrictions

Washington State adopted the Reproductive Privacy Act originally in 1992 and updated the law in 2022. The law states that every individual possesses a fundamental right of privacy with respect to personal reproductive decisions. Wash. Rev. Code § 9.02.100.

Abortions may be performed at any time prior to viability, or to protect the pregnant individual's life or health. Wash. Rev. Code § 9.02.110.

Physician Requirements: A physician, physician assistant, advanced registered nurse practitioner, or other health care provider acting within the scope of practice may terminate a pregnancy, and a health care provider may assist them in terminating pregnancy. Wash. Rev. Code § 9.02.110.

Reporting Requirements: Each facility where abortions are performed shall report data concerning these abortions to the Secretary of Health each month. Wash. Admin. Code § 246-490-100.

Penalties

Criminal Penalties:

- Any person who performs an abortion on a viable fetus and not to protect the patient's life or health commits a class C felony, which is punishable by a maximum sentence of 5 years imprisonment and/or a fine in amount fixed by the court of $10,000. Wash. Rev. Code § 9.02.120; Wash. Rev. Code § 9A.20.020.
    - The good faith judgment of the medical professional is a defense. Wash. Rev. Code § 9.02.130.

Administrative Actions & Penalties:

- Performing a criminal abortion is considered unprofessional conduct that may subject the health care professional to suspension or revocation of their license. Wash. Rev. Code § 18.130.180.

Aiding & Abetting	The state cannot penalize, prosecute, or otherwise take adverse action against someone for aiding or assisting a pregnant individual in exercising their right to reproductive freedom with their voluntary consent. Wash. Rev. Code § 9.02.120.
State Constitution	Although the Washington State constitution contains provisions that implicate a right to privacy, there are no court cases construing these provisions to provide a right to an abortion. Governor Inslee has called for a constitutional amendment to specifically protect abortion access. • Art. I, § 3: No person shall be deprived of life, liberty, or property, without due process of law. • Art. I, § 7: No person shall be disturbed in his private affairs, or his home invaded, without authority of law. • Art. I, § 32: A frequent recurrence to fundamental principles is essential to the security of individual right and the perpetuity of free government. • Art. XXXI, § 1: Equality of rights and responsibility under the law shall not be denied or abridged on account of sex.
Future Considerations	Governor Inslee issued a directive on June 30, 2022 instructing the Washington State Patrol to refrain from cooperating with other states' investigations into reproductive health care services and activities that are legal in Washington State. See Exec. Directive 22-12. In addition, Washington State joined the Multi-State Commitment to defend access to reproductive health care that was also signed by the Governors of California and Washington State. See Oregon.gov, "West Coast States Launch New Multi-State Commitment to Reproductive Freedom, Standing United on Protecting Abortion Access in face of U.S. Supreme Court Decision on Roe vs. Wade," (Jun. 24, 2022).

West Virginia

W. Va. Code § 16-2R-1 to W. Va. Code § 16-2R-9

W. Va. Code § 16-5-22

W. Va. Code § 30-1-26

W. Va. Code § 30-3-13

W. Va. Code § 33-42-8

W. Va. Code § 61-2-8

Restrictions | Penalties | Aiding & Abetting | State Constitution | Future Considerations

NOTE: In August and September 2022, the West Virginia legislature held a special session that resulted in the enactment of new abortion restrictions and penalties. The new law does not fully repeal prior abortion provisions, but includes language declaring the former laws "of no force or effect" unless the new abortion restrictions and penalties are "judicially determined to be unconstitutional." In addition, the new law does not repeal a pre-*Roe* ban codified in 1849 that is currently enjoined. The following summary of abortion laws in West Virginia include the older pre-*Roe* ban and the new abortion restrictions enacted in September 2022.

Restrictions

Pre-*Roe* Abortion Ban (currently enjoined):

- Any person who shall administer to, or cause to be taken by, a woman, any drug or other thing, or use any means, with intent to destroy her unborn child, or to produce abortion or miscarriage, and shall thereby destroy such child, or produce such abortion or miscarriage, shall be guilty of a felony punishable by 3 to 10 years imprisonment. W. Va. Code § 61-2-8.
    - **Exception**: for any acts done "in good faith" with the intention of saving the life of the mother or unborn child.

Abortion Restrictions (eff. Sept. 13, 2022):

- No abortions may be performed. W. Va. Code § 16-2R-3.
    - **General Exceptions**:
        - Medical emergency.
        - Ectopic pregnancy.
        - Nonviable embryo or fetus.
- No partial birth abortions may be performed. W. Va. Code § 16-2R-3(e).

- No abortion inducing drugs may be prescribed or dispensed via telehealth. W. Va. Code § 30-1-26.

Abortions Permitted (eff. Sept. 13, 2022):

- On an adult within the first 8-weeks, or on a minor or incapacitated adult within 14-weeks if the pregnancy was the result of incest or sexual assault that has been reported to law enforcement at least 48 hours prior to the abortion, and the licensed medical professional performing the abortion has seen the report. W. Va. Code § 16-2R-3(b).

Physician Requirements (eff. Sept. 13, 2022):

- Only licensed medical professionals may perform abortions; this includes physicians, podiatrists, surgeons, and any other medical professional licensed under W. Va. Code § 30-3-1, et seq. or W. VA. Code § 30-14-1, et seq. W. Va. Code § 16-2R-2.
- If a fetus is born alive during the course of an abortion, the licensed medical professional must attempt to preserve the life and health of the child, and must ensure the child is transported and admitted to an appropriate medical facility. W. Va. Code § 16-2R-8(a).

Consent Requirements (eff. Sept. 13, 2022):

- In the case of a minor, notice must be provided to the parent or guardian in person, by phone or mail at least 48-hours prior to the abortion. W. Va. Code § 16-2R-5.
    - Minors may petition the courts to waive the notice requirements.

Reporting Requirements (eff. Sept. 13, 2022):

- All abortions must be reported no later than the tenth day of the month after they were performed. W. Va. Code § 16-5-22.

Penalties

Immunities: A pregnant female shall not be subject to any criminal penalties for any violation of abortion laws either as a principal, accessory, accomplice, conspirator or aidor and abettor. W. Va. Code. § 61-2-8(c).

Pre-*Roe* Abortion Ban (currently enjoined):

- Any person performs an abortion shall be guilty of a felony, punishable by between 3 and 10 years imprisonment. W. Va. Code § 61-2-8.
- If the woman upon whom an abortion was performed dies, then the person who performed the abortion shall be guilty of murder. W. Va. Code § 61-2-8.

Criminal Penalties:

- Any person other than a licensed medical professional who performs or attempts to perform an abortion shall be convicted of a felony and imprisoned for not less than 3 and not more than 10 years. W. Va. Code § 61-2-8.
- Knowingly performing a partial-birth abortion that is not necessary to save the patient's life is a felony punishable by a fine between $10,000 and $50,000, up to 2 years imprisonment, or both. W. Va. Code 33-42-8.

	• Any person who is not a licensed medical professional and who knowingly and willfully fails to exercise reasonable care to preserve the life of a fetus born alive after an abortion is guilty of the unauthorized practice of medicine, and shall be punished accordingly: W. Va. Code § 16-2R-8(c); W. Va. Code § 30-3-13.
	  o **Misdemeanor**: holding a license expired for 90-days or less; punishable by not more than 12-months in jail, a $5,000 fine or both.
	  o **Felony**: never been licensed, or holding an inactive license, or a license expired greater than 90-days; imprisonment for at least 1 and not more than 5 years in jail, a $10,000 fine or both.
	
	Civil Actions & Penalties: A patient may seek any remedy otherwise available to the patient under applicable law. W. Va. Code § 16-2R-8(d).
	
	Administrative Actions & Penalties:
	• Licensed medical professionals who willfully and knowingly perform or attempt to perform an abortion with intent to violate the abortion restrictions of § 16-2R-3 will be subject to disciplinary actions. W. Va. Code § 16-2R-7.
	• A finding of willful and knowing performance of an abortion by the Board will result in revocation of medical license. W. Va. Code § 16-2R-7.
	• Licensed medical professionals are subject to disciplinary actions, including revocation of their medical license, if they knowingly and willfully fail to exercise reasonable care to preserve the life of a fetus born alive after an abortion. W. Va. Code § 16-2R-8(b).

Aiding & Abetting	No provision.
State Constitution	West Virginia added Section 57 to Article VI of the West Virginia Constitution to say, "Nothing in this Constitution secures or protects a right to abortion or requires the funding of abortion."
Future Considerations	Abortion providers filed a lawsuit in June 2022 to challenge the enforcement of West Virginia's pre-*Roe* ban. A court granted an injunction on the older law on July 18, 2022, although the state AG is appealing the ruling. Shortly thereafter, the legislature convened and adopted strict new laws providing a total ban on abortions except in certain circumstances. Gov. Justice signed the newly enacted abortion restrictions into law in September and they became effective on October 5, 2022. See WV Public Broadcasting, "Judge Grants Injunction, W.Va. Abortions Effectively Allowed Again," (Jul. 18, 2022); WV Public Broadcasting, "Justice Signs Abortion Bill Into Law," (Sept. 16, 2022). West Virginia must now grapple with the sudden reversal of 50 years of federally guaranteed right to abortion and the century-old state law that makes providing abortions a felony. The West Virginia Attorney General's Office, in a separate

	legal review, also concluded that the pre-*Roe* ban that assigns felony punishment to abortion could be interpreted to apply to pregnant women. "The statute covers persons who perform abortions and, at least arguably, women who seek them," the Attorney General's Office wrote in the review. Whether to keep the law that way is a major issue for the Legislature to decide, the Attorney General's Office concluded: "The Legislature will need to decide whether to impose penalties on the provider, the pregnant mother, or both." See Steven Allen Adams, *The Intelligencer and Wheeling News Register*, Morrisey: 1800s Abortion Ban in West Virginia Is Enforceable (Jun. 30, 2022).

Wisconsin

Wis. Stat. § 48.257

Wis. Stat. § 48.375

Wis. Stat. § 69.186

Wis. Stat. § 253.09 to § 253.107

Wis. Stat. § 895.037 to § 895.038

Wis. Stat. § 940.04

Wis. Stat. § 940.13 to § 940.16

Wis. Admin. Code Med. § 11.01 to § 11.05

Restrictions | Penalties | Aiding & Abetting | State Constitution | Future Considerations

NOTE: Wisconsin first addressed abortion in 1849 when lawmakers enacted a general prohibition on the procedure after quickening, except when necessary to preserve the life of the mother. In 1858, that prohibition was expanded to prohibit abortion generally, regardless of whether quickening had occurred. Although related penalties changed over time, the broad prohibition has remained on the books, even after *Roe* was decided in 1972. The current Governor of Wisconsin tried unsuccessfully to have this pre-*Roe* ban repealed in June 2022. With the Supreme Court's ruling in *Dobbs*, abortion providers in Wisconsin have reacted as if the pre-*Roe* ban will be enforced, and while several local District Attorneys have said they would not prosecute under the ban, several others have said they would. The State AG brought a lawsuit in June 2022 to challenge the old ban and that litigation is winding its way slowly through the courts. The following summary of state law includes the pre-*Roe* ban and all other laws currently enacted in Wisconsin, regardless of whether or not they conflict with one another or are enforceable.

Restrictions

Pre-*Roe* Abortion Ban:

- No abortion may be performed on an "unborn quick child," unless advised by two physicians as necessary to save the mother's life. Wis. Stat. § 940.04(2).
- All abortions must be performed by a physician and, unless an emergency prevents, in a licensed maternity hospital. Wis. Stat. § 940.04(5).

Additional Abortion Restrictions:

- An abortion may not be performed when the fetus is capable of experiencing pain (if the probable gestational age is 20 or more weeks), except for medical emergencies. Wis. Stat. § 253.107.
- No partial-birth abortions may be performed, unless necessary to save the life of the mother. Wis. Stat. § 940.16.
- If abortion is performed after 12 weeks, except in medical emergencies, it must be performed in a state-approved hospital and the physician must take extra preoperative steps. Wis. Admin. Code Med. §§ 11.04-05.
- Any abortion performed to preserve the life or health of the pregnant woman must be performed in a hospital on an inpatient basis by a physician. Wis. Stat. § 940.15; Wis. Stat. § 253.105(2).

Drug-Induced Abortion Requirements:

- Prior to giving an abortion-inducing drug to a woman, the physician must perform a physical exam and be physically present in the room when the drug is dispensed. Wis. Stat. § 253.105.

Consent Requirements:

- An abortion cannot be performed or induced without voluntary and informed written consent. There is also a 24-hour waiting period. Wis. Stat. § 253.10.
- Informed consent must be obtained from the patient and their parent/guardian if a minor. Wis. Stat. § 48.375.

Reporting Requirements:

- Each facility in which abortions are performed must file a report annually. Wis. Stat. § 69.186.

Penalties

Immunities: No fine or imprisonment can be enforced against, and no prosecution can be brought against, a person who obtains an abortion or violates any provision of any abortion statute. Wis. Stat. § 940.13; Wis. Stat. § 253.107(4).

Criminal Penalties Under the Pre-*Roe* Ban:

- Any person, other than the mother, who intentionally destroys the life of an unborn child is guilty of a Class H felony which is punishable by imprisonment up to 6 years, or a fine of up to $10,000, or both. Wis. Stat. § 940.04(1).
- It is a class E felony, punishable by a fine up to $50,000 or imprisonment up to 15 years, or both, to intentionally abort an “unborn quick child”; or cause the death of a pregnant person by an intentional act to destroy the life of an unborn child. Wis. Stat. § 940.04.

	Additional Criminal Penalties:
	• It is a class A felony, punishable by life imprisonment, to perform an unlawful partial-birth abortion. Wis. Stat. § 940.16; Wis. Stat. § 939.50.
	• A class I felony is punishable by up to $10,000 or imprisonment up to 3 years and 6 months, or both. Wis. Stat. § 939.50. **It is a class I felony to:**
	  o Perform an abortion after fetus reaches viability. Wis. Stat. § 940.15.
	  o Intentionally perform abortion if one is not a physician. Wis. Stat. § 940.15.
	  o Perform an abortion on an unborn child capable of feeling pain. Wis. Stat. § 253.107.
	  o Dispense abortion-inducing drugs without first examining the pregnant person and being physically present in the room. Wis. Stat. § 253.105.
	
	Civil Actions & Penalties:
	• Any person who performs an unlawful abortion may be liable to civil actions. Wis. Stat. § 253.109(4); Wis. Stat. § 253.107(5).
	• Any person who performs abortion on a minor may be required to pay up to $10,000 and is liable for civil actions. Wis. Stat. §§ 895.037.
	• A civil action for damages, including exemplary damages, may be maintained against a physician who performs a partial-birth abortion. Wis. Stat. § 895.038.
	• A civil action may be maintained against a physician who provides abortion-inducing drugs to a woman without first performing a physical exam or being present in the room when the drugs are dispensed. Wis. Stat. § 253.105.

Aiding & Abetting	No Provisions
State Constitution	A right of privacy is recognized in Wisconsin in the state code. Wis. Stat. § 995.50 (1). However there are no mention of reproductive rights. There is no right to privacy or right to an abortion directly addressed in the state constitution. • Art I § 1: All people are born equally free and independent, and have certain inherent rights; among these are life, liberty and the pursuit of happiness; to secure these rights, governments are instituted, deriving their just powers from the con-sent of the governed.
Future Considerations	On June 28, 2022, Wisconsin AG Josh Kaul filed a lawsuit in Dane County Circuit Court challenging the constitutionality of the pre-*Roe* ban. See *Kaul, et al. v. Urmanski, et al.*, No. 2022-CV-1594 (Wis. Cir. Ct. filed Jun. 28, 2022). The litigation remains pending and could take a long time to wind its way to the Wisconsin Supreme Court. In the meantime, both Kaul and Democratic Gov. Tony Evers won re-election in November, though the legislature remains in the

	hands of Republicans who would like to enact further abortion restrictions to clarify the law. The pre-*Roe* ban remains in effect while the lawsuit proceeds. District Attorneys around the state have taken various stands as to whether or not they would prosecute under the law, and abortion clinics shut down in response. See Wisconsin Examiner, "Two paths forward on Wisconsin's abortion ban," (Nov. 21, 2022); PBS Wisconsin, "Dismissal motion could delay Wisconsin abortion challenge for months," (Nov. 22, 2022); Wisconsin Watch, "Prosecutors move to dismiss Wisconsin abortion ban challenge," (Dec. 3, 2022). Though no action has been taken at this time, Governor Evers has suggested that he may take executive action to help protect abortion rights in Wisconsin. WEAU News, "Evers considers executive action on abortion law," (Jun. 24, 2022). Two days before the ruling in *Dobbs* was released, the Wisconsin legislature, at the Governor's behest, opened and then immediately ended without any action a special session that had been called to repeal the pre-*Roe* abortion ban still on the books. CNN, "Wisconsin GOP abruptly ends special session called by Democratic governor to repeal 19th century abortion law," (Jun. 22, 2022). Since that time, Governor Evers has vowed to grant clemency to any doctor charged under the pre-*Roe* abortion ban. NBC News, Wisconsin Gov. Vows to Grant Clemency to Doctors Charged Under State Abortion Ban (Jun. 27, 2022).

Wyoming

Wyo. Stat. Ann. § 35-6-101 to § 35-6-119

Restrictions | Penalties | Aiding & Abetting | State Constitution | Future Considerations

NOTE: Wyoming's trigger ban did not immediately kick in after the decision in *Dobbs* was released. Instead, the law required certification to the Governor by the state Attorney General, which was completed on July 22, 2022 and the ban took effect on July 27, 2022. Shortly thereafter, the law was temporarily enjoined by the courts as litigation remains pending on the constitutionality of the ban. The below summary of Wyoming's laws includes the trigger ban and all other laws still on the books, whether or not they are enforceable.

Restrictions

Abortion Bans (currently enjoined).

- Abortions cannot be performed. Wyo. Stat. Ann. § 35-6-102(b).
  - **Exceptions:**
    - Abortion is necessary to preserve the woman from serious risk of death, or of substantial and irreversible physical impairment of major bodily function (not including psychological or emotional conditions)
    - Pregnancy is a result of incest or sexual assault.

Abortion Restrictions that have not been repealed:

- Abortion cannot be performed after embryo or fetus has reached viability, except when necessary to preserve the pregnant woman's health or life (based on appropriate medical judgment). Wyo. Stat. Ann. § 35-6-102(a).
  - **NOTE**: This subsection will be repealed if the abortion ban at § 35-6-102(b) becomes effective.
- Physician who performs an abortion pursuant to § 35-6-102 cannot intentionally terminate the viability of the unborn infant prior to, during, or following the procedure. Wyo. Stat. Ann. § 35-6-103.
- Any physician performing abortion must take medically appropriate and reasonable steps to preserve the life and health of an infant born alive. Wyo. Stat. Ann. § 35-6-104.
- No hospital, governing board, or any other person, firm, association, or group can terminate employment of, sanction, or discriminate against any person who refuses to perform or participate in any abortion. Wyo. Stat. §35-6-106.

	Informed Consent Requirements that have not been repealed:
	• Except in case of medical emergency, physician performing the abortion on the patient, referring physician, or person designated by either physician must inform patient of the opportunity to view an active ultrasound of the unborn child and hear the heartbeat of the unborn child if the heartbeat is audible. Wyo. Stat. Ann. § 35-6-119.
	  o The quality of the active ultrasound image and auscultation of fetal heart tone must be consistent with standard medical practice in the community.
	  o Does not apply to procedure performed with intent to:
	  ▪ Save the life of the patient;
	  ▪ Ameliorate serious risk of causing patient substantial and irreversible impairment of a major bodily function;
	  ▪ Preserve the health of the unborn child;
	  ▪ Remove a dead unborn child; or
	  ▪ Remove an ectopic pregnancy.
	• Except in the case of a medical emergency, abortion cannot be performed on minor unless at least one of the minor's parents/guardians are notified in writing at least 48 hours before the abortion, and the attending physician has obtained written consent of the minor and at least one parent/guardian, unless: Wyo. Stat. Ann. § 35-6-118.
	  o The minor (1) in a closed hearing, is granted the right to self-consent to an abortion by court order, is otherwise authorized by court order; and (2) the attending physician receives a certified copy of the court order and the minor's written consent.
	
	Record/Reporting Requirements that have not been repealed:
	• Attending physician must complete abortion reporting form, and submit it to the state health officer within 20 days after the abortion is performed. Wyo. Stat. Ann. § 35-6-107.
	
	Facility Requirements that have not been repealed:
	• No private hospital, clinic, institution, or other private facility is required to admit any patient for the purpose of performing an abortion nor to allow performance of an abortion. Wyo. Stat. Ann. §35-6-105.
	  o Private hospital, clinic, institution, or other private facility must inform any prospective patient seeking an abortion of its policy not to participate in abortion procedures. Wyo. Stat. Ann. §35-6-105.

Penalties	**Immunities:** No private action can arise against a private hospital, clinic, institution, or other private facility for refusing to perform or allow an abortion. Wyo. Stat. Ann. §35-6-105. **Criminal Penalties that have not been repealed:** • Any physician or other person who violates any provision of s35-6-102 – 104 is guilty of a felony punishable by imprisonment for up to 14 years. Wyo. Stat. Ann. § 35-6-110.

	• Any person other than a licensed physician who performs an abortion is guilty of a felony punishable by imprisonment for 1-14 years. Wyo. Stat. Ann. § 35-6-111. • Any person who performs or prescribes abortion by using anything other than accepted medical procedures is guilty of a felony punishable by imprisonment for up to 14 years. Wyo. Stat. Ann. § 35-6-112. • Any person, firm, corporation, group, or association who discriminates against someone for refusing to perform an abortion is guilty of an offense punishable by a fine of up to $10,000. Wyo. Stat. Ann. § 35-6-113. • Any physician or other person who knowingly performs abortion on minor in violation of s35-6-118 is guilty of a misdemeanor punishable by a fine of up to $1,000, imprisonment for up to 1 year, or both. Wyo. Stat. Ann. § 35-6-118. • Whoever sells, transfers, distributes, or gives away an aborted child, or any tissue or cells from an aborted child for any form of experimentation is guilty of a felony punishable by a fine of at least $10,000 and by imprisonment for 1-14 years. Wyo. Stat. Ann. § 35-6-115. • A person who prints or publishes an advertisement of a drug or nostrum with intent to use such drug to procure an abortion or miscarriage; or sells or gives away newspaper, pamphlet, or book containing such advertisement will be fined up to $100 and may be imprisoned for up to 6 months. Wyo. Stat. Ann. § 35-6-116.
Aiding & Abetting	**Third-Parties:** • Any person consenting, aiding, or abetting the sale, transfer, distribution, or other unlawful disposition of aborted child or tissue/cells of aborted child is guilty of a felony punishable by fine of at least $10,000 and by imprisonment for 1-14 years. Wyo. Stat. Ann. §35-6-115. o **Exception** – does not apply to legal organ or tissue donations made by a parent, to material from a fetus that is not aborted, or to tissue from an abortion used for testing for a medical condition.
State Constitution	There is no direct provision in the state constitution addressing abortion, or a right to privacy. There is, however, a provision related to health care decision-making that some legal experts in the state believe could cover a right to an abortion. • Art. I, § 6: No person shall be deprived of life, liberty or property without due process of law. • Art. I, § 38: Each competent adult shall have the right to make his or her own health care decisions. … The legislature may determine reasonable and necessary restrictions on the rights granted under this section to protect the health and general welfare of the people or to accomplish the other purposes set forth in the Wyoming Constitution. • Art. VI, § 1: … Both male and female citizens of this state shall equally enjoy all civil, political and religious rights and privileges.

Future Considerations	Gov. Mike Gordon certified the abortion ban under Wyoming law and it took effect on July 27, 2022. Shortly thereafter, a Wyoming judge placed an injunction on the ban while litigation challenging its constitutionality proceeded through the courts. The lawsuit remains pending, but is heading to the Wyoming Supreme Court for further deliberations. See *Johnson v. Wyoming*, No. 2022-18732 (Wyo. Dist. Ct. Aug. 10, 2022). See also PBS.org, "Most abortions will soon become illegal in Wyoming," (Jul. 22, 2022); AP, "Abortion to remain legal in Wyoming while lawsuit proceeds," Aug. 10, 2022; Cowboy State Daily, "Wyoming's Abortion Trigger Ban Advances to State Supreme Court," (Dec. 1, 2022).