

Abortion in America- How Legislative Overreach is Turning Reproductive Rights into Criminal Wrongs

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Introduction and Overview

- ▶ Impact of a decision overturning *Roe v. Wade* on criminal prosecutions and the implications for overcriminalization
- ▶ Analysis of abortion laws in nine states: Alabama, Arkansas, Georgia, Kentucky, Louisiana, Mississippi, Missouri, Ohio, Utah



Legislative Overview of State Statutes

TRIGGERING LEGISLATION \ FETAL HEARTBEAT BILLS & GESTATIONAL
AGE BANS \ “PERSONHOOD” LAWS \ “SELECTIVE SELECTION” BILLS

Triggering Legislation

- Statutes That Are Not Enforceable Unless *Roe v. Wade* Is Overturned.
- These laws act as a way to ensure abortions become automatically illegal in the event that *Roe* is overturned.

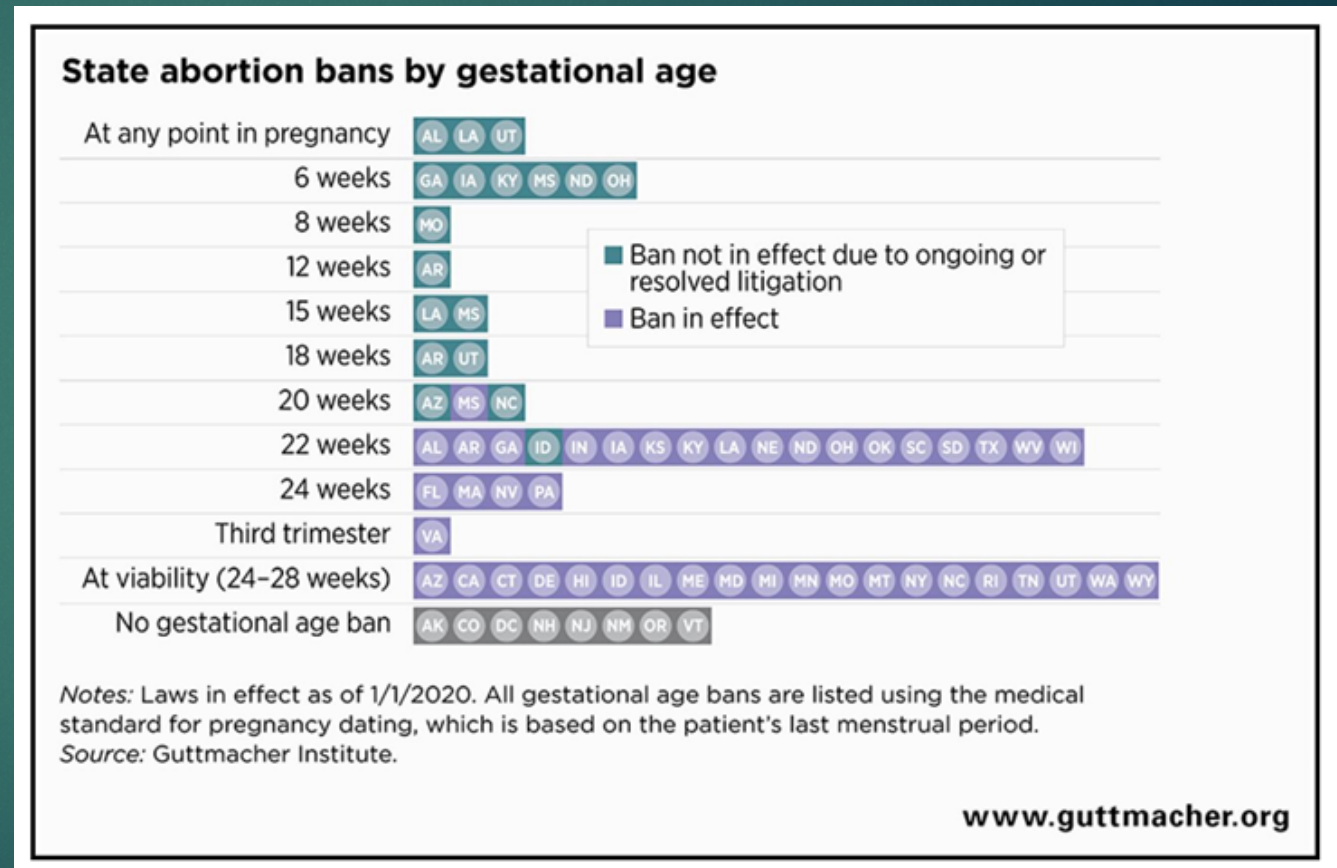


Fetal Heartbeat Bills & Gestational Age Bans

- Laws Prohibiting Abortions Once A Fetal Heartbeat Is Detected Or After A Specific Gestational Age.

Gestational Age Bans

- Within the past two years, nine states have enacted some type of gestational age ban, laws which strictly prohibit abortion after a specific point in pregnancy
- Five states passed laws prohibiting abortions once a fetal heartbeat is detected, which can be as early as six weeks into pregnancy—before most women are even aware that they are pregnant



“Personhood” Laws

- Laws that increase an already dangerous trend of criminalizing pregnancy that not only affect abortion laws within a state, but apply across the state’s criminal code.
- Laws That Seek To Classify Fertilized Eggs, Zygotes, Embryos, And Fetuses As “Persons,” And To Grant Them Full Legal Protection Under The Law, Including The Right To Life From The Moment Of Conception

Targeted Regulation of Abortion Providers

- Statutes that limit where surgical abortions can be provided and regulate facility requirements, such as room size, hospital transfer agreements, the distance to a hospital.
- Statutes that regulate clinician's hospital admitting privileges and certification requirements.

Targeted Regulation of Abortion Providers

STATE	REGULATIONS APPLY TO SITES WHERE:*		FACILITY REQUIREMENTS:					CLINICIAN REQUIREMENTS:			
	Surgical Abortion Is Provided		Medication Abortion Is Provided	Structural Standards Comparable to Those for Surgical Centers	Procedure Room Size Specified	Corridor Width Specified	Maximum Distance to Hospital Specified	Transfer Agreement with Hospital	Requires:		OB/GYN Certification or Eligibility
	Outpatient Clinics	Private Doctor Offices							Hospital Privileges	Hospital Privileges or Alternative Agreement	
Alabama	X	X	X	X		X	§		▼	X	
Arizona	X	X	X	X			30 miles*			X	
Arkansas	X	X	X	X	X		30 miles			X ^Ω	§
Connecticut	X										
Florida	X		X				nearby	X		X	
Indiana	X	X	X	X	X	X	adjacent county			X [‡]	
Kansas	§	§	§	§			§		§		
Kentucky	X		X	X				▼			
Louisiana	X	X	X	X	X		§		▼		§
Maryland	X										
Michigan	X		X	X	X	X	30 minutes	X			
Mississippi	X	X	X	X	X	X	▼		▼	X	X
Missouri	X			X			X		X		
Nebraska	X	X	X		X						
North Carolina	X		X	X				X			
North Dakota							30 miles		X		
Ohio	X			X			30 miles	X			
Oklahoma	X		X	X	X		§		§	X	
Pennsylvania	X	X		X	X	X		X			
Rhode Island	X	X	X	X							
South Carolina	X	X	X	X		X				X	θ
South Dakota	X	X	X	X		X					
Tennessee				▼			▼		▼		
Texas	X	X	X	▼			▼		▼	X	
Utah	X	X	X	X	X						
Wisconsin	X		X				§	X	§		
TOTAL	23	13	18	17	9	8	8	6	2	9	1

§ This law is temporarily enjoined pending a final decision in the courts.

▼ This law is permanently enjoined and is not in effect.

* Applies only to surgical abortions.

‡ Indiana law requires an abortion provider to either have admitting privileges or an agreement with another physician who has admitting privileges at a local hospital. A court has blocked a requirement that would have required the agreement with another physician who has privileges to be renewed annually and filed in every hospital in the local area.

θ Only an obstetrician/gynecologist may provide abortions after 14 weeks of pregnancy.

Ω A medication abortion provider must have an agreement with another provider who has hospital admitting privileges. This law is temporarily enjoined pending a final decision in the courts.

“Selective Selection” Bills

- Statutes banning Physicians From Performing An Abortion If They Have “Knowledge” That The Patient Is Seeking The Procedure, “In Whole Or In Part,” Because Of The Gender, Race Or Disability Of The Fetus

Counseling and Consent Laws

- ▶ Laws with accompanying criminal penalties requiring “informed consent,” mandated state directed counseling, mandatory waiting periods, and in the case of minors, parental consent.

Affected Criminal Statutes

- ▶ Homicide
- ▶ Feticide
- ▶ Child Abuse/Endangerment
- ▶ Domestic Violence
- ▶ Drug Related Offenses

Types of Expanded Liability

- ▶ Abortion Statutes That Are Death-Eligible Offenses
- ▶ Statutes That Expand Accomplice Liability To Those Who Solicit, Request, Command, Encourage, Or Internally Aid Another Person To Terminate A Pregnancy

Findings- Criminal Liability For Abortion

- ▶ If *Roe* is overturned, it could establish a legal path for states' pre-1973 abortion bans, as well as currently unenforced post-1973 bans, to take effect, vastly expanding the potential for criminal prosecutions to be brought against those participating in, aiding, or performing abortions in those states.

Findings- Personhood Laws

- ▶ State laws redefining “personhood,” to include an unborn child within the definition of a “person” or “human being” have dramatically altered the scope of criminal liability, expanding the reach of criminal liability for serious offenses such as homicide, assault, and battery, as well as many other crimes.
- ▶ In certain states they also threaten to expand the scope of criminal liability for the performance of an abortion.

Findings-Prosecution of Women

- ▶ Although the majority of abortion statutes explicitly exempt women who receive abortions from criminal liability, when read in conjunction with existing criminal statutes will likely render women criminally liable for serious crimes such as murder, manslaughter, and child endangerment if their fetuses are aborted, stillborn, or otherwise injured during pregnancy.

Finding-Accessorial And Accomplice Liability

- ▶ Existing state conspiracy, attempt, and accomplice liability statutes would subject a wide range of individuals, beyond women seeking abortions and the doctors performing them, to criminal penalties – often as a principle, and even for crimes such as murder and manslaughter.

Findings-Other Fundamental Rights

- ▶ The overwhelming majority of proposed anti-abortion statutes run afoul of existing constitutional protections and prohibitions and implicate fundamental rights.

Findings- Disparate impact

- ▶ Anti-abortion legislation disproportionately impacts economically disadvantaged women and women of color, highlighting the manner in which the passage of such laws will contribute mass incarceration and systemic racism within the criminal legal system.

Findings- Abortion Providers

- ▶ Statutes imposing restrictions on abortion providers that would effectively prevent access to most, if not all, abortions will lead to deaths and greater numbers of criminal prosecutions for illegal abortions

Findings- Overcriminalization

- ▶ Proposed anti-abortion laws, if enacted, and/ or a Supreme Court decision overturning *Roe v. Wade* will lead to record overcriminalization in the context of abortion, and in many other criminal offense categories, and to unprecedented mass incarceration.

Legal Challenges

- ▶ Equal Protection
- ▶ Due Process
- ▶ Limitations on Right to Privacy
- ▶ Burden on Right to Travel
- ▶ Unconstitutionally Vague
- ▶ Thirteenth Amendment
(Involuntary Servitude)