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**HOUSE OF REPRESENTATIVES**  
COMMONWEALTH *of* PENNSYLVANIA



*House and Senate Democratic Policy Committee Hearing*

A Post Roe PA: Facts and Fiction

Tuesday, July 19, 2022 | 10:00 a.m. – 12:00 p.m.

The Women's Health Caucus and Representative Mary Isaacson

10:00 a.m. Dr. Denise Johnson, *Pennsylvania Physician General*  
Pennsylvania Department of Health

*Q & A with Legislators*



COMMONWEALTH OF PENNSYLVANIA  
OFFICE OF THE SECRETARY OF HEALTH

Joint House and Senate Democratic Policy Committee  
Hearing on Post-Roe Pennsylvania

Testimony of  
Dr. Denise Johnson  
Acting Secretary and Physician General; Pennsylvania Department of Health

Good morning, Chairman Bizzarro and Chairwoman Muth and members of the committees. Thank you for extending the invitation to speak about the state of post-Roe reproductive health care in Pennsylvania. The Department of Health shares Governor Wolf's concern that the decision reached in *Dobbs v. Jackson Women's Health Organization* will have serious implications for Pennsylvanians' bodily autonomy, privacy, and overall health. The Department has strongly opposed any legislative action during this administration which would limit an individual's access to abortion and other reproductive health services. We stand with public health organizations like the American College of Obstetricians and Gynecologists, the National Health Law Program, and countless others in our assertion that abortion and emergency contraceptives are valid health care interventions and should be protected by law.

The Department regards its role as the primary regulator of abortion facilities as part of its mission to ensure safe, quality access to maternal health care. First, I want to ensure all Pennsylvanians are aware that, as of this hearing, reproductive health care services, including abortions, remain safe and legal in Pennsylvania. The Department's oversight of the facilities currently approved to offer abortion services is not changing because of the U.S. Supreme Court's decision. The state statutory and regulatory requirements for the provision of abortion services that are under the Department's jurisdiction also remain unchanged.

When the Dobbs decision was announced, the Department sent a letter communicating pertinent regulatory information to abortion providers in the Commonwealth and urged facilities to review and reference these statutes and regulations if they have any questions relating to ongoing regulatory requirements or are seeking to expand services to meet an anticipated need. A resource email account was also provided for any related inquiries. The Department remains committed to open communication with facilities, stakeholders, providers, and patients. By doing so, we want to ensure that providers have reliable access to information so that patient access to services is preserved.

As a board-certified obstetrician-gynecologist, I understand abortion and contraceptive services to be essential components of reproductive health care. This position is based on clinical safety, medical necessity, and the wellbeing of patients. Within my role as Physician General for the Commonwealth, and now as Acting Secretary of the Department of Health, my medical practice has deeply informed my perspective regarding increasing rates of maternal mortality within Pennsylvania. The consequences of forced pregnancy can be dangerous to maternal health and may increase chances of maternal morbidity. If abortion or emergency contraceptive services were to become further limited in Pennsylvania, it would likely exacerbate this crisis.



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It remains true that Black women and people of color generally bear the highest burden of maternal mortality within the United States.<sup>1</sup> Within Pennsylvania, the overall maternal mortality rate is 82 deaths per 100,000 live births; for Black women, that rate is two-times higher — 163 deaths per 100,000 live births. The Department applauds the Wolf Administration’s decision to extend the Medicaid postpartum coverage period for eligible mothers and birthing persons to one year following birth, which was a recommendation in our *2021 Maternal Mortality Review Report*. While this represents a much-needed step in addressing maternal mortality, I fear that future progress will be mitigated if accessing needed reproductive health services is made either more difficult or impossible for those experiencing pregnancy. When reproductive health services are restricted, there are unintended consequences for those undergoing pregnancy losses. Providers can become hesitant to render treatment for fear of breaking the law, even in situations where abortion is best medical practice. Any delay of treatment in those instances represents an increased chance of mortality and long-term disability, in addition to needless suffering which may be experienced by the patient.

A retrospective research study published last year by affiliates of the St. Louis School of Medicine examined maternal mortality data from the United States between the years 1995-2017. States which have more restrictive abortion laws were shown to have higher rates of maternal mortality than states that either had protective or neutral positions towards abortion.<sup>2</sup> When the study began in 1995, mean mortality ratios per 100,000 live births were relatively similar; by 2017, states which had restrictive positions towards abortion had a mean mortality ratio of 28.5 per 100,000 births, whereas protective states had a much lower mean mortality ratio of 15.7. Another recent research study published in the journal of *Public Health* analyzing total maternal death data published by the National Center for Health Statistics from 2015-2018 found that states with a higher number of abortion-restricting policies were also associated with increases in total maternal mortality.<sup>3</sup> In a national health climate where maternal mortality is on the rise, the lives of pregnant people in Pennsylvania would be in increased danger if access to reproductive health services were jeopardized. The life of a pregnant person should be prioritized, without being forced to assume the varied risks of pregnancy against their will. Induced abortion can be a lifesaving, safe procedure and is fourteen-times [less likely](#) to result in death than childbirth.

I would be remiss if I did not mention the impacts on health equity in a conversation about abortion care. There is ample data that confirms the economic impacts on the lives of Pennsylvanians denied abortion services. The Turnaway Study, a landmark research initiative which assessed 1,000 women who were denied abortions in the United States five years post denial, has documented in detail that individuals who have been unable to access abortion care [experience more debt, are more likely to live in poverty, and are less likely to be able to work full-time](#). The National Bureau of Economic Research has also estimated that individuals who were denied an abortion are likely to have twice as many delinquent debts than people who were able to have an abortion. The personal financial impact of being denied an abortion in some



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cases can be as large as the effect of [being evicted](#). In addition to financial hardship, individuals who are denied abortions also report having difficulty achieving [self-established life goals in the years after forced birth](#). These structural difficulties represent real and negative social determinants for peoples' health. In contrast, 99 percent of individuals who were able to access abortion care, also interviewed as part of the Turnaway Study, reported five years post-abortion that ending their pregnancy was [the right choice for them](#). The data shows that individuals who can access a wanted abortion are better able to manage their financial futures, pursue goals and aspirations, raise children in healthier conditions, and are more likely to raise planned-for children in the future.

Complicating pathways to medically necessary abortion care in Pennsylvania will worsen maternal care. The negative economic impact to individuals and the corollary challenges to their mental health when elective abortion care is banned is also clear. As diverse as all pregnant persons are in the Commonwealth, so are the circumstances in which a pregnant person ends a pregnancy. What is necessary for us, as public health officials, is to do everything that we can to preserve the dignity of choice that Pennsylvanians and their families currently have and deserve. The choice made by would-be mothers and their doctors to preserve a mother's health in a devastating situation, the choice made by mothers who already have children or will someday, but not now, and the choice made by those who know that for their physical and mental health, not ever. These choices matter, and the people who make them matter. The health of Pennsylvanians will be extremely negatively impacted if those choices cease to exist.

To quote the American College of Obstetricians and Gynecologists, "the best health care is provided free of political interference in [the patient-physician relationship](#)." Medical decisions regarding an individual's reproductive health should only be made in consultation between the individual in question and their health-care provider. With so many voices in the room, who will be able to listen and pay attention to the unique needs of the pregnant person? And who will see to their comprehensive health, when the overwhelming advice of health care providers is ignored? Our guiding responsibilities at the Department of Health are to ensure the safety of patients and the quality of their care – in a Pennsylvania where reproductive rights are heavily restricted or eliminated, both are severely compromised.

Thank you again for the opportunity to be with you today to discuss this very critical issue. I am happy to take any questions you may have at this time.

<sup>1</sup> Cynthia Prather, Taleria R. Fuller, William L. Jeffries IV, Khiya J. Marshall, A. Vyann Howell, Angela Belyue-Umole, and Winifred King. Health Equity. Dec 2018.249-259.<http://doi.org/10.1089/heq.2017.0045>.

<sup>2</sup> Addante AN, Eisenberg DL, Valentine MC, Leonard J, Maddox KEJ, Hoofnagle MH. The association between state-level abortion restrictions and maternal mortality in the United States, 1995-2017. *Contraception*. 2021 Nov;104(5):496-501. doi: 10.1016/j.contraception.2021.03.018. Epub 2021 Mar 26. PMID: 33781761.

<sup>3</sup> Vilda D, Wallace ME, Daniel C, Evans MG, Stoecker C, Theall KP. State Abortion Policies and Maternal Death in the United States, 2015–2018. *Am J Public Health*. 2021 Sep;111(9):1696-1704. doi: 10.2105/AJPH.2021.306396. Epub 2021 Aug 19. PMID: 34410825; PMCID: PMC8589072.



## **Senate Democratic Policy Committee – A Post-Roe Pennsylvania: Facts & Fiction**

July 19, July 26 and August 11, 2022

### ***Dobbs* Case Summary**

1. ***Dobbs v. Jackson Women’s Health Organization***: Alito delivered the opinion, 6-3. Alito’s opinion was joined by Thomas, Gorsuch, Kavanaugh and Barrett. Thomas and Kavanaugh filed concurrences. Roberts filed an opinion concurring in the judgment (but not the majority’s rationale). Breyer, Sotomayor and Kagan filed dissents. The Court held, “The Constitution does not confer a right to abortion; Roe and Casey are overruled; and the authority to regulate abortion is returned to the people and their elected representatives.” This was a challenge to Mississippi’s 15-week abortion ban.
  - a. **Abortion is still legal under Pennsylvania’s [Abortion Control Act](#); however, because the Court overturned *Planned Parenthood v. Casey* in addition to *Roe*, the spousal notification requirements in [18 Pa.C.S. § 3209](#) are back in effect (*Casey* overturned spousal notification).**
  - b. Opinion [here](#).
  - c. Case background [here](#).

### **Abortion Laws and Regulations in PA – Current Status**

Below is the current status of abortion rights in Pennsylvania. *Dobbs v. Jackson Women’s Health Org.*, 142 S.Ct. 2228 (2022) overturned *Roe v. Wade*, 410 U.S. 113 (1973) and *Planned Parenthood of Southeastern Pa. v. Casey*, 505 U.S. 833 (1992) and, as such, the current state of Pennsylvania law is as follows unless the General Assembly amends it:

- While there is no express right to abortion in PA’s statutes, abortion is only prohibited beginning at 24 weeks gestational age (from last menstrual period). 18 Pa. C.S. §3211(a).
  - Exceptions to this 24-week ban include an abortion by a physician if the physician reasonably believes it is necessary to prevent (1) the death of the pregnant person or (2) substantial and irreversible impairment of a major bodily function. 18 Pa. C.S. §3211(b).
  - Violation of the 24-week ban is considered a 3rd degree felony. Physicians are subject to additional penalties for violating provisions related to their duties to make clinical judgments of gestational age and death/substantial injury exceptions, subject to a 2nd degree misdemeanor for a first offense and 1st degree for subsequent offenses. 18 Pa. C.S. §3211(d).

- Pennsylvania law prohibits the use of state and federal Medical Assistance (MA) funds for abortion services, unless the pregnancy is a result of reported rape or incest, or abortion is necessary to avert the death of the pregnant person. 18 Pa.C.S. §§ 3215(a), (c) and (j).
  - This is subject to a current lawsuit based on PA constitutional equal protection provisions and PA's equal rights amendment, *Allegheny Reproductive Health Center v. Pa. Dept. of Human Services, et al.*, 26 MAP 2021. The majority of our caucus submitted a joint amicus brief with the House Democrats, and the state Supreme Court recently granted oral argument.
  - This case has the potential to determine whether there is a fundamental right to abortion under our state constitution, depending on if the PA Supreme Court both determines our MA coverage ban is unconstitutional and interprets our equal protection provisions and equal rights amendment to provide a fundamental right for the first time. Therefore, now that *Dobbs* overturned the federal constitutional protections of *Roe v. Wade* and passed that authority solely to the states, the state Supreme Court's decision here could shape the future of state access to abortion under the current language of the state constitution.
- Now that *Casey* is no longer good law as well, PA's spousal notification requirement that a married woman obtain a signed notice, under penalty, that she has notified her spouse she is about to undergo an abortion is now effective again (with exceptions for medical emergencies or if the pregnancy resulted from spousal sexual assault, etc). 18 Pa. C.S. §3209.
- Please note the other restrictions on abortion facilities and health care providers in the Health Care Facilities Act, section 806(h), remain in place as well.

**Source:** Shannon Sollenberger, Legislative Counsel, PA Senate Dems

### **SB 106 – how does a potential constitutional amendment affect abortion rights in PA?**

PA Senate Democratic Legal Counsel is currently working on an analysis of what happens if SB 106 passes *after* and if the PA Supreme Court decides there is a fundamental right to abortion under the constitution. Further below from Shannon Sollenberger, Legislative Counsel, PA Senate Dems:

*“We have not done an official analysis of SB 106, because ultimately a court will determine how it affects these rights. However, we know that the language of the amendment, “THIS CONSTITUTION DOES NOT GRANT THE RIGHT TO TAXPAYER-FUNDED ABORTION OR ANY OTHER RIGHT RELATING TO ABORTION,” is intended to eliminate the argument that both (1) there is no right to use of state dollars for abortion – including those Medicaid dollars at issue in the pending lawsuit discussed below, Allegheny Reproductive Health Center; and (2) the “any other right relating to abortion” is intended to eliminate any argument that there is a right to an abortion under our state constitution. This is also an issue pending in that lawsuit. However, it’s more impactful than the Rs let on because Dobbs made it so that only the states (and their state constitutions) are the source of protections for abortion. If the PA state constitution is amended to explicitly eliminate abortion rights, it means all we’re left with is the state statute. If the GA repeals that, we’re left with nothing in PA and many lawsuits to shut down any abortion clinics we have left at that time. It will get messy.”*

### **Legislation Introduced on Abortion in PA – 2021-22 Legislative Session**

- **H.B. 289 (O’Neal)** – Would require abortion facilities to publicly post and update inspection information online and provide inspection information to individuals upon request at no cost. Plans of correction

must be posted on a facility's public website within 30 days of receiving notice of a violation or sooner, as directed by the Department of Health. Facilities must ensure the identities of their patients remain confidential when posting such information.

➤ Status – *H.B. 289 was referred to the House Health Committee on January 27, 2021.*

- **H.B. 733 (Howard)** – Would codify women's reproductive rights under Roe v. Wade into Pennsylvania Statute. The Commonwealth would be prohibited from interfering with the right of an individual to choose or obtain an abortion if the individual's pregnancy is 24 weeks or less or the individual's physician believes an abortion beyond 24 weeks is necessary to prevent the death of the individual or the substantial and irreversible impairment of a major bodily function of the individual.
  - Status - *H.B. 733 was referred to the House Health Committee on March 3, 2021.*
  
- **H.B. 904 (Borowicz)** – Would prohibit the abortion of a fetus if a heartbeat is detected, changing current statutory requirements for an abortion from 24 weeks to 6 weeks gestation. If no fetal heartbeat is detected, an abortion may only be performed if a physician determines an abortion is necessary.
  - Status - *H.B. 904 received first consideration on the House Floor on May 25, 2021. The bill was tabled for a second time in the House on September 20, 2021.*
  
- **H.B. 1335 (Sims)** – Would require schools to provide sexuality education to students, prohibiting the use of funding for health education programs that withhold health-promoting or lifesaving information about sexuality-related topics, including abortion, HIV, sexual violence or human trafficking.
  - Status – *H.B. 1335 was referred to the House Education Committee on May 5, 2021.*
  
- **H.B. 1444 (Frankel)** – Would prohibit the State from requiring a health care practitioner to provide medically inaccurate and inappropriate information to a patient. Practitioners would not be required to provide medical services that are not evidence-based.
  - Status – *H.B. 1444 was referred to the House Health Committee on May 20, 2021.*
  
- **H.B. 1500 (Klunk)** – Would prohibit an abortion for the reason of a prenatal diagnosis of Down Syndrome. The bill would change the penalty of a physician that performs an abortion for this reason, providing for that physician's medical and surgical licenses to be revoked instead of allowing for suspension or revocation. A person receiving or attempting to receive an abortion due to the fetus' sex or prenatal diagnosis of Down Syndrome shall not be guilty of committing, attempting to commit, conspiring to commit or being complicit in committing a prohibited abortion. A written statement must be provided to the Department of Health by the physician performing the abortion indicating the person did not seek an abortion because of the sex of the fetus or a prenatal diagnosis, test result or indication of Down Syndrome in the fetus.
  - Status - *H.B. 1500 passed the House on third consideration on June 8, 2021 by a vote of 120:83. The bill is currently in the Senate, where it was reported as committed by the Senate Health and Human Services Committee on June 21, 2021 by a vote of 7:4. It received first consideration on the Senate Floor on June 21, 2021 and was removed from the table for a fifth time on June 30, 2022.*
  
- **H.B. 1872 (Bonner)** – Would require the administration of pain medication to a fetus aborted at more than 12 weeks gestation unless the physician has prior knowledge of the pregnant person's adverse reaction to pain relief medication or there is insufficient time to administer medication prior to the abortion due to a medical emergency.

- Status - *H.B. 1872 was referred to the House Health Committee on September 16, 2021.*
- **H.B. 2252 (Oberlander)** – Would amend the Pennsylvania Constitution to declare that the right to an abortion or abortion funding does not exist.
  - Status – *H.B. 2252 was referred to the House Health Committee on January 20, 2022.*
- **H.B. 2626 (Shusterman)** – Would prohibit the Department of Human Services from appropriating funds to crisis pregnancy centers and repeal restrictions on family planning providers, including the current ban on the use of family planning funds for abortion-related activities.
  - Status – *H.B. 2626 was referred to the House Health Committee on May 26, 2022.*
- **H.B. 2627 (Shusterman)** – Would provide \$10 million to the Department of Human Services to be allocated to family planning providers to increase access to services. The department may not discriminate against providers for reason of offering abortion services. No money may be allocated to current or former crisis pregnancy centers.
  - Status – *H.B. 2627 was referred to the House Health Committee on May 27, 2022.*
- **H.B. 2628 (Shusterman)** – Would allow government-owned or -operated hospitals and health care facilities to be leased, sold or subleased to abortion providers, allow public funds to be used for abortion services and abortion-related legal services.
  - Status – *H.B. 2628 was referred to the House Health Committee on May 27, 2022.*
- **H.B. 2629 (Shusterman)** – Would allow the use of Federal and State funds for abortions.
  - Status – *H.B. 2629 was referred to the House Health Committee on May 27, 2022.*
- **Bill To Be Introduced (Friel Otten, Hanbidge)** – Would amend the Pennsylvania Constitution to provide for the reproductive rights of Pennsylvanians. The bill would provide for the right to privacy and reproductive freedom, including the right to abortion.
- **Bill To Be Introduced (Hill-Evans, Kinkead, Rabb)** – Would prohibit law enforcement officers, as well as state and local government agencies and their employees, from cooperating with out-of-state investigations of abortions legally obtained in Pennsylvania.
- **Bill To Be Introduced (Lewis)** – Would prohibit experimentation upon and harvesting of organs from electively aborted fetuses.
- **Bill To Be Introduced (Kinkead, Rabb)** – Would provide for the civil offense of wrongful conception, allowing pregnant persons to seek civil liabilities from impregnators that fail to take proper precautionary measures to prevent unwanted pregnancy or those that abandon their responsibilities during pregnancy.
- **Bill To Be Introduced (Cephas, Kenyatta)** – Would prohibit the State from imposing medically unnecessary requirements on women in their reproductive healthcare decision-making, such as the decision to have an abortion.

- **H.R. 92 (Ryan)** – A resolution honoring the work and contributions of John Patrick Stanton toward Pennsylvania’s pro-life movement, including strengthening statutory prohibitions against abortion and the establishment of the Statewide Choose Life license plate program.
  - *Status* - H.R. 92 was referred to the House Health Committee on April 23, 2021.
- **S.B. 21 (Martin)** – Would prohibit the abortion of a fetus based on the sex of the fetus and/or a prenatal diagnosis or belief that the fetus has Down Syndrome.
  - *Status* - S.B. 21 was referred to the Senate Health and Human Services Committee on January 20, 2021.
- **S.B. 106 (Argall)** – Amends the Pennsylvania Constitution to declare the right to abortion or publicly funded abortions does not exist in the state, require voters to present a valid ID to receive a ballot, remove the requirement that the legislature present disapproved regulations to the governor and change the nominations procedures for lieutenant governor.
  - *Status* – Pamphlet Laws Resolution No. 1.\
- **S.B. 152 (J.Ward)** – Would prohibit the Department of Health from entering into contracts with or making grants to entities that perform abortions that do not qualify for federal matching funds through Medicaid or that maintain or operate facilities where such abortions are performed, except as required by federal law when such services are provided by Medicaid and by a qualified provider approved by the Centers for Medicaid and Medicare Services.
  - *Status* - S.B. 152 was reported as committed by the Senate Health and Human Services Committee and received first consideration on the Senate Floor on January 25, 2022. A vote on Amendment A03541 to S.B. 152 failed by a vote of 4:7 on January 25, 2022. The bill was removed from the table on June 15, 2022.
- **S.B. 378 (Mastriano)** – Would prohibit the abortion of a fetus if a heartbeat is detected, changing current statutory requirements for an abortion from 24 weeks to 6 weeks gestation. If no fetal heartbeat is detected, an abortion may only be performed if a physician determines an abortion is necessary.
  - *Status* – S.B. 378 was referred to the Senate Health and Human Services Committee on March 10, 2021.
- **S.B. 442 (Phillips-Hill)** – Would provide language within the Fiscal Code to implement the General Appropriations Act of 2021, creating an inventory of state-owned structures that can be used to deploy broadband services and prohibiting public funding of state-related universities that conduct research using fetal tissue obtained from an elective abortion. Further, the bill stipulates that a university’s financial officer must submit statements to the House, Senate, Secretary of Education and Treasurer indicating compliance with the fetal tissue research requirement to receive its monthly appropriation.
  - *Status* – S.B. 442 passed the Senate on third consideration and final passage by a vote of 27:20 on May 25, 2021. On July 6, 2022, the bill was reported as amended by the House Appropriations Committee by a vote of 22:15 (Amendment A05336 included the fetal tissue research requirement). The bill passed the House on third consideration and final passage by a vote of 109:91 and was referred to the Senate Rules and Executive Nominations Committee on July 6, 2022.
- **S.B. 956 (J.Ward)** – Would amend the Pennsylvania Constitution to declare the right to abortion or abortion funding does not exist in the state.
  - *Status* – On January 25, 2022, S.B. 956 was reported as committed by the Senate Health and Human Services Committee and received first consideration on the Senate Floor. The bill was removed from the table by a vote of 36:11 on May 25, 2022, passed second consideration on the Senate Floor by a vote of 29:20 on June 6, 2022 and was removed from the table by a vote of 28:21 on June 28, 2022.

- **S.B. 1217 (Cappelletti)** – Would provide for the safeguarding of information collected by crisis pregnancy centers regarding their clients and restrict the sharing of such information without a client’s written consent.
  - *Status* – S.B. 1217 was referred to the Senate Consumer Protection and Professional Licensure Committee on June 1, 2022.
- **S.B. 1259 (Schwank)** – Would prohibit publicly funded organizations and providers that promote childbirth and provide alternatives to abortion from providing false or misleading information in their advertisements. Health care services must comply with nationally recognized standards and materials and training must include the full range of contraceptive options approved the U.S. FDA.
  - *Status* – S.B. 1259 was referred to the Senate Health and Human Services Committee on June 14, 2022.
- **Bill To Be Introduced (Santarsiero)** – Would amend the Pennsylvania Constitution to provide for the right to privacy, including sexual rights, marriage rights and abortion rights.
- **Bill To Be Introduced (Muth, Cappelletti, L.Williams, Collett, Schwank, Tartaglione, Comitta)** – Would provide for the protection of women’s health, rights and health care decisions, including abortion.
- **Bill To Be Introduced (Muth)** – Would prohibit the State from requiring a health care practitioner to provide medically inaccurate and inappropriate information to a patient. Practitioners would not be required to provide medical services that are not evidence-based.

### Executive Actions by the Governor

On July 12, 2022, Governor Wolf signed [Executive Order 2022-01](#), ensuring out-of-state residents can enter Pennsylvania to access reproductive health care services and protecting medical professionals providing reproductive health care services in Pennsylvania. This “includes all medical, surgical counseling, or referral services relating to the human reproductive system, including, but not limited to, services relating to pregnancy, contraception, or the termination of a pregnancy.”

With other states, such as Texas, attempting to create barriers to abortion by criminalizing access outside their borders, the Governor’s executive order signals to other states that Pennsylvania will not actively respond to nor comply with arrest warrants or surrender requests related to reproductive health care services from other jurisdictions unless they would also be a criminal violation under state law here in Pennsylvania.

**Source:** [Gov. Wolf Signs Executive Order Ensuring Access and Protections to Reproductive Health Care Services to Health Care Providers and Out-of-State Residents \(pa.gov\)](#)

### Other States – how have constitutional amendments, statutes, and court cases affected abortion rights and access?

As Pennsylvania navigates the legal landscape of abortion rights in the US in a post-*Roe* world, looking at other state constitutions, statutes, and court rulings can help policymakers understand how abortion rights could be impeded or affirmed on the state level. The legal complexities cannot be overstated: each state has different layers of constitutional language, statutory law and case law that affect individuals’ ability to access abortion

services. Since the *Dobbs* decision, providers are using state constitutional provisions providing for expansive right protections as a basis for challenging abortion bans, oftentimes relying on provisions regarding privacy, equal protection, discrimination and rights to liberty. Even so, states banning abortion, such as Louisiana and Texas, have various laws regulating abortion on the books, leaving patients and providers in a legal quandary as to what is holding without the federal umbrella of protection provided by *Roe*. As mentioned by Senate Democratic Caucus legal counsel, any constitutional amendment regarding abortion that may pass in Pennsylvania will ultimately be subject to interpretation by our state courts.

Below are several sources that discuss these layers in more detail.

#### The Center for Reproductive Rights

The Center for Reproductive Rights has brought cases in state courts for decades seeking to build strong state abortion protections independent of federal law. In their May 11, 2022 report, [“State Constitutions and Abortion Rights.”](#) they highlight 11 states where “high courts have recognized that their state constitutions protect abortion rights and access independently from and more strongly than the U.S. Constitution or have struck down restrictions that were upheld by the U.S. Supreme Court.”

The report breaks down their analysis into several categories – state traditions of personal autonomy, privacy decisions, and anti-discrimination principles – to show where footing has been gained to affirm abortion rights in states and how access to abortion has been affected by the interpretation of state law.

**Source:** [State Constitutions and Abortion Rights - Center for Reproductive Rights](#)

#### Guttmacher Institute

Guttmacher Institute has created an [interactive map](#) showing abortion policies by state and how that has affected access since *Roe* was struck down. Information included are key facts about the amount of abortions performed, the number of clinics providing service, and the average one-way driving distance for women to the nearest clinic. In states with the most restrictive abortion policies, driving distances to obtain an abortion can equal hundreds of miles in a single direction. Pennsylvania-specific statistics are provided below:

- In 2020, Pennsylvanians received 32,270 abortions, equaling approximately 13.6 abortions per 1,000 women ages 15-44.
- Only 18 clinics provided abortion care in 2017, leaving residents in 85% of counties without such services.
- Forty-eight percent of women ages 15-44 lived in counties without abortion providers in 2017.
- The average distances that pregnant persons traveled to receive abortions at the closest available location is as follows:
  - 11 miles for treatment prior to 12 weeks gestation.
  - 14 miles for treatment prior to 14 weeks.
  - 20 miles for treatment up to 20 weeks.
  - 28 miles for treatment before 22 weeks.
  - 29 miles for treatment before 24 weeks.
  - 84 miles for treatment after 24 weeks.

([Guttmacher Institute](#))

A glimpse into the restrictiveness of abortion-related provisions within states across the U.S. is provided in the below chart based on the Guttmacher Institute’s interactive map.

OVERVIEW OF STATE ABORTION ACCESS														
STATE	DEGREE OF ACCESS	PRE-ROE BAN	NO CONSTITUTIONAL RIGHT	RESTRICTION ON GESTATIONAL AGE	MANDATED COUNSELING	WAIT PERIOD	STATE MEDICAID COVERAGE	PRIVATE HEALTH INSURANCE COVERAGE	BAN ON ABORTION BY TELEHEALTH/ MAIL	PARENTAL CONSENT FOR MINORS	PHYSICIAN-ONLY ABORTIONS	CLINIC REGULATIONS NOT MEDICALLY BASED	PATIENT/STAFF PROTECTIONS	STATE ABORTION FUND
Alabama	Most Restrictive	Complete ban with limited exceptions.	X	All ages	X	48 hours			X	X	X	X		
Connecticut	Restrictive/Protective			24-26 weeks			X					X		
Delaware	Restrictive/Protective			24-26 weeks						X			X	
Illinois	Protective			24-26 weeks			X	X	X	X	X	X		
Kansas	Restrictive			22+ weeks	X	24 hours			X	X	X		X	
Maine	Protective			24-26 weeks			X	X					X	
Maryland	Protective			24-26 weeks			X	X				X	X	
Massachusetts	Restrictive/Protective			24+ weeks			X			X			X	
Michigan	Restrictive/Protective	May be enforced with overturn of Roe		24-26 weeks	X	24 hours					X	X	X	
Missouri	Most Restrictive	Complete ban with limited exceptions.		All ages	X	72 hours			X	X	X	X		
Nebraska	Restrictive			22+ weeks	X	24 hours								
New Hampshire	Restrictive/Protective			24+ weeks						X				
New Jersey	Protective						X							
New Mexico	Protective						X							
New York	Protective			24-26 weeks			X	X					X	
North Carolina	Restrictive/Protective			24-26 weeks	X	72 hours			X	X	X	X	X	
Ohio	Very Restrictive			6+ weeks	X	24 hours				X	X	X		
Oregon	Most Restrictive						X	X					X	X
Pennsylvania	Restrictive			24+ weeks	X	24 hours				X	X	X		
South Carolina	Very Restrictive			6+ weeks	X	24 hours			X	X	X	X		
Texas	Most Restrictive	Complete ban with limited exceptions.		All ages	X	24 hours			X (medication abortion access restricted)	X	X	X		
Utah	Restrictive	Trigger ban automatically enforced with overturn of Roe			X	72 hours				X	X	X		
Vermont	Protective						X							
Virginia	Restrictive/Protective			3rd trimester						X				
Washington	Protective			24-26 weeks			X	X					X	
West Virginia	Restrictive	May be enforced with overturn of Roe	X	22+ weeks	X	24 hours			X	X	X			
Wisconsin	Restrictive	May be enforced with overturn of Roe		22+ weeks	X	24 hours			X	X	X	X	X	

(Source: [Guttmacher Institute](#))

Bolts, a digital magazine covering politics and government institutions, published [“What All State Constitutions Say About Abortion, and Why It Matters”](#) on June 30, 2022. It describes some of the political landscapes within state courts and how the *Dobbs* decision has impacted or could impact state constitutional rights as affirmed or rejected by state rulings.

ABC News published a breakdown of [abortion laws by state](#) on June 27, 2022.

Other articles regarding the legal landscape of abortion across the country can be found at the end of this policy brief.

## Federal Government Actions – Executive and Congressional

### Executive Action

On July 8, 2022, President Biden signed an executive order protecting access to reproductive health care services. For additional information on what the executive order entails, please refer to the [White House fact sheet](#) on the issue.

As directed in the executive order, the U.S. Department of Health and Human Services (HHS) released clarifying [guidance](#) that under the [Emergency Medical Treatment and Active Labor Act \(EMTALA\)](#), abortions are legally protected regardless of what state laws may prohibit, if a patient’s life or well-being are at stake. EMTALA was

passed in 1986 to require hospitals to treat people with emergency medical conditions. This includes pregnant patients whose health is in “serious jeopardy.”

**Sources:**

- [Doctors must provide abortions in emergencies, regardless of state law, HHS says | Healthcare Dive](#)
- [HHS Says Federal Law Protects Abortions In Life-Threatening Pregnancies \(buzzfeednews.com\)](#)

In response to the clarifying guidance issued by HHS, the Republican Texas Attorney General has [sued](#) the Biden administration. The lawsuit is contending the administration’s guidance is in violation of the Hyde Amendment which prohibits federal spending on abortion. It also argues that HHS should have subjected the guidance to a “notice-and-comment” process as is required of newly proposed federal agency rules (HHS contends this is not new policy). In addition, the suit contends the guidance violates the 10<sup>th</sup> Amendment and a law that forbids “arbitrary and capricious” actions by federal agencies.

**Source:** [Texas sues Biden admin for requiring abortions in medical emergencies - The Washington Post](#)

Congressional Action

Congress is currently considering two pieces of legislation, the Women’s Health Protection Act and the Ensuring Women’s Right to Reproductive Freedom Act. The House of Representatives passed both measures on Friday, July 15, 2022.

The Women’s Health Protection Act would enshrine the protections of *Roe v. Wade* into federal law. The Ensuring Women’s Right to Reproductive Freedom Act would reaffirm the right for someone seeking an abortion to travel across state lanes.

In May, Senate Republicans and Sen. Joe Manchin blocked the Women’s Health Protection Act. On Thursday, July 14, 2022, Senate Republicans blocked a Senate version of a bill similar to the Ensuring Women’s Right to Reproductive Freedom Act from coming up for a vote.

With the House Democratic majority, both bills passed the House. Neither bill is expected to pass the Senate due to Republican opposition and a requirement for passage of 60 votes or a suspension of the filibuster and a simple majority.

**Sources:**

- [House poised to vote on bills to codify abortion rights, ensure access \(msn.com\)](#)
- [House Passes Two Bills Seeking to Ensure Access to Abortion - The New York Times \(nytimes.com\)](#)

**How Patients and Providers are Faring since *Dobbs***

Other reproductive healthcare questions have been raised by *Dobbs*, including how the ruling affects embryos outside the womb, whether doctors and labs can provide routine procedures for infertility treatment, and ultimately, if those seeking to become pregnant or performing IVF treatments will be charged with crimes or otherwise impeded from making decisions related to those procedures. Doctors, frustrated by their [exclusion from the \*Dobbs\* opinion](#), are now struggling with their enhanced legal role in determining who can and cannot receive an abortion under increasingly restrictive state laws. Reportedly, [forty-four percent of obstetric and gynecological residents](#) are training in states that are looking to ban abortions.

[As reported in the New York Times](#), the American Society for Reproductive Medicine, an organization that represents fertility treatment providers, [analyzed](#) the 13 states with trigger laws and concluded that they do not pose an immediate threat to patients or providers of infertility treatments and procedures. Legal experts, however, contend that as states draft legislation, these issues could be at play.

Similar questions have been raised by women and pregnant individuals across the country, as well as physicians and other providers, about the legality of contraception, as well as prescription medication to assist with miscarriages and abortions.

**Source:** [The Dobbs Decision Has Unleashed Legal Chaos for Doctors and Patients | The New Yorker](#)

Below are some anecdotal examples of how the *Dobbs* decision has affected patients and providers across the US.

A 10-year-old Ohio girl, who was raped and became pregnant, recently underwent an abortion in Indiana because she was unable to access it in her home state due to Ohio's six-week abortion ban. In response, the Republican Attorney General in Indiana recently commented that they are investigating whether the doctor who performed the abortion took appropriate actions under state law to report it. The doctor's attorney has confirmed she did make the proper reports per state law and is considering legal action against the Indiana Attorney General.

**Source:** [Indianapolis doctor reported 10-year-old's abortion as required - The Washington Post](#)

As reported in the Pittsburgh Post-Gazette on July 14, 2022, the only two abortion clinics west of Harrisburg have seen a surge in the demand for services since the *Dobbs* decision dismantled federally held constitutional rights to abortion. Both Allegheny Reproductive Health Center in East Liberty and Planned Parenthood of Western Pennsylvania have had their offices flooded with calls from both in-state and out-of-state patients.

Because of Ohio's six-week abortion ban and another 15 states moving ahead with abortion bans, the western Pennsylvania clinics have become the closest facilities where patients can access a legal abortion past six weeks for hundreds of square miles.

Prior to *Dobbs*, Allegheny Reproductive Health would perform around 3,500 abortions per year, with roughly 1,100 for out-of-state patients. The clinic is projecting they may see 10,000 or more patients since *Dobbs*, with nearly 6,000 coming from out-of-state from Ohio, Kentucky, Mississippi, Tennessee and Alabama, as well as other southern states where bans or near bans have been enacted.

Both clinics anticipate adding staff in the coming months to brace for the greater influxes of patients since *Dobbs* was decided.

**Source:** [Out-of-state patients surge at Allegheny County abortion clinics as bans enacted elsewhere | Pittsburgh Post-Gazette](#)

Public health researchers warn of the [negative health and economic effects](#) of the U.S. Supreme Court's recent *Dobbs* decision. Evidence of this harsh reality was submitted to the Supreme Court prior to receiving this case.

### **Additional News Highlights on the Recent Abortion Ruling:**

[In Light of Roe v. Wade Ruling, Men Share Their Abortion Stories - The New York Times \(nytimes.com\)](#)

[New Mexico clinic performing later abortions braces for surge : NPR](#)

[One Of Texas' Biggest Abortion Providers To Relocate To New Mexico | HuffPost Latest News](#)

[In red states, women navigate a chaotic abortion landscape - Los Angeles Times \(latimes.com\)](https://www.latimes.com)

[‘We cannot go back’: People share their stories of abortion and access \(nbcnews.com\)](https://www.nbcnews.com)

[The Fight for Abortion Rights Turns to State Constitutions \(theintercept.com\)](https://www.theintercept.com)