

## Abortion Policy in the Absence of *Roe*

**BACKGROUND:** Recent changes in the membership of the U.S. Supreme Court have led some state policymakers to consider the possibility that *Roe v. Wade* could be overturned and regulation of abortion returned to the states. Some state legislatures are considering banning abortion under all or virtually all circumstances; these measures are widely viewed as an attempt to provoke a legal challenge to *Roe*, while other states are considering abortion bans that would go into effect in the event that *Roe* is overturned. And a number of states still have pre-1973 abortion bans on the books—several of which, in theory, could be enforced if *Roe* were ever overturned. Still other states have laws declaring the state’s intent to ban abortion to the extent permitted by the U.S. Constitution.

Meanwhile, some states are moving in the opposite direction by passing laws that essentially codify the parameters of *Roe*. These laws prohibit any interference with a woman exercising her right to obtain an abortion before viability or when necessary to protect the life and health of the woman.

### HIGHLIGHTS:

- 20 states have laws that could be used to restrict the legal status of abortion.
  - 4 states have laws that automatically ban abortion if *Roe* were to be overturned.
  - 13 states retain their unenforced, pre-*Roe* abortion bans.
  - 7 states have laws that express their intent to restrict the right to legal abortion to the maximum extent permitted by the U.S. Supreme Court in the absence of *Roe*.
- 7 states have laws that protect the right to choose abortion prior to viability or when necessary to protect the life or health of the woman.



Advancing sexual and reproductive health worldwide through research, policy analysis and public education.

125 Maiden Lane  
New York, NY 10038  
212.248.1111  
[www.guttmacher.org](http://www.guttmacher.org)  
[info@guttmacher.org](mailto:info@guttmacher.org)

1301 Connecticut Avenue, N.W.  
Washington, DC 20036  
202.296.4012  
[www.guttmacher.org](http://www.guttmacher.org)  
[policyworks@guttmacher.org](mailto:policyworks@guttmacher.org)

# ABORTION POLICY IN THE ABSENCE OF *ROE*

STATE	RESTRICTING THE RIGHT TO ABORTION			PROTECTING THE RIGHT TO ABORTION	
	Criminalizing Abortion Except in Cases of Life Endangerment		Pre- <i>Roe</i> Abortion Ban Still State Law		Expressed Intent to Limit Abortion to the Maximum Extent Permitted
	Abortion Ban	Intended to Ban Abortion if <i>Roe</i> Is Overturned			
Alabama			X <sup>†,‡</sup>		
Arizona			X <sup>†</sup>		
Arkansas			X	X	
California				X	
Colorado			X <sup>Ω</sup>		
Connecticut				X	
Delaware			X <sup>Ω</sup>		
Hawaii				X	
Illinois				X	
Kentucky				X	
Louisiana	▼	X		X	
Maine				X	
Maryland				X	
Massachusetts			X		
Michigan			X <sup>†</sup>		
Mississippi		X	X <sup>†,Ψ</sup>		
Missouri				X	
Nevada				X	
New Mexico			X <sup>Ω</sup>		
North Dakota		X*		X	
Ohio				X	
Oklahoma			X <sup>†</sup>		
South Dakota		X			
Utah	▼				
Vermont			X <sup>†</sup>		
Washington				X	
West Virginia			X <sup>†</sup>		
Wisconsin			X <sup>†</sup>		
<b>TOTAL</b>		<b>4</b>	<b>13</b>	<b>7</b>	<b>7</b>

▼ Enforcement permanently enjoined by court order; policy not in effect.

† Law includes an exception to protect the life of the woman.

‡ Law includes an exception to protect the health of the woman.

Ω Law does not apply in cases when necessary to protect the life of the woman, when necessary to preserve the physical health or mental health of the woman, when the pregnancy is the result of rape or incest, or when the fetus may be born with defects.

Ψ Law includes an exception in case of rape.

\* Law only allows a physician to claim an affirmative defense that the abortion was necessary to protect the life of the woman or in cases of rape or incest.

## FOR MORE INFORMATION:

For information on state legislative and policy activity, click on Guttmacher's [Monthly State Update](#), and for state-level information and data on reproductive health issues, click on Guttmacher's [State Center](#). To see state specific abortion information click on [State Facts About Abortion](#).

Jones RK et al., [Abortion in the United States: incidence and access to services, 2005](#), *Perspectives on Sexual and Reproductive Health*, 2008, 40(1):6–16.

Boonstra H et al., [Abortion in Women's Lives](#), New York: Guttmacher Institute, 2006.

Finer LB et al., [Reasons U.S. women have abortions: quantitative and qualitative perspectives](#), *Perspectives on Sexual and Reproductive Health*, 2005, 37(3):110–118.

Cohen SA, [Envisioning life without Roe: lessons without borders](#), *The Guttmacher Report on Public Policy*, 2003, 6(2):3–5.

Gold RB, [Lessons from before Roe: will past be prologue?](#), *The Guttmacher Report on Public Policy*, 2003, 6(1):8–11.

Finer LB and Henshaw SK, [Abortion incidence and services in the United States in 2000](#), *Perspectives on Sexual and Reproductive Health*, 2003, 35(1):6–15.

Henshaw SK and Finer LB, [The accessibility of abortion services in the United States, 2001](#), *Perspectives on Sexual and Reproductive Health*, 2003, 35(1):16–24.

Jones RK, Darroch JE and Henshaw SK, [Contraceptive use among U.S. women having abortions in 2000–2001](#), *Perspectives on Sexual and Reproductive Health*, 2002, 34(6):294–303.