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State Policy Trends 2021: The Worst Year for Abortion Rights in Almost Half a Century

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This analysis has been updated to include abortion restrictions signed at the end of 2021.

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This analysis has been adjusted to reflect the United States Food and Drug Administration's changes to the restrictions on medication abortion.

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State legislatures across the United States regularly made headlines in 2021 by enacting laws, including a record number of abortion restrictions, that limited human and civil rights. In their return to near-regular activity after the first wave of the COVID-19 pandemic abbreviated many sessions in 2020, conservative-led legislatures focused on restricting voting access, enacting discriminatory policies against LGBTQ individuals—transgender youth in particular—and limiting abortion, particularly through bans early in pregnancy and restrictions on medication abortion.

Buoyed by the Supreme Court's 6–3 anti-abortion majority, state legislators raced to enact abortion restrictions. As of December 31, 108 abortion restrictions had been enacted in 19 states. This is the highest total in any year since abortion rights were affirmed by the US Supreme Court in 1973.

At the same time, some state legislatures expanded access to reproductive health services. More than half of the states increased access to pregnancy and postpartum care; many of these new provisions were designed to reduce racial disparities in maternal mortality. Several states now allow pharmacists to prescribe contraceptives or medication that help prevent HIV. And a few states expanded access to abortion services, primarily by repealing restrictions.

These gains are important, but the damage to abortion rights is profound. Abortion access is already very limited for many people, including Black and Brown people, low-income individuals, LGBTQ individuals and young people, as well as those living in the South, the Plains and the Midwest. Many states in these regions have enacted bans that violate the US Constitution in the hope that the Supreme Court will soon eliminate federal constitutional protections for abortion.

The South is a particular concern: The Supreme Court has allowed Texas' ban on abortion starting at six weeks of pregnancy to remain in effect—and it is possible that the Court, which in December heard arguments in Mississippi's ban on abortions after 15 weeks, might uphold that prohibition and use the opportunity to overturn *Roe v. Wade*.

If the Court overturns that landmark 1973 decision guaranteeing a constitutional right to abortion, our recent analysis shows that 26 states are certain or likely to ban abortion. People seeking abortion care would face vastly

increased travel distances to reach their next nearest clinic. In addition, the effects of these bans would be felt across the country, as states that protect abortion rights would suddenly be home to the closest provider for many people who want an abortion.

Abortion Bans and Restrictions

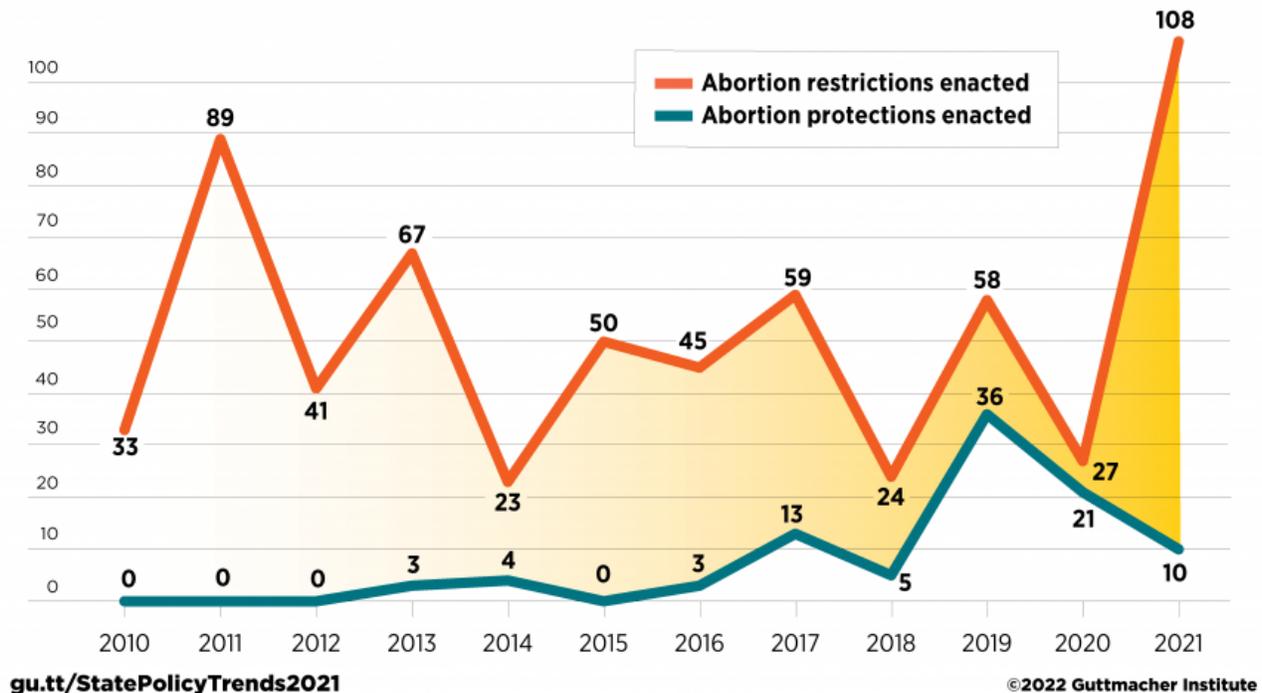
The 108 abortion restrictions enacted in 2021 far surpasses the previous post-*Roe* record of 89, set in 2011. A total of 1,338 abortion restrictions have been enacted since *Roe v. Wade* was handed down in 1973—44% of these in the past decade alone. In addition to abortion bans of all types, restrictions on medication abortion were passed by many state legislatures.

- *Abortion bans*: The most damaging abortion restriction to go into effect since *Roe v. Wade*, Texas' six-week abortion ban drastically reduced access to care starting on September 1, after the US Supreme Court refused to block it. Since 2013, 13 states have enacted bans on abortion at six or eight weeks of pregnancy. Texas' ban is the only one in effect. In the other states, courts have blocked enforcement or the ban has yet to take effect.

Several states enacted other types of bans this year. Among these, only the South Dakota prohibition is in effect.

- Arkansas enacted a ban that prohibits all abortions except in cases of life endangerment, and Oklahoma enacted a prohibition that has exceptions only if the patient's life is endangered or there are serious threats to the patient's physical health.
- Montana enacted an abortion ban at 20 weeks after the last menstrual period, while New Hampshire adopted a ban on abortion at 24 weeks.
- Arizona enacted an abortion ban in cases of genetic indication, and South Dakota banned abortion if the fetus has Down syndrome.
- Oklahoma and Texas also enacted bans that would go into effect if *Roe* is overturned.

In 2021, more US state abortion restrictions were enacted than in any year since *Roe v. Wade* was decided in 1973



- **Medication abortion restrictions:** State legislatures renewed their focus on medication abortion, and 16 legislatures introduced laws to restrict it. Now that telehealth has been integrated into medical care as part of the COVID-19 pandemic response—and the US Food and Drug Administration (FDA) has eased some of the restrictions placed on medication abortion by allowing mailing of the pills and expanding access through pharmacies—abortion opponents are enacting additional burdensome and medically unnecessary restrictions on medication abortion. Many of the 2021 restrictions are based on existing and previous FDA protocols, but some states have attempted to further impede access to care.

In 2021, eight states (Arizona, Arkansas, Indiana, Montana, Ohio, Oklahoma, South Dakota and Texas) enacted restrictions on medication abortion. Some of these restrictions are not in effect because they have been challenged in court, including the Montana, Ohio and Oklahoma restrictions.

- Six of these states (all but Indiana and Ohio) banned providers from mailing the medication to patients, and seven of those states (all but Arizona, which already bans use of telehealth to prescribe medication abortion) either required the provider and patient to meet in person or banned the use of telehealth.
- Four states (Indiana, Montana, Oklahoma and Texas) placed gestational age limits, ranging from seven to 10 weeks, on use of medication abortion. The legislation passed in Arkansas, Montana and Oklahoma also requires medication abortion providers to have an agreement with another physician to handle complications, which are rare. These laws are designed to simply add another barrier to abortion.
- In addition, the Oklahoma measure requires manufacturers and distributors of medication abortion pills to seek certification by the state.

Transgender Youth Discrimination

Measures were introduced in 37 state legislatures that would limit sports participation or access to health care for transgender youth, and nine of these states enacted laws in these areas. Much of this legislation forces students to play on sports teams designated for their biological sex, preventing transgender youth the opportunity to participate. Other measures would prohibit the provision of medical care for transgender youth.

- *Sports participation:* Nine states (Alabama, Arkansas, Florida, Mississippi, Montana, South Dakota, Tennessee, Texas and West Virginia) placed gender restrictions on youth sports team participation to prevent transgender youth from playing on these teams. The Mississippi measure—which is similar to the other states’ legislation—requires sports teams at public schools, colleges and universities, as well as at private colleges and universities, to be designated as men’s, women’s or coed. Men’s and women’s designations are to be based on “biological sex,” and women’s teams may not accept students “of the male sex.” In addition, the law prohibits complaints of gender bias against schools that maintain separate women’s sports programs. Of these new restrictions, only the West Virginia law has been blocked by a court.
- *Medical care:* Arkansas and Tennessee enacted legislation that would limit health care access for transgender individuals. The Arkansas measure would prohibit health care providers from offering gender-affirming care, including medication and surgery, to people younger than 18. The law also would prohibit Medicaid from covering these services. A legal challenge was filed, and the law will not be enforced while the court case continues. The Tennessee measure prohibits the administration of hormone treatments to suppress puberty.

Maternal Health Care Improvements

As they have in the past decade, states expanded access to and improved provision of maternal health care. In 2021, 81 provisions were enacted in 27 states and the District of Columbia; both progressive and conservative state legislatures passed measures aimed at improving maternal health outcomes. Enacted measures include those that increase access to pregnancy-related care, expand postpartum Medicaid coverage, improve reproductive health care for those who are incarcerated and support state maternal mortality review committees (MMRCs).

- *Pregnancy care:* Fifteen states took steps to improve pregnancy care. Four states enacted legislation that requires Medicaid (Illinois and Nevada) or private health insurance plans (Louisiana and Rhode Island) to cover doula care, and Minnesota now requires community organizations working with the state Department of Health to identify barriers to patients using doulas. Four states now require implicit bias training for medical employees who provide pregnancy or postpartum care. In California, nurses will receive the training, while in Connecticut and Minnesota, all hospital employees who treat pregnant, laboring or postpartum individuals will be trained. New Jersey expanded its implicit bias training requirements to include any medical provider or administrative employee who is involved in pregnancy-related care.
- *Postpartum Medicaid coverage:* The American Rescue Plan signed into law by President Biden in February authorized state Medicaid programs to extend coverage up to one year postpartum from the typical coverage length of 60 days. Illinois became the first state to receive federal approval to implement one-year postpartum Medicaid coverage, and two other states (Georgia and Missouri) received federal approval for more limited expansions. Similar legislation was enacted in 11 other states.
- *Reproductive health for incarcerated individuals:* Eight states improved reproductive and maternal health care for those who are incarcerated. Mississippi enacted one of the most comprehensive measures. The law prohibits state correctional facilities from using leg or wrist restraints during pregnancy, labor and delivery, and for 30 days postpartum. It also bans invasive cavity searches on pregnant people and solitary confinement during pregnancy and for 30 days postpartum. The law requires facilities to provide appropriate nutrition and dietary supplements and to permit a new parent and infant to remain together for 72 hours after delivery. Facilities must also ensure sufficient availability of menstrual hygiene products, which will be provided at no cost to indigent women.
- *Maternal Mortality Review Committees:* Seven states and DC enacted measures that bolster reporting, require inclusion of members from communities disproportionately affected by maternal mortality and ensure that racial inequalities in pregnancy outcomes are addressed. California established an MMRC that expands the state’s tracking and investigating of maternal mortality. The committee’s responsibilities include reviewing all deaths that occur within a year after the end of pregnancy, providing recommendations on best practices to prevent maternal mortality and severe maternal morbidity, and analyzing racial and LGBTQ disparities.

Expanded Pharmacist Prescribing for Contraceptives and HIV Prevention

Many states are expanding pharmacists' prescribing authority to include the ability to prescribe contraceptives or medication that helps prevent HIV. This year, 10 states adopted provisions that allow pharmacists to prescribe one or both of these types of medications. Once regulations are adopted, people in 21 states in total and DC will have expanded access to contraceptives, and HIV medication will be accessible in eight states.

The provisions to allow pharmacists to prescribe contraceptives that were enacted in six states (Arizona, Arkansas, Delaware, Illinois, Nevada and North Carolina) are similar to laws in other states, although the Arizona and Arkansas programs only allow adults to use this service. Three states (Oregon, Utah and Virginia) that already have pharmacy access for contraceptives, along with Maine, Nevada and North Carolina, enacted measures that allow pharmacists to provide HIV medication. Pharmacists are allowed to provide pre- and postexposure HIV preventive medication in all of these states, except in North Carolina, where they can only prescribe postexposure medication.

Proactive Abortion Policies

Although they were overshadowed by the number and scope of abortion bans and restrictions enacted in 2021, provisions to protect and expand access to care were enacted in states along the East Coast and in the West.

- *Repealing restrictions:* Delaware, New Mexico and New Jersey repealed abortion restrictions. Delaware and New Mexico repealed pre-*Roe* abortion bans and restrictions, while New Jersey repealed its targeted regulations of abortion providers.
- *Expanding the provider pool:* Hawaii and New Jersey repealed laws that had limited abortion provision to physicians. In Hawaii, advanced practice nurses may provide both medication and procedural abortion, also known as surgical abortion, in the first trimester. In New Jersey, advanced practice clinicians—such as physician assistants, nurse-midwives and advanced practice nurses—can provide abortion care.
- *Improving abortion coverage:* Colorado, Virginia and Washington all improved abortion coverage in their health insurance plans. Washington required college health insurance plans that cover maternity care to also cover abortion care. Colorado ensured that public funds, including Medicaid, cover abortion services for sexual assault survivors at any abortion provider in the state; previously, Medicaid funds could only be used with a limited set of providers. And Virginia repealed its abortion coverage ban for Affordable Care Act marketplace plans.

Counts of state legislation in 2021 (as of December 31, 2021):

Reproductive Health and Rights Overall

- 2,090 provisions introduced in state legislatures on all reproductive health and rights topics
 - 315 provisions enacted
- 1,011 provisions introduced that would protect reproductive rights or expand access to reproductive health
 - 130 provisions enacted
- 957 provisions introduced that would restrict access to reproductive health or curtail rights
 - 142 provisions enacted

Abortion

- 218 provisions introduced that would protect or expand access to abortion care
 - 10 provisions enacted
- 663 provisions introduced that would restrict access to abortion care
 - 108 provisions enacted
- 591 provisions restricting access to abortion care have been enacted since the beginning of 2011

Contraception

- 199 provisions introduced that would protect or expand access to contraceptive services
 - 16 provisions enacted

Maternal Health

- 325 provisions introduced that would expand access to or improve the quality of maternal health care
 - 81 provisions enacted

Information on legislation and enactments on specific topics can be found in our State Policy Update, which is updated twice a month.

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