

# Criminalized Care

## How Louisiana's Abortion Bans Endanger Patients and Clinicians

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Physicians for  
Human Rights



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REPRODUCTIVE  
RIGHTS

## Acknowledgments

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# Executive Summary and Recommendations

In the nearly two years since the U.S.' Supreme Court overturned the constitutional right to abortion first established in 1973 under *Roe v. Wade*, lawmakers across the country have introduced hundreds of state legislative bills aimed at restricting or banning legal access to this essential health care. To date, 14 states have criminalized abortion.

Louisiana has been one of the most aggressive in enacting and enforcing legal bans on abortion. Even before the *Dobbs v. Jackson Women's Health Organization* decision in 2022, it had one of the most restrictive and punitive anti-abortion legal frameworks in the U.S.. The state legislature enacted a trigger ban with very narrow exceptions as early as 2006 to prohibit abortion immediately if *Roe* were ever to be overturned. The state legislature also increased legal and professional penalties for those providing abortion care just before the *Dobbs* ruling, with penalties of up to 15 years imprisonment and \$200,000 in fines. Just days after *Dobbs* was decided, the state's Attorney General (now the state's Governor) sent a letter to the Louisiana State Medical Society threatening legal action against any clinician who provided abortion care in the state.

To gauge the on-the-ground human rights impacts of these escalating attacks on reproductive rights and bodily autonomy in Louisiana, four organizations—Lift Louisiana (Lift LA), Physicians for Human Rights (PHR), Reproductive Health Impact (RH Impact), and the Center for Reproductive Rights (CRR)—conducted extensive fact-finding in Louisiana beginning in May 2023. The research, completed in November 2023, was designed to assess the impact of the abortion bans on pregnant patients and clinicians in the state. Research teams conducted dozens of in-depth interviews with clinicians and patients and held focus group discussions with community-based organizations involved in reproductive health care access in Louisiana.

**The findings contained in this report are alarming: the research shows how Louisiana's abortion bans violate federal law meant to protect patients, disregard evidence-based public health guidance, degrade long-standing medical ethical standards, and, worst of all, deny basic human rights to Louisianans seeking reproductive health care in their state.**

The research makes clear that:

- ▶ Existing federal statutes put in place to protect patient access to emergency care, including the federal law known as EMTALA, are being nullified by Louisiana's abortion bans.
- ▶ The abortion bans contravene long-accepted public health guidance, including guidance issued by the World Health Organization, and undermine clinicians' core ethical obligations to provide patients with the proper standard of medical care.
- ▶ The bans flout the U.S.' international legal obligations and violate a range of human rights that protect reproductive health and autonomy, including the rights to life, health, equality and non-discrimination, information, and freedom from torture and other cruel, inhuman or degrading treatment.

The experiences documented in this report reveal in stark ways how the criminalization of abortion care by anti-abortion lawmakers harms pregnant patients in Louisiana, their communities, and the clinicians who care for them. **This anonymized fact-finding and research shows how the bans' narrow and ill-defined exceptions create confusion, uncertainty, and fear for both pregnant patients and clinicians,** who face significant professional, civil, and criminal penalties for providing the patient-centered and compassionate care they were trained for and could legally offer before *Roe* was overturned.

One maternal-fetal medicine (MFM) specialist articulated the fear many others shared:

*Our attorney general, Jeff Landry, sent us all a letter saying, 'I will put you in jail if you break these rules.' Literally, I am out to get you, so don't break these rules. So, you do feel a little bit like there's a target on your back because you want to do what's right for the patient. And these aren't situations that happen*

*infrequently, these aren't clinical scenarios that happen once a year. They happen all the time. Every time I'm on call, I have a patient that's considered to potentially be in a life-or-death situation.*

**The bans erode clinicians' ability to use their medical judgment to provide the appropriate standard of medical care, resulting in pregnant patients being delayed or denied abortion care, even in cases where they present with serious preexisting health conditions or receive severe fetal diagnoses.** The threat of punitive measures levied at clinicians creates an untenable situation for them and causes pregnant patients to experience grave risks to their physical and mental health.

Another MFM specialist described the case of a pregnant patient who was forced to remain pregnant despite having serious cardiac complications that threatened her life:

*[S]he was quite sick, and they said, 'No. We have to maximize all medical management options before we could offer any sort of termination procedure.' And I'm thinking, but what if she doesn't want to wait that long because she could have a heart attack and die? I don't know. At what point can you act? How many cardiac meds have to fail? Okay, you failed 10 cardiac meds, so now we can talk about it? And in that case, the patient had no voice. There is no shared decision-making. None at all.*

Pregnant patients in Louisiana are also having to navigate their first trimester of pregnancy without critical information and obstetrical support in a state that already is experiencing a maternal health crisis. **Initial prenatal care in Louisiana is being pushed deeper into pregnancy, often beyond the first trimester when miscarriage is more common—purposely delayed to avoid the risk of miscarriage care being misconstrued as an abortion in violation of the bans.** This results in pregnant people struggling to access

time-sensitive, appropriate care for early pregnancy and miscarriages.

One patient with a history of miscarriages shared her experience:

*I'm used to them saying, 'Okay, well can you wait until eight [weeks]?' That's fine. But to wait until 12 [weeks] was very alarming for me and not something that I really wanted to do. I did go to several different doctor's offices and physician groups and said, 'Hey, this facility or this facility wouldn't see me, can you do it?' And they're like, 'No, I'm sorry. Our new policy is that we have to wait until 12 weeks.' When I asked why ... she straight up said, 'The abortion ban is something that's new. We're still dealing with it as well.' She stated that they schedule people based on the 12-week mark, because they want to eliminate some of the spontaneous abortions, or miscarriages, that may happen up until that 12-week mark ... Unfortunately, I didn't make it to 12 weeks.*

### **The abortion bans disproportionately impact and harm historically marginalized communities and groups in the state.**

Most pregnant Louisianans already live in vast “maternity care deserts” (areas where pregnancy-related care is entirely unavailable) and Black Louisianans suffer disproportionately high rates of preventable maternal deaths. Leaving the state to access a legal abortion remains impossible for many, especially marginalized communities who need to secure substantial economic and social support to travel.

A community-based organization representative contemplated the individual harm to pregnant people as well as the impact on families that choose to build their families in Louisiana:

*[P]eople are not going to be able to access the care that they want. And they're going to be circumstanced into growing their families or reproducing in a way that they didn't consent*

*to or choose for themselves. And, so, we're trying to think about what that means for making Louisiana a healthy and sustainable place because we already know it is hard here for people that choose to have children because of the multiple and intersecting crises that we are faced with on the front lines.*

Other major takeaways from the research show that the state abortion bans:

- ▶ Cause confusion about what reproductive health-related information clinicians can provide pregnant patients, exacerbating mistrust of the health system and harming the patient-provider relationship. Clinicians and pregnant patients alike are confused about what information they can ask for or provide, including referrals to abortion care outside the state, because they fear legal penalties for the disclosure of information concerning abortion-related care.
- ▶ Lead clinicians to face “dual loyalty” dilemmas that cause them moral distress and injury, with likely long-term impacts on the state's health care workforce. Clinicians stressed that the bans hinder their ability to respect pregnant patients' autonomy by prohibiting them from acting in accordance with their preferences and rights. Several expressed doubt that they or their colleagues could continue to practice in the state in light of the professional, civil, and criminal risks they are forced to navigate under the bans. The loss of clinicians in the state, many pointed out, will ultimately harm pregnant Louisianans.

In light of the urgent harms caused by Louisiana's abortion bans, Lift Louisiana, Physicians for Human Rights, Reproductive Health Impact, and the Center for Reproductive Rights make the following recommendations:

## To the Louisiana Legislature:

As these research findings illustrate, the laws and policies enacted by the Louisiana legislature have undermined the health and interests of pregnant people, women, and their families, and have reduced access to critical health care services. To comply with federal and human rights law, the legislature must:

**1) Repeal Louisiana’s abortion bans**, as well as all other restrictive laws and regulations that effectively obstruct access to abortion in the state. This includes enacting legislation that would:

- a. **Decriminalize abortion** and remove professional, civil, and criminal penalties for health care workers who provide abortion care to patients.
- b. **Repeal laws that could be used to prosecute or penalize people for having an abortion**, including a self-managed abortion, assisting another person to access abortion care, or for pregnancy outcomes.
- c. **Remove all medically unnecessary requirements** for provision of abortion care, such as mandatory waiting periods and biased counseling.
- d. **Amend and adopt legislation to ensure access to the full spectrum of sexual and reproductive health care**, including comprehensive sexual health education, contraception, abortion, maternal health care, and perinatal mental health care without discrimination. This includes:
  - i. **Refer a constitutional amendment to affirm the right of every Louisianan to make and carry out their own reproductive decisions**, including but not limited to decisions about abortion, contraception, fertility treatment, miscarriage care, and continuing their pregnancy.

- ii. **Address the state’s maternal mortality and morbidity crisis by enacting laws and policies that increase access to prenatal, peri-partum, and postpartum care for historically marginalized communities and those disproportionately impacted by maternal mortality and morbidity**, including through regulatory and funding measures that facilitate access to and coordination between nurse midwives and surgical centers.

- iii. **Invest in full-spectrum health care centers and providers**, including birthing centers and birth workers, who are committed to the reproductive justice framework and offer care in chronically underserved areas, particularly rural and low-income communities.

- iv. **Enact Medicaid reforms that would expand access to full spectrum reproductive health care**, including contraception, abortion, pregnancy, and postpartum care.

- e. **Take steps to address social determinants of health that contribute to health inequities in maternal mortality and morbidity**—such as unequal access to income, nutrition, housing, clean water, healthy environments, transportation, paid family and medical leave, and affordable childcare.

## To the Louisiana Executive Branch:

**1) The Governor** opposes abortion rights and, despite his substantial authority, is unlikely to use it to protect abortion care in the state. The Governor has broad authority to:

- a. **Support the enactment of legislation that protects reproductive health care in the state;**

- b. **Veto legislation** that would further restrict access to reproductive health care, including abortion access; and
- c. **Adopt executive orders** to ensure such care can be provided and received without fear of investigation, harassment, or civil or criminal penalties.

**2) The Attorney General** has substantial power to protect abortion care in the state that she is unlikely to wield because of her opposition to abortion rights. The Attorney General has authority to:

- a. **Rescind** the Office’s letter of June 29, 2022; and
- b. **Decline** to prosecute abortion-related charges.

**3) The Louisiana Department of Health should adopt policies that expand Louisianians’ access to health care** and engage with clinicians, hospitals, medical colleges, and medical associations to understand and address the impacts of abortion bans on Louisiana’s public health and health care system.

## To the Federal Executive Branch:

**1) Integrate the World Health Organization’s newly issued Abortion Care Guideline into the whole-of-government approach to ensure access to abortion.** This Guideline makes evidence-based law and policy recommendations, including that all countries fully decriminalize abortion, refrain from enacting laws that permit abortion only in certain circumstances, and remove non-evidence based pharmaceutical restrictions on abortion medications. To that end:

- a. **Ensure that the U.S. Food and Drug Administration maintains authority to approve and regulate drugs used in medication abortion in an**

**evidence-based manner.**

b. **Exercise the power of the Department of Justice to actively promote and defend the right to reproductive autonomy,** including protecting the constitutional right to travel in order to obtain abortion care in states where it is legal, ensuring that all forms of violence and harassment against clinicians and health facilities for provision of abortion are investigated and prosecuted to the full extent of the law, and advising federal agencies and Congress on policies and actions that secure broad access to abortion and other reproductive health care.

c. **Monitor the impact of abortion bans on the provision of reproductive health care and on health inequities,** including by employing the U.S. government’s authority to investigate discrimination in programs and services funded by the Department of Health and Human Services.

d. **Scrutinize, propose, and finalize updates to regulatory language to strengthen the effectiveness of relevant legislative measures,** including the Emergency Medical Treatment and Labor Act (EMTALA), in order to secure access to abortion in life-threatening situations even in states where abortion is banned, and the Health Insurance Portability and Accountability Act (HIPAA), in order to protect sensitive personal health information disclosed when seeking or receiving abortion care.

d. **Veto any legislation that seeks to limit access to reproductive health care.**

## To the U.S. Congress:

- 1) Enact the Women's Health Protection Act (WHPA)**, which establishes a statutory right for health care professionals to provide abortion care and for patients to receive care, and other positive measures to ensure meaningful access to abortion and other reproductive health care information and services without discrimination.
- 2) Eliminate the Hyde Amendment**, which restricts federal funding for abortion care except in very limited circumstances under Medicaid, and other harmful legislation that creates barriers to abortion access, in particular for Black, Indigenous, and other people of color, people with limited financial resources, and people with disabilities.
- 3) Enact the Equal Access to Abortion Coverage in Health Insurance (EACH) Act**, which would ensure that every person who receives health care or insurance through the federal government will have coverage for abortion care.
- 4) Support legislation that prohibits clinicians' civil or criminal liability, disbarment, loss of license, or other retribution or reprimanding measures** where clinicians provide life- or health-preserving abortion care.

## To Louisiana's Hospitals and Health care Professionals:

- 1) Speak out against laws criminalizing abortion or otherwise restricting access to abortion**, including by raising awareness of the harm caused to patients and health care systems and ensuring clinicians are not prohibited by their medical institutions from speaking out against such laws.
- 2) Assist clinicians in navigating abortion bans and restrictions and providing patients with the standard of care**, including by providing them with accurate and up-to-date legal guidance as well as guaranteed and timely legal support for abortion-related investigations or legal proceedings. Louisiana's hospitals and health care providers must better ensure that staff and clinicians in clinical settings adhere to the recommendations that the American Medical Association, the American College of Obstetricians and Gynecologists, and other medical professional organizations have issued affirming ethical and professional obligations to provide patients with abortion care.
- 3) Continue to support clinicians and medical students to attend trainings on abortion and other reproductive health care**, including clinical training and ethical guidance.
- 4) Lead and support efforts to build knowledge of and access to the full range of evidence-based reproductive care among patients and communities**, including those experiencing greater health inequities.

## To State and National Medical Associations:

- 1) Vigorously advocate for the repeal of abortion bans and restrictions and continue to speak out against the range of injuries—criminal, civil, and moral—caused by abortion bans and restrictions**, including citing evidence of how such laws lead to violations of ethical obligations, interfere with professional duties of care, and exacerbate existing health inequities.
- 2) Advocate for increased access to abortion and other reproductive health care in Louisiana and beyond**, including measures that protect the safety and security of clinicians providing reproductive health care, patient data confidentiality, patients' ability to travel for abortion care, and telehealth abortion.
- 3) Provide financial and practical support to allow Louisiana clinicians and medical students to access clinical training on abortion care**, including out of state.
- 4) Raise patient awareness of their rights under the bans**, including their rights to travel to another state to access abortion care.

## To International and Regional Human Rights Mechanisms, including UN Treaty Monitoring Bodies, UN Special Procedures, and the Inter-American Commission on Human Rights:

- 1) Undertake independent, impartial human rights monitoring visits to the U.S.** to document the ongoing scope and nature of human rights violations occurring and monitor compliance with recommendations issued to the U.S. government post-*Dobbs*.
- 2) Prioritize scrutiny of the U.S.' reproductive health record**, including in periodic review processes and relevant follow-up by the Human Rights Committee, the Committee Against Torture, the Committee on the Elimination of Racial Discrimination, and the UN Human Rights Council.
- 3) Actively support legal challenges to abortion bans and other reproductive health care restrictions**, including by issuing joint statements of condemnation and filing amicus briefs.

