



Arizona Law – Is abortion legal or not?

By Cathi Herrod, Esq., President, Center for Arizona Policy

In response to questions about Arizona law on abortion, I am outlining to the best of my ability, in consultation with other attorneys, the following.

1. Arizona law 13-3603 prohibits abortion except to save the life of the mother. The law prohibits abortion from the moment of conception. The law dates from before statehood. It has never been repealed. The law terms abortion as miscarriage but the clear intent is to prohibit abortion. The Arizona Legislature expressly has declined to repeal 13-3603 when given the opportunity to do so.
2. Prior to January 1973, a state court had upheld 13-3603 as being constitutional. It was in effect, and abortion was not legal when *ROE* was issued in January 1973.
3. In March 1973, the court permanently enjoined, meaning prohibited, the state Attorney General and the Pima County Attorney from taking any action to stop abortion against all persons. That order did not apply to every other county attorney.
4. Now *ROE* has been overturned.
5. Vacating that March 1973 injunction should be a formality now that *ROE* has been overturned. The injunction likely runs only against the Attorney General and the Pima County prosecutor but not against other county prosecutors. No other county prosecutors were enjoined in the March 1973 order.
6. In 2022, the legislature enacted, and Gov. Ducey signed a law to limit abortions in Arizona to 15 weeks. That law, SB 1164, clearly stated that the act did not repeal 13-3603. The law was designed to only go into effect if 13-3603 was not in effect.
7. Now, the legislature has adjourned. Some contend that the 15-week limit will go into effect in 90 days and override the pre-*Roe* law. That is not accurate.

8. If in 90 days, the pre-*ROE* law is enforceable and abortion is not legal in Arizona except to save the life of the mother, then that is the controlling law, not the 15-week limit.

9. The only way the 15-week limit should be enforceable is IF the pre-*ROE* law, 13-3603, has been enjoined by a court action between now and the end of the 90-day period.

10. In 2021, the legislature passed, and Gov. Ducey signed SB 1457 that stated that the laws of this state "shall be interpreted" to "acknowledge on behalf of an unborn child at every stage of development, all rights...available to other persons, subject only to the Constitution of the United States and decisional interpretations thereof by the United States Supreme Court." Now with Court ruling that the Constitution does not grant a right to an abortion, Arizona laws must be interpreted to grant unborn children all the rights in the law to born persons.

11. Now, all that said, the abortion industry and their allies already are filing lawsuits to grant abortion rights in Arizona. On Saturday June 25, the ACLU and parties filed an emergency motion to enjoin enforcement of the 2021 measure.

12. Lastly, no Arizona law punishes the woman for having an abortion. Last year, the legislature passed, and the Governor signed a law to repeal the pre-*Roe* law that punished the woman for having an abortion with a jail sentence. The abortionist is the one to be held criminally liable for breaking the law, not the woman.