

Arizona Law on Abortion

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Background

- A.R.S. 13-3603 prohibits abortion except to save the life of the mother. The law has been in the Arizona statutes since statehood. This is the law referred to as Arizona's pre-*Roe* law on abortion. The term miscarriage means abortion in this context.

A person who provides, supplies or administers to a pregnant woman, or procures such woman to take any medicine, drugs or substance, or uses or employs any instrument or other means whatever, with intent thereby to procure the miscarriage of such woman, unless it is necessary to save her life, shall be punished by imprisonment in the state prison for not less than two years nor more than five years.

- The U.S. Supreme Court issued *Roe v. Wade* on January 22, 1973, declaring abortion was legal in all fifty states.
- An Arizona court issued an injunction in March 1973 prohibiting enforcement of Arizona's law on abortion because of the *Roe v. Wade* decision.
- In 1977, the Arizona Legislature repassed the pre-ROE law, expressing its intent to keep the law on abortion in Arizona statutes despite the *Roe* decision. The pre-*Roe* law may accurately be called the 1977 abortion law.
- On June 24, 2022, the U.S. Supreme Court overturned *Roe v. Wade*, ruling that the U.S. Constitution did not include a right to an abortion. Rather, abortion laws are to be determined by representatives of the people, meaning the legislative branch.
- Arizona Attorney General Mark Brnovich filed a procedural motion in Pima County Superior Court to have the 1973 injunction prohibiting enforcement of Arizona's pre-*Roe* law lifted now that *Roe* had been overturned.
- On Friday, September 23, 2022, Pima County Superior Court Judge Kellie Johnson issued a 7-page ruling in which she ordered the 1973 injunction of the law to be lifted. Judge Johnson further declined to issue a stay of her decision.
- The abortion industry filed a notice of appeal and a request of a stay of Judge Johnson's ruling pending appeal. A three-judge panel on the Arizona Court of Appeals, Division 2 granted the stay Friday, October 7, 2022. That panel will hear this case by mid-November with decision to follow.
- Arizona's pre-*Roe* law is not enforceable for now at least in Pima County and by the Attorney General statewide. However, most, if not all, Arizona county attorneys appear reluctant to enforce the pre-*Roe* law and are awaiting the outcome of the litigation.

Responses to Key Arguments

- No Arizona law punishes a woman for having an abortion. In 2021, the Arizona Legislature repealed A.R.S. 13-3604, the law that criminalized a woman for getting an abortion or trying to get an abortion. Hence, Arizona law only punishes the abortionist.
- A.R.S. 13-3603 does not prevent any woman from getting treatment for a miscarriage or ectopic pregnancy. Miscarriages and ectopic pregnancies do not happen with the intent to procure an abortion.
- Democrat candidate for Attorney General, Kris Mayes, repeatedly states that Arizona Constitution Article 2 Section 8, grants abortion rights. Not true.
 - The clause states that “No person shall be disturbed in his private affairs, or his home invaded, without authority of law.
 - No state or federal court has ever interpreted the language to include a right to an abortion.
 - The clause is a search and seizure type prohibition.
- SB 1164 (2022) to limit abortions after 15-weeks gestational age does not override the 13-3603. Gov. Ducey and media representatives have made that claim. It is not an accurate reading of Arizona laws. The new law:
 - Prohibits abortion after 15-weeks gestational age of the unborn child. The provision mirrored the Mississippi law that was pending before the U.S. Supreme Court in *Dobbs* at the time the 15-week limitation was passed and signed into law.
 - Specifically states that the new law
 - Did not create or recognize a right to abortion
 - Did not repeal A.R.S. 13-3603.
 - The clear intent of the legislature was that the 15-week limit only would go into effect if the U.S. Supreme Court did not overturn *Roe* in the *Dobbs* decision.

Status of Abortion Litigation

Three lawsuits currently pending

- **Arizona Court of Appeals, Division Two**
 - Lawsuit mentioned above.
 - Court has set a briefing schedule with oral arguments expected mid- to late-November with decision to follow.

- **Maricopa County Superior Court**
 - On Monday, October 3, the ACLU Arizona filed a new lawsuit challenging Arizona's abortion law. The lawsuit makes claims similar to those made before the Arizona Court of Appeals but rejected by Pima County Judge Johnson.
 - The lawsuit was filed on behalf of abortionist Paul Isaacson and the Arizona Medical Association. The lawsuit alleges that:
 - Arizona courts have a “duty to harmonize” Arizona's pro-life laws.
 - They claim all of Arizona's laws should “co-exist” as opposed to leaving in effect the pre-Roe law banning most abortions.
 - They claim Arizona's legislature intended to allow doctors to perform abortions within the framework of laws like parental consent, informed consent, etc.
 - Response – legislative intent is clear.
 - Arizona law does not state anywhere that a doctor may perform an abortion. The law clearly states that non-doctors are not allowed to perform or provide abortions. That prohibits nurse practitioners and physician assistants from providing abortions but it does not grant doctors or anyone else the legal authority to perform abortions.
 - Lawmakers passed restrictions on abortion to the extent that laws were permissible pursuant to decisions made by the U.S. Supreme Court and other courts. It is a false claim that lawmakers intended these laws to co-exist with pre-ROE law.
 - Lawmakers repeatedly and specifically declined to repeal A.R.S. 13-3603. Through the years, amendments or bills filed to do so were not approved. When the legislature repealed the law punishing women, they clearly did not take the step to repeal A.R.S. 13-3603.
 - Maricopa County Superior Court Judge Joseph Mikitish has set a briefing schedule to be followed by oral arguments on Thursday, November 3 with decision to follow.

- **U.S. District Court**

- The abortion industry has continued to pursue a lawsuit in federal court challenging Arizona's 2021 law that granted rights to the unborn child and prohibited abortions due to genetic abnormalities.

Summary

- Arizona's pre-Roe law prohibiting abortion except to save the life of the mother is not enforceable only due to state court order and pending litigation.
- Arizona's law prohibiting abortion after 15-weeks is in effect today as well as other laws regulation abortion.