

## Abortion Law in the United States

### What happened before Roe v. Wade?

- Under English common law, the cornerstone of American jurisprudence, abortions performed prior to “quickening” (the first perceptible fetal movement, which usually occurs after the fourth month of pregnancy) were not criminal offenses.
- abortion was made illegal under most circumstances in most states in the mid-1800s
- by 1973, legal abortions were available in 17 states.
- in 1930, abortion was listed as the cause of death for 18% of maternal deaths.
- Before Roe, a woman seeking abortion had to appeal to a standing hospital committee. She could also travel to another state, or even England where abortion was legal.

### What did Roe v. Wade provide?

- Abortion is legal in the first trimester. The US may not restrict abortion after that, but states may regulate or restrict it.
- From the majority opinion: “We, therefore, conclude that the right of personal privacy includes the abortion decision, but that this right is not unqualified and must be considered against important state interests in regulation.” What are those state interests? “...at some point the state interests as to protection of health, medical standards, and prenatal life, become dominant.”
- Also, from the majority opinion: “the word person, as included in the 14th amendment, does not include the unborn.”
- The trimesters (a trimester is 13.3 weeks):
  - first trimester: the abortion decision is left to the woman's physician.
  - Second trimester: the state may regulate abortion procedures in ways that are reasonably related to maternal health.
  - third trimester: the state may proscribe abortion except when medical judgment concludes that the life of the mother is at stake.

### What are the subsequent important cases?

- *Planned Parenthood v. Casey* (1992) the Supreme Court established that restrictions on abortion are unconstitutional if they place an “undue burden” on a woman seeking an abortion before the fetus is viable.
- In *Gonzales v. Carhart* (2007), the court upheld the federal Partial-Birth Abortion Ban Act (2003), which prohibited a rarely used abortion procedure known as intact dilation and evacuation.
- In *Whole Woman’s Health v. Hellerstedt* (2016), the court invoked its decision in *Casey* to strike down two provisions of a Texas law that had required abortion clinics to meet the standards of ambulatory surgical centers and abortion doctors to have admitting privileges at a nearby hospital.

### What is Florida law about abortion?

- Abortion is prohibited after 24 weeks except in cases of life or health endangerment, and a second physician must participate in such cases.
- Healthcare professionals and institutions may refuse to participate in abortions.
- Florida passed a law banning dilation and evacuation abortions, but it was enjoined by court order and is not in effect.
- In 2018, Florida passed a law requiring the state to partner with pregnancy support organizations that exclusively promote live birth.
- In 2019, a so-called “fetal heartbeat bill” failed to progress in the Florida legislature, and a bill requiring parental consent for a minor's abortion passed the House but was not considered in the Senate.