



FACT SHEET: Criminalization of Abortion in Wisconsin

If *Roe v. Wade* is overturned, current state law would allow law enforcement to prosecute people for performing abortions in Wisconsin. National organizations, such as the [National Institute for Reproductive Health](#), have recognized [a number of states](#) that are hostile to reproductive freedom and access to abortion - including [Wisconsin](#).

Background

In 1849, the state of Wisconsin passed a law that made having an abortion or performing an abortion a felony criminal offense. That law became clearly unenforceable when Supreme Court of the United States ruling in *Roe v. Wade*, which effectively protects the right to access abortion. The state legislature, however, never removed the 1849 law from its criminal code. With Justice Brett Kavanaugh's recent appointment to the Supreme Court, *Roe v. Wade* is under serious threat of being overturned. Without its protection, doctors could be criminalized for performing abortions in Wisconsin.

Timeline of Events

- **1848:** Wisconsin became the 30th state admitted to the Union.
- **1849:** The state of Wisconsin passes a law making it a felony offense to have or provide an abortion.
- **1970:** US District Court for the Eastern District of Wisconsin rules in *Babbitz v. McCann*, that the state cannot interfere with a person's decision to have an abortion until the fetus begins its first recognizable movements (usually between the sixteenth and eighteenth week of pregnancy).
- **1973:** The Supreme Court of the United States decides *Roe v. Wade*, making the 1849 state law unenforceable in Wisconsin.
- **2016:** The Supreme Court of the United States rules in *Whole Woman's Health v. Hellerstedt* that state regulations on abortion must benefit patient health more than they burden patient access to abortion.

Today: Wisconsin's archaic 1849 law criminalizing doctors for providing abortions remains a part of the state criminal code, and if *Roe v. Wade* is overturned, the 1849 law in Wisconsin could be enforceable against doctors.

What This Means for Abortion Providers

If *Roe v. Wade* is overturned, Wisconsin's state law could result in the criminalization of doctors who perform abortions and penalize them with up to six years in prison and \$10,000 fine. Wisconsin's current restrictions on abortion practices include a 20-week ban, 24-hour mandatory waiting period, mandatory ultrasound procedure, and a ban on telemedicine abortion. If criminalization of doctors occurs, many people will have no access whatsoever to abortion services in the state of Wisconsin.

Abortion Access in the United States

Wisconsin is not the only state where abortion could become criminalized; several restrictive abortions laws have recently been introduced in states across the United States. Over the last year, state legislatures in Kentucky, Indiana, and Oklahoma have introduced bills that criminalize all abortion without exception, even in cases involving rape, incest, or emergency health crises involving the life and wellbeing of a pregnant person.

About the Wisconsin Alliance for Women's Health

Our vision at the Wisconsin Alliance for Women's Health's (WAWH) is to ensure every Wisconsin woman – at every age and every stage of life – has the ability to reach her optimal health, safety and economic security.