



Re: Abortion is legal and protected in New York State

Dear Law Enforcement Colleagues,

Even though the United States Supreme Court recently overturned *Roe v. Wade* and ruled that the right to choose an abortion is not protected by the federal constitution, **abortion is legal in New York**. New York will continue to be a safe haven for abortion access and will protect patients, providers, and other persons seeking to access or provide lawful abortion care in the state.

Recent news reports have raised concerns about the prospect of certain states attempting to impose civil or criminal liability on persons who provide or obtain abortion care in states like New York. The Governor has recently signed into law numerous protections for persons obtaining or providing lawful abortion care in the state.

New York's new laws impose obligations and place restrictions upon law enforcement officials to ensure that other states are unable to penalize people for obtaining or providing lawful abortion care in New York.

Below is a list of frequently asked questions with answers to address how these new laws relate to the work of law enforcement officials. I urge you to familiarize yourself with these statutes and develop practices to ensure that your departments comply with the new laws.

NEW YORK STATE ABORTION LAW FREQUENTLY ASKED QUESTIONS FOR LAW ENFORCEMENT

What type of abortion care is lawful in New York?

- New York guarantees the unqualified right to abortion up to 24 weeks after the commencement of pregnancy.
- Abortion is permitted after 24 weeks if the fetus is not viable or if the pregnant person's life or health (including mental health) is at risk.
- In New York, minors under the age of 18 may access abortion or other reproductive health services without parental notification or consent.

Are abortion services in New York confidential?

- Yes. A health care provider generally may not disclose medical records or any information about a pregnant person's appointment or procedure without their consent.
- Employers are prohibited from accessing information regarding an employee's or their partner's reproductive health decision-making.
- Under a new law effective on September 12, 2022, abortion providers, their employees, volunteers, patients, and immediate family members will be eligible to enroll in a state-run address confidentiality program if they fear for their safety or the safety of an immediate family member. See Executive Law §§ 108(1), (3).

Will New York cooperate with states seeking to extradite abortion providers?

- New York will not assist states seeking to extradite someone who performed or aided in the performance of a lawful abortion in New York, unless the demanding state alleges in writing that the accused was present in the demanding state at the time of the crime and then fled from the state. See Criminal Procedure Law § 570.17.
- This law is in effect now.

Can law enforcement cooperate with or provide information to an out-of-state governmental entity about abortions performed in New York?

- New York law enforcement may not cooperate with or provide information to any individual or out-of-state agency regarding a legal abortion performed in New York, absent a valid court-issued subpoena or warrant (which may only be issued under limited circumstances). See Executive Law § 837-w.
- This law is in effect now.

Can a New York court compel a witness to testify in connection with an out-of-state lawsuit about an abortion performed in New York?

- Absent limited exceptions, New York courts and county clerks are prohibited from issuing an order to compel a witness to testify in a deposition in connection with an out-of-state abortion proceeding relating to an abortion lawfully performed in New York unless the underlying proceeding is brought by the patient or her representative, asserts a tort, contract, or statutory violation, and is actionable, in an equivalent or similar manner, under New York law. See Civil Practice Law and Rules § 3102 (e).
- This law is in effect now.

Can law enforcement arrest a person for performing, aiding in the performance of, or procuring a legal abortion in New York?

- No. A police officer may not arrest any person for performing, aiding in the performance, or procuring an abortion that is lawfully performed in New York. See Criminal Procedure Law § 140.10 (3-a)
- This law is in effect now.

Can a New York court issue a subpoena in connection with an out-of-state lawsuit about an abortion performed in New York?

- New York courts and county clerks are prohibited from issuing a subpoena in connection with an out-of-state abortion proceeding relating to an abortion lawfully performed in New York unless the underlying proceeding is brought by the patient or her representative, asserts a tort, contract, or statutory violation, and is actionable, in an equivalent or similar manner, under New York law. See Civil Practice Law and Rules § 3119(g).
- This law is in effect now.

Is it illegal to interfere with someone seeking to obtain or provide an abortion?

- State penal law prohibits anyone from using force, threat of force, or physical obstruction to intentionally injure, intimidate, or interfere with anyone (or attempt to do so) because that person is obtaining or providing reproductive health services, or to discourage that person from obtaining or providing reproductive health services, including abortion. See N.Y. Penal Law §§ 240.70(1)(a), (1)(b), (3)(e).
- State penal law also prohibits intentionally damaging or attempting to damage the property of a health care facility because the facility provides reproductive health services, including abortion. See N.Y. Penal Law § 240.70(1)(d).
- These state law prohibitions mirror federal protections under the Freedom of Access to Clinic Entrances or “FACE” Act. See 18 U.S.C. § 248.
- These laws are in effect now.

In the weeks following the Supreme Court's decision, individuals seeking and providing reproductive health services have faced increasing opposition and attacks from those intending to interfere with access to abortion in New York. I encourage you to familiarize yourself with the reproductive health service providers in your jurisdiction, engage with those providers about their safety needs, and provide law enforcement protection necessary to prevent unlawful interference with reproductive health services. I also encourage you to promptly report incidents of interference to my office so that we might investigate and determine whether enforcement action is appropriate under N.Y. Civil Rights Law Section 79-m or the FACE Act. To report an incident please contact our Civil Rights Bureau at (212) 416-8250 and civil.rights@ag.ny.gov.

Finally, as law enforcement officials, we share the great responsibility of ensuring that our justice system is not wrongly used to advance improper and discriminatory enforcement actions. Since 1973, National Advocates for Pregnant Women has documented more than 1,700 instances nationwide in which people were arrested, prosecuted, convicted, detained, or forced to undergo medical interventions because of their pregnancy status or outcomes.¹ The individuals targeted by such actions were overwhelmingly low income and disproportionately Black and Brown.² Many had histories involving drug use, mental health issues, and/or experiences of violence.³ Such enforcement actions exacerbate racial and socioeconomic inequities, punish pregnant people for their circumstances, undermine the health of pregnant people and fetuses, and have no place in New York State.

As we enter a world in which the rights of pregnant people are under renewed attack, law enforcement officials should exercise caution before taking any adverse action against any person based on pregnancy status or pregnancy outcomes. For example, New York's manslaughter statute does not apply to pregnant persons based on conduct that is perceived to be reckless or harmful toward a fetus. See generally *People v. Jorgensen*, 41 N.E.3d 778 (2015). Our laws should not be used to criminalize otherwise legal conduct or be used to punish pregnant people for acts or omissions perceived to create a risk of harm to the pregnancy. Our laws protect a range of individual choices that are essential to bodily autonomy and self-determination.

In the wake of the Supreme Court's decision, I redouble my commitment to fiercely defend reproductive justice and freedom of choice in New York State. Please join me in the fight to uphold and faithfully apply New York's laws to ensure that New York remains a necessary safe haven—not only for abortion—but also for the full range of choices that are essential to reproductive autonomy and comprehensive healthcare.

Respectfully,



Letitia James

¹ National Advocates for Pregnant Women, *Confronting Pregnancy Criminalization: A Practical Guide for Healthcare Providers, Lawyers, Medical Examiners, Child Welfare Workers, and Policy Makers*, 5 (June 2022), available at nationaladvocatesforpregnantwomen.org/wp-content/uploads/2022/06/1.Confronting-Pregnancy-Criminalization_6.22.23-1.pdf.

² Lynn M. Paltrow & Jeanne Flavin, *Arrests of and Forced Interventions on Pregnant Women in the United States, 1973–2005: Implications for Women's Legal Status and Public Health*, 38 J. HEALTH POLITICS, POL. & L. 299, 310, 311-13 (2013)

³ *Id.*