

“The Post-*Dobbs* Litigation Landscape,” *The State of Criminal Justice 2024*

Publications

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In Chapter 13 in the *American Bar Association's* annual publication, *The State of Criminal Justice 2024*, Partners Anne Cortina Perry, Shoba Pillay, and Joanna Wright, and Associates Emily Mannheimer, Isabel Farhi, and Illyana Green discuss the legal landscape for abortion care following the US Supreme Court's decision in *Dobbs v. Jackson Women's Health Org.* in 2022, which reversed *Roe v. Wade*.

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In the chapter, the authors analyze the state laws that prohibit abortion through state constitutional or statutory bans and provide an overview of key criminal issues in the post-*Dobbs* abortion litigation landscape.

“Bans are generally considered to prohibit performing a surgical abortion on a pregnant person or prescribing or dispensing abortion medication to a pregnant person. The scope of “procuring” or “assisting” with an abortion is less clear and could be broadly read to include a host of individuals or entities who funded or otherwise assisted in the abortion,” the authors write.

The authors also discuss the extent of liability (criminal penalties) for abortion bans, which vary widely by state and the impacts of secondary liability in states that seek to criminalize assisting in an abortion.

“While thus far untested, these state laws could be used to criminalize employers’ provision of insurance benefits that allow employees to travel out-of-state to access abortion care, to charge hospital staff and administrators who assist with an illegal abortion, or even to reach as far as potentially covering family members and friends who helped their loved one obtain abortion medication. Early state enforcement efforts have expansively construed theories of secondary liability to pursue a large array of actors,” the authors write.

Other sections throughout the chapter discuss medication abortion, the impact of federal law on medication abortion laws, and territorial concerns.

“Beyond the increase in abortion bans and laws shortening the time a patient has to obtain an abortion, certain trends in abortion restrictions have developed since *Dobbs* was decided. One such trend is the increase in laws that specifically address the liability of the pregnant person, including laws that indicate that abortion patients cannot be held criminally liable under the law, and laws that indicate that they can. Similarly, more prosecutors may attempt to prosecute the pregnant person under other statutes, such as statutes criminalizing abuse of a corpse,” the authors conclude.

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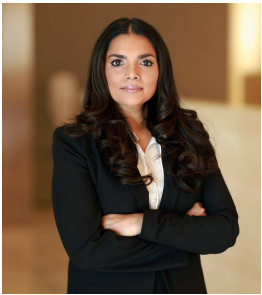


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