

Fulfilling *Roe*'s Promise: 2019 Update

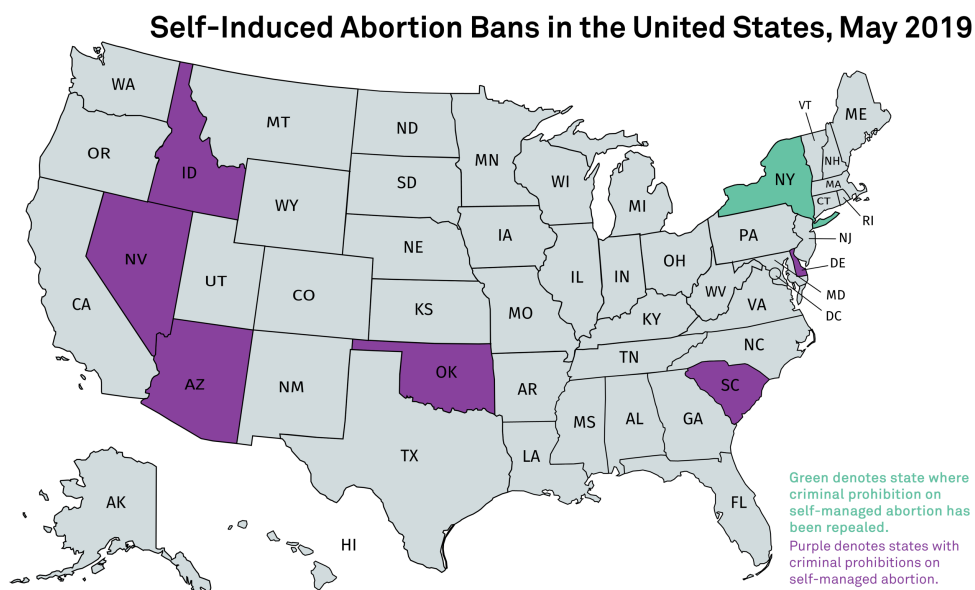
Much has changed since *Roe's Unfinished Promise* was first published in 2017 by the SIA Legal Team (now If/When/How: Lawyering for Reproductive Justice). President Trump has appointed a second abortion opponent to the U.S. Supreme Court. Lawmakers across the country have proposed increasingly radical abortion restrictions, imposing gestational limits that begin even before a person may discover that they are pregnant, and in some states, outright criminalizing people who have abortions.

But the worsening landscape has been a clarion call for advocates to take stock of their state laws and eliminate the threats described in *Roe's Unfinished Promise*. Whether that means repealing antiquated laws or leveraging opportunities to introduce protections into existing harmful laws, advocates have been hard at work ensuring that people who end pregnancies are safe from the threat of arrest.

The legal landscape isn't the only thing that has changed: in March 2019, the SIA Legal Team merged¹ with If/When/How: Lawyering for Reproductive Justice. With advocates across the nation and a robust network of law students, attorneys, and legal professionals committed to reproductive justice, If/When/How continues the work that began at SIA Legal Team, halting criminalization of people who self-manage abortions. This includes direct support through ReproLegalHelpline.org, where people concerned about being criminalized for ending, or attempting to end, a pregnancy can learn more about their rights, submit questions by phone or through encrypted communication, and get connected with an attorney in their state if needed.

Our own legal research and advocacy shows that, since 2000, there have been at least 21 arrests of individuals accused of a crime for ending a pregnancy or helping a loved one do so. Today, If/When/How: Lawyering for Reproductive Justice continues to work in partnership with legal professionals, health care providers, advocates, and activists to ensure that there is not one more.

NEW YORK: UPDATING LONG-OUTDATED LAWS

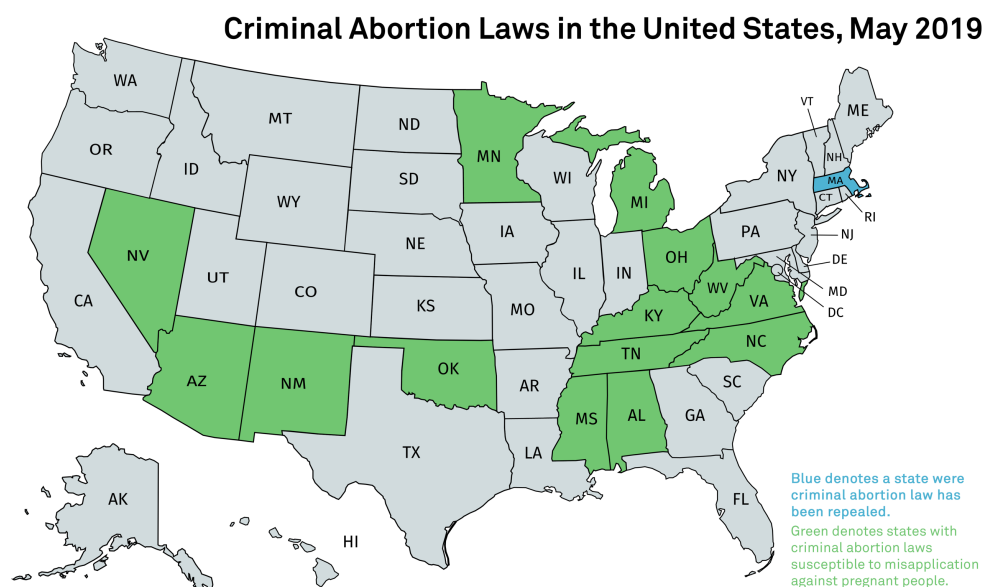


¹ If/When/How: Lawyering for Reproductive Justice, *If/When/How and the SIA Legal Team Unite: Introducing the New Leading Edge in Lawyering for Reproductive Justice*, Mar. 13, 2019, <https://www.ifwhenhow.org/2019/03/13/ifwhenhow-and-the-sia-legal-team-unite-introducing-the-new-leading-edge-in-lawyering-for-reproductive-justice/>.

In 2019, on the anniversary of *Roe v. Wade*, New York State passed the Reproductive Health Act,² reforming New York's abortion laws for the first time since 1971.³ Prior to this, New York was one of only seven states that had a law explicitly criminalizing self-managed abortion (termed "self-abortion"), which had been used as recently as 2011 against a woman who admitted under interrogation that she had drunk an herbal tea hoping to end her pregnancy.⁴ New York's Penal Law also contained provisions threatening people who perform abortions, imposing a gestational limit directly in conflict with post-*Roe* Supreme Court case law.⁵ These limitations forced many New Yorkers to leave the state for medically necessary abortions.

The Reproductive Health Act repealed provisions criminalizing both the people who provide abortions and the people who have them, taking abortion out of the Penal Law entirely. As a result, abortion will be treated not like a crime, but like any other health care procedure, ensuring that no New Yorker has to fear arrest for ending their own pregnancy.

MASSACHUSETTS: "NASTY" WOMEN FIGHT BACK



Until July 2018, Massachusetts retained a 19th century criminal abortion law that had been misinterpreted to criminalize women who had ended their own pregnancies. Even in the mid-1800's, when the law was originally passed, it was understood that a person who had an abortion was not subject to criminal penalties. Nevertheless, it was misused in 2007 to charge⁶ an immigrant woman with criminal abortion for ending a pregnancy using pills that were, at the time, available over the counter in her home country.

² S.240, 2019-2020 Gen. Sess. (N.Y. 2019).

³ Bethany Bump, *Cuomo Signs Reproductive Health Act After Legislature Votes*, Albany Times Union, Jan. 22, 2019, <http://bit.ly/2WfBM6K>.

⁴ See Anemona Hartocollis, *After Fetus is Found in Trash, a Rare Charge of Self-Abortion*, N.Y. Times, Dec. 1, 2011, <http://nyti.ms/2q1Nncz>.

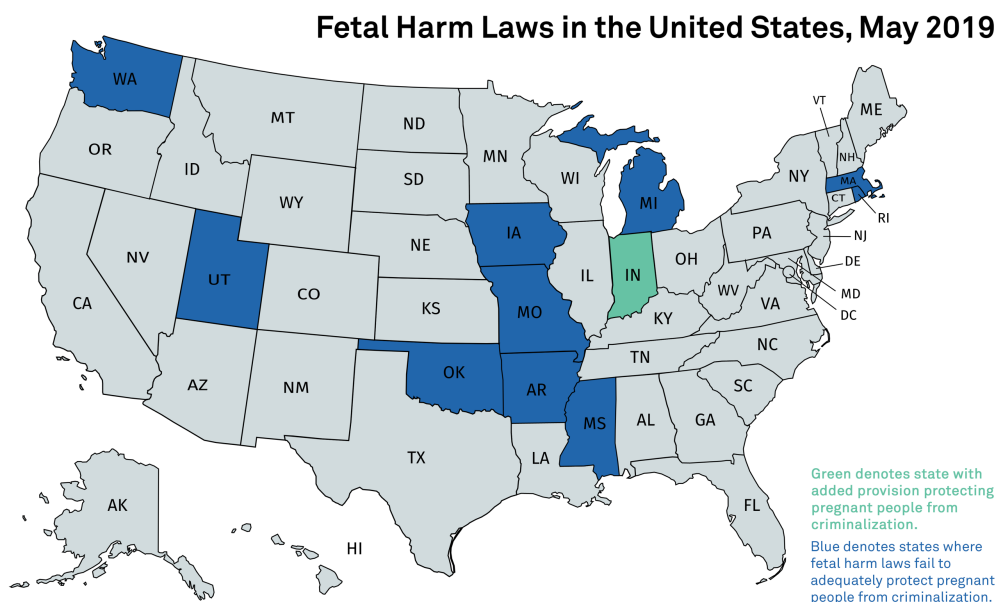
⁵ Vivian Yee, *New York Can't Block Late-Term Abortion in Certain Cases, Schneiderman Says*, N.Y. Times, Sep. 7, 2016, <https://nyti.ms/2WdAg1N>.

⁶ Jennifer 8. Lee, *For Privacy's Sake, Taking Risks to End Pregnancy*, Jan. 4, 2009, <http://nyti.ms/2GYaE5j>.

In light of the growing threat to abortion access at the federal level, Massachusetts legislators passed the Act Negating Archaic Statutes Targeting Young Women⁷ (or, the “NASTY Women Act”), which repealed a number of Massachusetts laws designated as “Crimes Against Chastity, Morality, Decency and Good Order.”⁸ These included laws forbidding adultery, fornication, “procuring miscarriage” (i.e. performing abortions), advertising abortion or contraceptives, or furnishing information about contraception or “articles intended for self-abuse.”

By repealing the archaic morality laws, the NASTY Women Act removed any remaining statutory pretext a prosecutor could find for criminally charging a person who ended their own pregnancy.

INDIANA: CREATING TRUE PROTECTIONS FOR PREGNANT PEOPLE



In 2018, Indiana introduced a bill amending state feticide provisions to apply not only to viable fetuses, but at all stages in pregnancy.⁹ The feticide law was originally passed with the aim of addressing crimes against pregnant people, such as Katherin Shuffield, an Indianapolis bank teller who was shot during the course of a robbery and lost her twin pregnancy as a result.¹⁰ The lawmaker who urged the expansion of the law to include earlier stages in pregnancy was a former Marion County prosecutor concerned by the murder of a woman in his district.

Despite this seemingly benign justification, Indiana has a recent history of prosecuting people with feticide offenses based on their own pregnancy outcomes. The most high-profile of these arrests was of Bei Bei Shuai,¹¹ who was arrested in Marion County in 2011 after she survived a suicide attempt

⁷ S.2260, 190th Leg. (Mass. 2017).

⁸ Jamie Halper, *Massachusetts Repeals Long-Dormant Ban on Abortion*, Boston Globe, July 27, 2018, <http://bit.ly/2DE0MNU>.

⁹ S.B 203, 120th Gen. Assem., 2018 Sess. (Ind. 2018).

¹⁰ Assoc. Press, *Robber Shoots a Pregnant Teller*, N.Y. Times, Apr. 3, 2008, <https://nyti.ms/2DFVLUU>.

¹¹ Jessica Mason Pieklo, *Plea Deal Reached in Bei Bei Shuai Prosecution*, Rewire News, Aug 2, 2013, <http://bit.ly/2L8GyBR>.

during her pregnancy but gave birth to a baby who died soon after delivery, and Purvi Patel,¹² who was sentenced to 20 years behind bars after she sought emergency medical care after allegedly having ended her pregnancy with pills obtained online in 2013. Both were incarcerated for years before finally being vindicated.

Although the Court of Appeals of Indiana rejected the use of the feticide law of self-managed abortions, Indiana's lack of clear protection from prosecution for pregnant individuals left them vulnerable. In fact, research has shown that even in states with statutory language protecting pregnant people from arrest, people have been prosecuted for abortions, miscarriages, and stillbirths.¹³ Advocates recognized that expanding the law to the point of fertilization would potentially leave people who lost or ended pregnancies susceptible to unjust arrest, including for early miscarriages.

With a state house hostile to abortion rights and intent on expanding legal status for fetuses, advocates recognized the difficulty of opposing the bill. However, they held lawmakers to their claim that they did not intend to criminalize pregnant people by introducing an amendment that stated that pregnant people could not be prosecuted for losing or ending a pregnancy.

While the Indiana General Assembly succeeded in its goal of expanding the feticide provision, the introduction of the amendment preventing the misuse of that law will ensure that no one faces felony charges related to a self-managed abortion or pregnancy loss.

INTO THE FUTURE: IS YOUR STATE NEXT?

This is the first of what we know will be a number of updates detailing the exciting progress being made across the country on our shared journey to making reproductive justice a reality for all — even in the face of regressive political, institutional, and systemic opposition to reproductive freedom.

That's why If/When/How: Lawyering for Reproductive Justice is always eager to be a resource to grassroots reproductive rights, health, and justice advocates who want to end the criminalization of self-managed abortion where they live. Our legal, policy, and movement-building experts may be able to provide support with bill or ordinance drafting, messaging, coalition-building, community education, and other procedural and logistical work necessary to ensure that everyone can self-determine their reproductive lives without fear of prosecution.

Legal professionals who wish to get involved in pro bono work for people who have been criminalized for self-managed abortion can reach out to us at SMA@ifwhenhow.org. For questions about how to get started opposing the criminalization of pregnancy and self-managed abortion care in your state or community, reach out to us at info@ifwhenhow.org.

¹² Assoc. Press, *Purvi Patel is Released After Feticide Conviction Overturned*, Indy Star, Sept. 1, 2016, <http://indy.st/2qQ104f>.

¹³ Paltrow & 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, Policy & Law 299 (2013).