Legal Restrictions and Thriving Anyway

A GUIDE TO ARKANSAS LAW POST-ROE

WRITTEN & DESIGNED BY OZARK CIRCLE FOR CHOICE

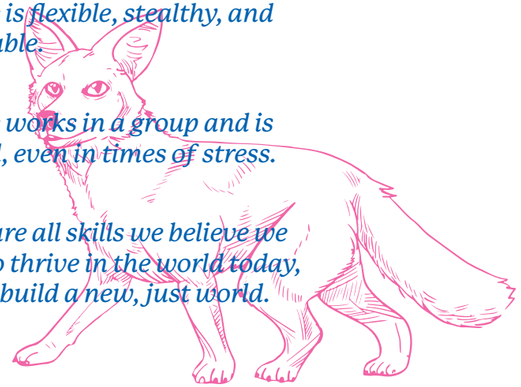
WE ARE USING THE IMAGE AND MEDICINE OF COYOTE TO HELP US STRATEGIZE, ADAPT AND RESPOND

to the changing landscape around access to abortion in Arkansas and in the U.S. more broadly.

Coyote is flexible, stealthy, and adaptable.

Coyote works in a group and is playful, even in times of stress.

These are all skills we believe we need to thrive in the world today, and to build a new, just world.



Q: What happened to abortion rights after Roe was overturned?

It is now up to individual states to decide whether and to what degree to legalize abortions. Some states continue to allow and have even strengthened access to abortion, while other states have restricted access or banned it outright.

Coyote invites us to laugh at obstacles. Laughter breaks your fall.

Q: Is abortion illegal at the federal level since Roe was overturned?

No. Overturning Roe did not made abortion federally illegal.

NOTE: While overturning Roe opened up the possibility that Congress could at some point enact a national abortion ban, that possibility is remote. Both chambers of Congress would need to pass such a law, and the president would need to sign it (or Congress would need enough votes to overturn a presidential veto).

Q: What happened in Arkansas when Roe was overturned?

The 2019 Trigger law (SB 149) went into immediate effect.

Q: What does the Arkansas trigger law do?

SB 149 prohibits any person from "purposefully perform[ing] or attempt[ing] to perform an abortion except to save the life of a pregnant woman in a medical emergency."

With this law in effect, no one may legally perform or attempt to perform an abortion in the state of Arkansas unless it is necessary to save the life of a pregnant person in medical emergency.

NOTE: SB 149 uses the word "woman" throughout, although the state will likely enforce the statute against any pregnant person.

Q: What does "medically necessary" mean?

SB 149 defines "medically necessary" as: "a condition in which an abortion is necessary to preserve the life of a pregnant woman whose life is endangered by a physical disorder, physical illness, or physical injury, including a life-endangering physical

Coyote reminds us that all things are sacred and yet nothing is sacred. Rather than spiraling with anxiety over what could be, we strengthen our connections with our communities, to fortify us for whatever arises.

RESOURCES

BIRTH CONTROL

The local health department can prescribe Plan B, and offers birth control (including IUDs) based on a sliding scale. No one is turned away based on inability to pay.

Washington County Health Unit
3270 N Wimberly Dr, Fayetteville, AR
479-521-8181

Benton County Health Unit
1200 W Walnut St #2200, Rogers, AR
479-986-1300

FERTILITY AWARENESS

There are many resources to help people who menstruate understand their cycle and when they are more or less likely to become pregnant.

Planned Parenthood:
plannedparenthood.org/learn/birth-control/fertility-awareness

ABORTION PILLS, A.K.A. SELF-MANAGED ABORTION

If abortion pills sound unfamiliar or overwhelming, check out this essay in comic form: **"Out of the Alley: How Self-Managed Abortion Looks Today"** to learn the basics.
thenib.com/self-managed-abortion

"Self-Managed Abortion" from Whole Woman's Health
wholewomanshealth.com/abortion-care/self-managed-abortion

Plan C provides abortion pills by mail. (Note: it is unclear if Arkansas laws allow this—see info in this zine).
plancpills.org

MONETARY AID

National Network of Abortion Funds
abortionfunds.org

OZARK CIRCLE FOR CHOICE
Reproductive and Abortion Support

We are a secular collective of NWA residents who offer no-cost informational, physical, and emotional support for people accessing pregnancy, reproduction, and abortion services.

@ozarkcircleforchoice
www.ozarkcircleforchoice.org

The information in this zine is accurate to the best of our knowledge at the time of printing: 6/23/23

condition caused by or arising from the pregnancy itself."

This language is vague, but it is important to note that to count as "medically necessary" the danger to the pregnant person's life must be physical (rather than, for example, psychological) in nature.

Coyote has found ways to thrive in inhospitable landscapes where other animals have perished. We must find a way to make ourselves at home wherever we find ourselves.

(3) Removal of an ectopic pregnancy.

SB 149 specifically exempts removal of an ectopic pregnancy from the abortion ban. A future law may outlaw the removal of ectopic pregnancies, but the trigger law does not.

Q: Is there any penalty for violating the Arkansas abortion ban?

Yes. Violation of the prohibition against "performing or attempting to perform" an abortion is an "unclassified felony," with a fine of up to $100,000 or imprisonment up to 10 years.

Q: Is there any penalty for receiving an abortion under SB 149?

No. SB 149 specifically states that it "does not authorize the charging or conviction of a woman with any criminal offense in the death of her own unborn child."

This is important. SB 149 appears to be specifically aimed at criminalizing abortion providers, NOT people who receive abortions.

NOTE: Although the murder statute specificially excepts the pregnant woman, these exceptions DO NOT

Coyote is stealthy and agile; an escape artist and thief.

(2) An action done for the purpose of removing "a dead unborn child caused by spontaneous abortion."

NOTE: A "spontaneous abortion" is the medical term for "miscarriage."

(1) An abortion done with the purpose to "save the life or preserve the health of the unborn child."

The law uses the word "abortion" in this context, but what they likely mean is induced labor, C-section, or other method of removing the fetus from the womb prematurely in order to keep it alive.

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Q: Are there any other exceptions to the abortion ban?

Yes. SB 149 specifies the following exceptions:

(1) An abortion done with the purpose to "save the life or preserve the health of the unborn child."

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NOTE: Although the murder statute specificially excepts the pregnant woman, these exceptions DO NOT prevent a prosecutor from trying to prosecute them. Prosecutors could get creative and try to prosecute them under child endangerment, child abuse, or abuse of corpse laws, which has happened in other states.

Q: What about taking the abortion pill, also known as self-managed abortion?

That's a little trickier. A doctor who prescribed abortion pills could potentially be prosecuted under SB 149 for "performing" an abortion. It's less clear what would happen to someone who ordered abortion pills online (from a doctor located in another state or country), had them delivered to Arkansas, and then conducted a self-managed abortion in Arkansas.

Such a situation presents a catch-22: while SB 149 criminalizes "any person" who performs an abortion, it also does not authorize the criminalization of the person receiving an abortion. What happens when the person who performs the abortion is also the person receiving the abortion? It's unclear.

Coyote reminds us to let go of sentimental attachments to the status quo. Instead, we activate our radical imagination to find a way forward, over, around or through.

Arkansas Attorney General Leslie Rutledge gave an interview on PBS stating that she believes SB 149 would apply to the use of abortion pills. In theory, the state could arrest anyone it believes has violated SB 149 regardless of what the text of the law says. Ultimately, SB 149 does not appear to have been written with the idea of a self-managed medical abortion in mind, and self-managed abortion will either be something that gets sorted out by the courts, or the legislature may end up passing laws specifically aimed at limiting self-managed abortions.

Coyote helps us see traps we may be caught in, or ways that we may be fooling ourselves. We have to be canny.

Q: Could someone travel from Arkansas to another state where abortion is legal to get an abortion?

Yes. At this time, it is legal to leave the state of Arkansas to obtain an abortion in another state. Many states have taken steps to increase abortion access since the overturning of Roe, which has led to more people traveling out-of-state to receive an abortion. (See the last page of this zine for resources that can assist with travel out of state.)

Q: Could Arkansas prosecute someone for receiving an abortion in a state where abortion is legal?

This is complicated. Although it is not explicitly illegal, prosecutors could still try to prosecute someone for receiving an out-of-state abortion. Eventually, the courts would hopefully intervene, but it doesn't stop them from trying.

Some states have proposed laws that would criminalize anyone who travels to another state to receive an abortion, even if abortion is legal in that state, but it's not necessarily clear if states will be allowed to pass such restrictions.

Among other legal considerations is something called the "Dormant Commerce Clause" which is a prohibition implicit in the Commerce Clause of the Constitution against states passing legislation that discriminates against or excessively burdens interstate commerce.

If Arkansas decides to pass a law banning Arkansans from traveling to another state to receive a legal abortion access since the overturning of Roe, which has led to more people traveling out-of-state to receive an abortion. (See the last page of this zine for resources that can assist with travel out of state.)

However, it will most likely be up to courts to determine whether such a law would violate the Dormant Commerce Clause, and conservative activist judges are likely to be biased in their rulings.

The Dormant Commerce Clause is not the only legal uncertainty about laws banning out-of-state abortions, but it is a good example of how complex the issue is. It is very likely that we will not know what will happen with these laws until a state has passed one and the issue has gone before a federal court.

At the moment, Arkansas does not have any such law on the books, but it could adopt one going forward.

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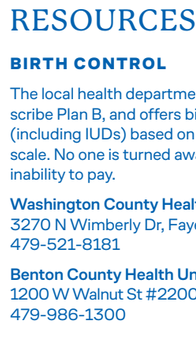
KEY TAKEAWAYS

When Roe was overturned, SB 149 went into immediate effect in Arkansas.

SB 149 **criminalizes abortion providers,** not the person receiving the abortion.

Narrow exceptions are allowed under SB 149, including an abortion to save the life of the pregnant person if they are physically threatened, and the removal of ectopic pregnancies.

It is unclear whether self-managed medical abortion is legal under SB 149, but the law does clearly state that it does not authorize the criminalization of any person receiving an abortion.



Abortion is still legal in some states. Currently, it is legal to travel from Arkansas to those states to receive an abortion.

SB 149 is best viewed as a floor, not a ceiling, in Arkansas. **The state has proposed and could pass additional laws further restricting access.**