



INTERNATIONAL ACTION NETWORK
FOR GENDER EQUITY & LAW



Teen Information Project on Reproductive Rights Manual

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¹ Contributions by Berkeley Law's Pro Bono Program

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1. Your Rights, Generally



<https://digitalfreedomfund.org/why-digital-rights-are-reproductive-rights/>

Trigger Warning: This curriculum discusses sensitive topics related to reproductive/sexual health and rights. Some content may be difficult for folks to think about and discuss, and that is completely okay. If you find yourself having trouble with any topic, please feel free to do what you need to do to take care of yourself (take deep breaths, step away, etc.).

Reproductive rights have changed throughout history. They are not universally protected throughout the world or the United States, and they may be modified in the future. After a recent U.S. Supreme Court decision finding there is no federal right to abortion, reproductive rights and access to abortion vary by state in the U.S.

In Indiana, reproductive rights are not protected. The Institute for Women’s Policy Research ranked Indiana 42nd out of 50 states using their reproductive rights index. The Index considers a multitude of factors, including insurance coverage of reproductive services, quality sex education, number of counties with at least one reproductive clinic, access to abortion, and more.² Currently, the majority of the state’s elected officials in both the executive and legislative branches do not support reproductive rights. The Indiana House voted 62-38 to pass Indiana’s near-complete abortion ban.³ However, the state also has many organizations that work to promote reproductive rights, including the American Civil Liberties Union (ACLU) and Planned Parenthood.

² IWPR Reproductive Rights Index: A State-by-state Analysis and Ranking: https://iwpr.org/wp-content/uploads/2022/07/Reproductive-Rights-Index-2022_FINAL_website.pdf

³ IndyStar: <https://www.indystar.com/story/news/politics/2022/08/05/indiana-abortion-law-how-every-indiana-house-member-voted-senate-bill-1/65390993007/>

While abortion is illegal in Indiana, Hoosiers still have access to other reproductive health care, including birth control, emergency contraception, pregnancy testing and prenatal care, and STD testing. However, youth in Indiana face additional barriers. Minors need consent from a parent, legal guardian, or judge to obtain an abortion. Minors also have restrictions relating to gender identity and expression.

Despite evidence of its ineffectiveness in decreasing risky sexual behavior among youth and adolescents, abstinence-only education in the United States persists.⁴ Since 1996, the federal government has provided over two billion dollars to support abstinence-only sex education.⁵ However, research shows that giving young people the information to make responsible decisions (such as the importance of delaying sex, how to use contraceptives, and knowledge concerning STDs) helps teens delay sex and protect their health. Further, a Congressional report revealed that more than 80% of the abstinence only curricula contained false or misleading information about reproductive health.⁶ The prevalence of abstinence-only curriculum does a disservice to youth because it fails to provide relevant and truthful information about sexual and reproductive rights.

This curriculum aims to remedy this deficit. It will focus on the legal aspects of reproductive decisions and inform you about the history, sources, and scope of various reproductive rights. It will also address the laws concerning the different choices available regarding those rights and discuss issues of importance to teenagers in the exercise of those rights. Through hypotheticals included in this curriculum, we will challenge you to think about and understand how the laws apply to you.

2. Privacy Rights

⁴ Access to contraception. Committee Opinion No. 615. American College of Obstetricians and Gynecologists. *Obstet Gynecol* 2015 (Reaffirmed 2022); 125: 250–5, <<https://www.acog.org/Clinical-Guidance-and-Publications/Committee-Opinions/Committee-on-Health-Care-for-Underserved-Women/Access-to-Contraception?IsMobileSet=false>>; Donovan, *The Looming Threat to Sex Education: A Resurgence of Federal Funding for Abstinence-Only Programs?* (March 2017)Guttmacher Institute<<https://www.guttmacher.org/gpr/2017/03/looming-threat-sex-education-resurgence-federal-funding-abstinence-only-programs>>.

⁵ *A History of Federal Funding for Abstinence-Only-Until-Marriage Programs*(August 2018)Sexuality Information and Education Council of the United States <<https://siecus.org/wp-content/uploads/2018/08/A-History-of-AOUM-Funding-Final-Draft.pdf>>.

⁶ “The Content of Federally Funded Abstinence-Only Education Programs,” Prepared for Rep. Henry A. Waxman, United States House of Representatives, Committee on Government Reform – Minority Staff, Special Investigations Division, December 2004.

The rights outlined in the United States Constitution are guaranteed in every state. On the federal level, privacy rights are currently used to protect reproductive rights and other rights involving intimacy and family relationships. Yet, federal privacy rights do not protect the right to have an abortion. Federal privacy rights were constructed through case law and come from the First, Fourth, Fifth, Ninth, and Fourteenth Amendments of the U.S. Constitution.

- The First Amendment provides the right to free speech, religion, press, assembly, and petition. For example, you have the right to have and communicate your own beliefs about whether terminating a pregnancy is right or wrong.
- The Fourth Amendment provides the right against unreasonable search and seizure. For example, your physical person cannot be searched without reason and is therefore private.
- The Fifth Amendment provides the right to federal due process. For example, you have the right to keep information about yourself private as part of your right to not admit criminal fault.
- The Ninth Amendment provides additional rights beyond the rights mentioned in the Constitution. It is interpreted as leaving all rights not written in the Constitution to the people. For example, a few justices argued that the right to buy birth control fell under the Ninth Amendment in *Griswold v. Connecticut*.
- The Fourteenth Amendment, specifically the Equal Protections Clause, provides all citizens with the protection of life, liberty, and property. This clause is one of the most important in the Constitution, called upon in many cases,^[6] including *Brown v. Board of Education* (where segregation in schools was outlawed), *Gideon v. Wainwright* (where the right to a state-appointed attorney was guaranteed), and of course, reproductive cases like *Griswold v. Connecticut*, *Roe v. Wade*, and *Dobbs v. Jackson Women's Health*. This amendment establishes equal privacy rights for all citizens.⁷

The U.S. Supreme Court has defined the right to privacy through decisions in cases, and the Court can redefine it at any time. The Court has the power to limit existing reproductive choices and access to care. On the state level, states can enact laws which regulate, prohibit, or criminalize reproductive health care services, as long as they do not contradict the Supreme Court's decisions or federal laws, as those take priority.

The right to contraception exists today and is protected by the Constitution. However, with the overturning of *Roe v. Wade* and *Planned Parenthood v. Casey*, these rights are threatened and may not be protected under the U.S. Constitution for much longer. In his concurring opinion in *Dobbs v. Jackson Women's Health Organization*—the case overturning *Roe v. Wade*—Justice Clarence Thomas expressed a desire to reconsider these rights.

The following cases outline the Supreme Court's history regarding privacy and reproductive rights on the federal level, starting with the 1965 case of *Griswold v. Connecticut*.

⁷ Cornell Law School – 14th Amendment: <https://www.law.cornell.edu/constitution/amendmentxiv>

A. Federal Law

1. *Griswold v. Connecticut*



<https://www.prochoicect.org/2018/06/07/today-connecticut-history-53rd-anniversary-griswold-vs-connecticut/>

In 1965, the Supreme Court held in *Griswold v. Connecticut* that there is a right of privacy to use birth control methods, also known as contraception, by broadly interpreting the First, Third, Fourth, and Fifth Amendments together. Estelle Griswold and Dr. C. Lee Buxton were arrested and convicted for providing birth control to married women in violation of Connecticut law in the early 1960s. They appealed their convictions all the way to the Supreme Court. In its decision, the Court stated that married people have the constitutional right to obtain contraceptives and consult with their doctors and other professionals concerning which method of birth control to use.⁸

2. *Eisenstadt v. Baird*

In 1972, the Supreme Court decided *Eisenstadt v. Baird*, which involved a man who was convicted for distributing contraceptive foam to people at a public meeting. The state law at issue allowed married people to obtain contraceptives but prohibited unmarried individuals from doing so. The Court said this state law was unconstitutional under the equal protection clause of the Fourteenth Amendment. It found that under the Fourteenth Amendment, married and unmarried people in every state were guaranteed the right to use contraception.⁹

3. *Carey v. Population Services International*

In the 1977 case of *Carey v. Population Services International*, the Supreme Court struck down a New York law that prohibited the sale of contraceptives to people under 16 as a violation of the Due Process Clause of the Fourteenth Amendment.¹⁰ This means that regardless of age and marital status, you have the right to obtain advice concerning contraception and to obtain any legally approved form of contraception. However, this right and others may be in jeopardy as a result of the recent *Dobbs* case discussed in the following paragraphs.

⁸ *Griswold v. Connecticut*, 381 U.S. 479 (1965).

⁹ *Eisenstadt v. Baird*, 405 U.S. 438 (1972).

¹⁰ *Carey v. Population Services*, 426 U.S. 918 (1977).

4. *Dobbs v. Jackson Women’s Health Organization*



<https://www.scotusblog.com/2021/05/court-to-weigh-in-on-mississippi-abortion-ban-intended-to-challenge-roe-v-wade/>

The most consequential Supreme Court case regarding reproductive rights since *Roe* is *Dobbs v. Jackson Women’s Health Organization*, decided in June 2022.¹¹ In this case, Jackson Women’s Health Organization, the only abortion facility in Mississippi, challenged a state statute passed in 2018 called the Gestational Age Act. The Gestational Age Act prohibited abortions after 15 weeks of pregnancy.

The U.S. Supreme Court cases of *Roe v. Wade* and *Planned Parenthood v. Casey* established a woman’s right to a pre-viability abortion. Viability, when a fetus can survive outside the womb, is generally considered to be at 23 or 24 weeks. The Court’s reasoning for this was that right to privacy was fundamental, and that “any governmental infringement of a fundamental right must be justified by a compelling state interest”¹² Previously, pre-viability was not considered compelling enough to warrant state regulation. Mississippi’s law sought to ban abortions earlier than viability, which was contrary to the law established in *Roe* and *Casey*. In *Dobbs*, however, the Supreme Court held that the U.S. Constitution does not grant the right to abortion and overruled both *Roe* and *Casey*.

The Court held that there is no federal constitutional right to abortion and returned the ability to ban and regulate abortion to the states. In doing so, the Court reasoned that abortion was not a constitutional right because it is not “deeply rooted” in American history or tradition, asserting that support for abortion as a constitutional right did not exist until the latter half of the 20th century. The Court returned abortion as an issue “to the people and their elected representatives,” claiming that the Court had exceeded its authority in *Roe* and *Casey*.

As abortion is no longer a right under the U.S. Constitution, state laws restricting abortion access are subject to the most lenient level of scrutiny a court can apply. This means as long as states can demonstrate a legitimate state interest in restricting abortion, state statutes containing such restrictions are allowed. Legitimate state interests range from protecting maternal health to

¹¹ *Dobbs v. Jackson Women’s Health Organization*, 142 S. Ct. 2228 (2022).

¹² Right to Privacy: Constitutional Rights & Privacy Laws: <https://www.livescience.com/37398-right-to-privacy.html>

preserving potential fetal life. Under this level of scrutiny, virtually all laws restricting abortion access will likely withstand court review.

While *Dobbs* did not criminalize abortion on the federal level, the decision means that states can regulate abortion as they see fit by enacting pre-viability bans or banning all abortions with no exceptions without violating the U.S. Constitution. States can prosecute people who have illegal abortions, criminalize medical professionals who perform abortions, and punish anyone who aids in illegal abortion access.

The *Dobbs* decision sparks questions pertaining to interstate commerce and free speech. Can people travel to another state to obtain an abortion? While Justice Kavanaugh indicated in his concurring opinion that he believes state restrictions preventing people with the capacity to become pregnant from traveling to another state to obtain an abortion would violate the constitutional right to travel, though his concurring opinion is not binding law. As a result, some states will likely try to ban people from traveling elsewhere for reproductive care.

In addition, certain states and some members of Congress are looking to apply the *Dobbs* reasoning to pursue further restrictions to reproductive rights and abortion access, including criminalizing abortion nationwide, overturning the right to contraception, and taking away the federal rights of same-sex marriage and intimacy.

5. Federal Law on Contraception

Some new forms of contraception may not be available in the United States because the Federal Food and Drug Administration (FDA) can prevent the use of a contraceptive until it determines that the product is safe. Some forms of contraception are available “over the counter,” meaning they can be purchased without a prescription, while others require a prescription to obtain. Different forms of birth control have different success rates, and some have side effects; some are not considered appropriate for use by teenagers. Information about birth control is available from doctors, health workers, and clinics.

3. Reproductive Rights in the Post-*Roe* Era

A. Facts and Figures

State Laws Post-*Dobbs*:¹³

- 14 states, American Samoa, and the Northern Mariana Islands have banned abortion at any stage in a pregnancy.
- Two states have banned abortion beginning at 6 weeks.
- Five states and Guam have banned abortion beginning at stages between 12 to 18 weeks.
- Four states' abortion bans are blocked by the courts for now.
- 26 states, Puerto Rico, and the U.S. Virgin Islands allow abortion, either until viability (around 23 weeks) or with no limit.

State Laws Pertaining to Parental Consent:¹⁴

- 36 states require parental involvement in a minor's decision to have an abortion.
- 21 states require parental consent; three of the 21 require both parents' consent.
- Six states require both parental notification and consent.
- 33 states allow a minor to have an abortion in a medical emergency.
- 14 allow a minor to have an abortion in cases of abuse, assault, neglect, or incest.
- 35 states include a judicial bypass procedure, which allows a minor to get approval from a judge

B. Federal Court Appointments

President Biden has been vocal in supporting abortion rights, but the legacy of President Trump remains today in the form of judicial appointments. During his presidency, President Trump used his executive power to nominate and appoint judges to federal courts who have historically opposed access to reproductive rights, especially abortion. President Trump also nominated Justices Neil Gorsuch, Brett Kavanaugh, and Amy Coney Barrett to the Supreme Court during his term. All three justices voted to overturn *Roe* and *Casey*, holding that there is no federal constitutional right to abortion. Justices Gorsuch, Kavanaugh, and Coney Barrett are all

¹³ Center for Reproductive Rights, *After Roe fell: Abortion laws by State*, <<https://reproductiverights.org/maps/abortion-laws-by-state>>.

¹⁴ Guttmacher Institute, *Parental Involvement in Minors' Abortions*, (last updated Jan. 1, 2023), <<https://www.guttmacher.org/state-policy/explore/parental-involvement-minors-abortions>>.

relatively young compared to the other justices on the Court, and they may continue to serve on the Court for decades.

While President Biden successfully nominated Justice Ketanji Brown Jackson to the Court to replace Justice Stephen Breyer, her appointment does not tip the ideological balance of the Court. All five justices who voted to strip people of the constitutional right to abortion—Justices Alito, Thomas, Kavanaugh, Gorsuch, and Coney Barret—remain on the Court. Chief Justice Roberts, who would have let the Mississippi law stand but favored deciding whether a constitutional right to abortion existed at a future date, also remains on the Court. This means, regardless of a new justice joining the Court, there are six justices on the Court who either believe there is no right to abortion and/or favor restricting abortion access and protections. Trump’s total judicial appointments number 234, making up more than a quarter of all active federal judges, ensuring his legacy remains beyond his presidency.¹⁵

C. Foreign Policy

The United Nations (UN) recognizes reproductive rights as part of human rights, including the right to life, the right to be free from torture, the right to health, the right to privacy, the right to education, and the right to be free from discrimination.¹⁶ The Biden Administration has enacted policies supporting international family planning and abortion access. In October 2021, President Biden rescinded the global gag rule, which prohibited U.S. foreign aid to be used to promote or to perform abortions. At least \$7.3 billion will be free to use in American global health funding, and the UN Population Fund will once again see American support.¹⁷ After the Court overturned *Roe*, President Biden expressed his disappointment with the decision and affirmed his administration's support for access to FDA-approved contraceptives and the right to interstate travel for reproductive care.



<https://www.justsecurity.org/77423/for-health-security-and-equity-time-to-end-the-global-gag-rule-once-and-for-all>

¹⁵ *Issue Advisory: Two Years into Trump’s Presidency* (February 2019) Nation Organization for Women <<https://now.org/issue-advisory-two-years-into-trumps-presidency/>>.

¹⁶ United Nations Population Fund, *Program of Action of the International Conference on Population Development*, (Cairo: United Nations 1994), page 59.

¹⁷ *Biden Administration Rescinds Global Gag Rule* (February 2021) Center for Reproductive Rights <<https://reproductiverights.org/biden-administration-rescinds-global-gag-rule/>>.

4. Consent to Healthcare

The law in Indiana concerning reproductive rights is ever-changing. Six weeks after the Dobbs decision in 2022, Indiana lawmakers signed Senate Bill 1, a near-total ban on abortion. It includes many restrictions, but pertaining to consent, **those who are under the age of 18 must have the consent of one parent or legal guardian to have an abortion in Indiana.** Local Planned Parenthood facilities, counselors, and hotlines provide guidance and, in some instances, financial aid to help with obstacles minors face in obtaining abortion services.

While abortion services in Indiana are quite restricted, access to other reproductive healthcare services and products, such as contraceptives, are still protected by federal law, notably the U.S. Supreme Court cases of *Griswold* and *Eisenstadt*. To summarize, *Griswold* gave married women the right to obtain birth control, and *Eisenstadt* expanded this right to unmarried people.

All forms of birth control are legal and available to every person in Indiana. Many are available at clinics, healthcare centers, online, and even over the counter. Emergency contraception, also known as the morning-after pill, is available over the counter to anyone over 17 without a prescription. Condoms are available at most drugstores, at student health centers, and at Planned Parenthood for low cost and with no age restriction. Most health insurance covers the cost of prescribed birth control, but if you don't have insurance, birth control can range from \$15-\$50 each month.

Note: If you are a victim of abuse, you should know that healthcare providers are mandatory reporters by law. Rape and sexual assault of a minor counts as child abuse, so your provider is required to report it to the authorities. In Indiana, a minor is any person under the legal age of 18. An exception is if you are classified as an emancipated minor. An emancipated minor is a person under the age of 18 who has freed themselves from their parent or guardian's control by going through a legal process. These processes include entering a marriage, serving on active duty in the U.S. armed forces, or getting a declaration of emancipation from a judge.

If you are a minor, your provider must attempt to contact your parent/guardian, unless they believe the parent/guardian is responsible for the child abuse, including rape and sexual assault. During an investigation, the authorities (such as the police or Child Protective Services) may disclose to your parents that a report was made.

A. Parental Consent and Notification Laws

Many teenagers do not have the luxury of relying on state law for reproductive rights. In cases concerning the right of a minor to have an abortion, courts have upheld state laws requiring minors to notify a parent (parental notification laws) or to obtain the consent of a parent (parental consent laws). In *Ohio v. Akron Center for Reproductive Health*, the Supreme Court upheld an Ohio state law that required a teenager to notify a parent or obtain permission from a court before having an abortion.¹⁸ In *Hodgson v. Minnesota*, the Supreme Court held that a two-parent notification

¹⁸ *Ohio v. Akron Center for Reproductive Health*, 497 U.S. 502 (1990).

requirement was constitutional if the requirement could be bypassed by a court order.¹⁹ Proponents of parental notification or consent laws believe that teens should consult their parents before making such an important decision, or else, the minor must prove to a court that they are mature enough to make this decision on their own. Opponents argue that a supportive family environment cannot be legislated and that these roadblocks to the exercise of reproductive rights cause teens to seek out unsafe, illegal abortions, often resulting in serious injury or death. According to Senate Bill 1, Indiana is one of the states that requires consent from the pregnant woman, the physician performing the procedure, and if the patient is a minor, their parent or guardian.

A person who wants to have an abortion in Indiana must give “voluntary and informed consent” before their procedure. For a person to provide “voluntary and informed consent” under Indiana law, the person must obtain counseling at least 18 hours prior to abortion services being provided. During the counseling, the doctor who will perform the abortion, or someone who works with the doctor, provides the patient with certain information, such as health risks, an ultrasound of the fetus, adoption alternatives, and other required information to confirm that the patient truly wants the abortion. The patient must then sign a form to say that they were given the information. If the patient is a minor, the patient’s parent or legal guardian must also sign this form, which provides the required parental consent.²⁰

There are three exceptions to this law. First, emancipated minors seeking an abortion do not need parental consent, although their reproductive choices are controlled by the state of Indiana. A judge will decide case-by-case in accordance with abortion law whether an emancipated minor is allowed to have an abortion. Second, victims of rape or incest do not need parental consent as the parent could be the abuser or biased towards the abuser. Third, a minor can petition for a judicial bypass. This is an order from a judge to waive the parental consent requirement. This is a confidential process between the person seeking the abortion, their attorney, and a judge. While the court will appoint an attorney, the If/When/How Repro Legal Helpline can also be of great assistance.²¹ Keep in mind that while a judge may allow you to waive parental consent requirements, they are still allowed to notify your parents if they believe it is in your best interest. The ACLU of Indiana attempted to block this notification requirement in *Planned Parenthood of Indiana and Kentucky, Inc. v. Commissioner, Indiana State Department of Health*, but was unable to do so. This law is currently in effect, making it difficult for minors to obtain an abortion without their parents’ consent.

B. Paying for Reproductive Health Care

In August 2022, Planned Parenthood of Great Northwest, Hawai’i, Indiana, Kentucky began participating in Title X, a 50-year-old federal program that provides birth control and family planning services to people with low incomes. Note that Title X will not directly cover the cost of an abortion, although Title X funding can improve the outreach of businesses, such as Planned Parenthood, which allows these businesses to garner support from other funds that *can* help pay

¹⁹ *Hodgson v. Minnesota*, 497 U.S. 417 (1990).

²⁰ Indiana Judicial Bypass Project: <https://www.indianajbproject.org/about-judicial-bypass>

²¹ If/When/How Repro Legal Helpline: 844 – 868 – 2812; Website: <https://www.reprolegalhelpline.org/sma-contact-the-helpline/>

for abortions. In relation to other reproductive needs, a pregnant individual might qualify for Title X if 1) they are not covered by health insurance; 2) they are covered by their parents' insurance but want their visit(s) to remain confidential; 3) they are worried about intimate partner violence and want their visit(s) to remain confidential; or 4) they are covered by Medicaid or private insurance but have a balance overdue. To apply for Title X at Planned Parenthood clinics, individuals need to provide their household size and income. If they cannot qualify for Title X, many Planned Parenthood clinics offer other aid such as paying in installments or discounts for certain birth control methods.²²

Pregnant individuals can qualify for Indiana Medicaid through two plans: Healthy Indiana Plan or Hoosier Healthwise. Healthy Indiana Plan is for people ages 19-65 and covers certain healthcare procedures based on specific income levels. Hoosier Healthwise covers numerous healthcare procedures for children up to age 19 and pregnant individuals for no cost. Realize that these programs cover birth control, preventative healthcare, and family planning services. **Indiana Medicaid will only pay for abortion procedures in the case of life endangerment to the fetus or mother, rape or incest, and severe detriment to the woman's physical health.**²³

If you need help paying for an abortion, abortion funds are a good place to turn to. They accept applications for financial assistance²⁴, as well as provide transportation for an out-of-state abortion. On average, first trimester abortions cost around \$800 fully out-of-pocket, whether that is a pill or surgical procedure. Second trimester abortions can be costlier, ranging from \$800 to \$2000 depending on how close your fetus is to viability.²⁵ However, private insurance providers and abortion funds can greatly lessen this price. Statewide abortion funds include the Midwest Access Coalition, Chicago Abortion Fund, All-Options Hoosier Abortion Fund, and more. National Funds like the National Abortion Federation Hotline Fund, Reprocare, and the Women's Reproductive Rights Assistance Project can help as well, but they may take longer to reach you. Note that many of these abortion funds require a scheduled appointment at a clinic or provider before granting aid. Fortunately, some clinics work directly with abortion funds, similar to the coalition of Planned Parenthood and Title X, and your provider can help to determine if you are eligible.

5. Access to Contraception

²² Planned Parenthood Discounts and Payment Plans: <https://www.plannedparenthood.org/planned-parenthood-great-northwest-hawaii-alaska-indiana-kentuck/patients/paying-your-care/discounts-payment-plans>

²³ Guttmacher Institute shows which states provide funding for abortion through Medicaid. <https://www.guttmacher.org/state-policy/explore/state-funding-abortion-under-medicare>

²⁴ Abortion Funds: <https://abortionfunds.org/>

²⁵ Planned Parenthood – “How much does an abortion cost?”: <https://www.plannedparenthood.org/blog/how-much-does-an-abortion-cost>

Birth Control Methods

There are **five types of birth control methods** from which to choose according to one's health, relationship status, lifestyle, and reproductive plans.

STERILIZATION METHODS	LONG-ACTING METHODS	SHORT-ACTING METHODS	BARRIER METHODS	NATURAL RHYTHM METHODS
*permanent	*reversible	*reversible	*reversible	*reversible
Tubal ligation 	IUD 	Pills  Patches 	Condoms  Diaphragms 	Natural family planning  Menstruation
Male vasectomy 	Implants 	Shots  Rings 	Sponges  Cervical caps 	Withdrawal 
99%	84-91%	71-86%	75-78%	
MOST EFFECTIVE		→		LEAST EFFECTIVE

www.shecares.com

<https://www.shecares.com/menstruation/birth-control-methods>

Contraception is the use of a device or method to prevent pregnancy. Common examples of contraception include birth control pills, intrauterine devices (IUDs), condoms, a shot, and a patch.

- At any age in Indiana, individuals have the right to obtain birth control and contraceptives confidentially, meaning parental/guardian consent is not needed. This right to confidential access to birth control comes from federal case law interpreting the right to privacy under the U.S. Constitution. There is no Indiana state law regulating or prohibiting minors' access to contraception, rather this right is determined based on the federal right to privacy and the "Mature Minor" doctrine. Under this doctrine, a minor must prove that they are 1) able to understand the risks and benefits of the proposed medical care, and 2) appealing for the care for beneficial and necessary reasons. Additionally, as mentioned in Chapter 4, Subsection B "Paying for Reproductive Healthcare", federal services like Title X and Medicaid also provide confidentiality for minors.
- Under the justification from these laws and doctrines, minors in Indiana may also confidentially
 - obtain testing and treatment for sexually transmitted infections including HIV (but not HIV vaccines);
 - provide medical evidence and obtain forensic services of a sex crime; and
 - receive both inpatient and outpatient treatment for substance abuse and mental health.
- Additionally, a minor can consent to more health services without their parent/guardian if they are married, on active military duty, emancipated by court order, or 14 years or older financially independent and living apart from their parents.

Minors do need parental consent for vaccines, abortions, and certain pregnancy care. The exception to this rule is that a patient 16 years or older may consent to pregnancy, delivery, and postpartum healthcare as long as their physician made an attempt to inform their parent/guardian.²⁶

A. Contraceptives

Contraception varies in price and accessibility. Over-the-counter contraceptives, including condoms and spermicide (which is a sperm killing gel), are available in stores for around \$7 and \$20, respectively. Cervical caps are also offered over the counter for a variety of prices. Recently, the FDA approved over-the-counter birth control slated to be available in stores in March 2024. The drug, Opill, has no age limit and is 98% effective. It can be covered by insurance, but the out-of-pocket cost is \$19.99 for a one-month supply or \$49.99 for a three month supply.²⁷

In Indiana, you need a prescription for any other type of birth control, including pills or a patch. To get a prescription, you can either go to your doctor or a pharmacist (without needing to see your doctor or clinician first). Following the almost-total abortion ban in September 2022, access to contraceptives greatly expanded with HB1568 in July 2023, a law which allows pharmacists to independently prescribe contraceptives.²⁸ This law will serve Hoosiers who can't afford to visit a doctor or who live in counties that are considered "contraceptive deserts" -- that is, they lack reasonable access in their county to a health care center that offers the full range of contraceptive methods.²⁹ However, pharmacists are allowed to refuse these prescriptions based on their moral, religious, or personal beliefs. Furthermore, the prescriptions only last for at most for six months until they need to be renewed, and pharmacists may only prescribe the contraceptives for 12 months until the patient sees a doctor.³⁰

B. Emergency Contraception

Access to emergency contraception is important to avoid unintended pregnancy. In the U.S., one in nine sexually active women of reproductive age has used emergency contraception.³¹ Emergency contraception can vary: it could be a copper IUD (if it is inserted quickly enough) or

²⁶ Adolescent Health Initiative: <https://umhs-adolescenthealth.org/wp-content/uploads/2021/09/in-confidentiality-spark-handout.pdf>

²⁷ NPR – "First OTC birth control pill heads to stores": <https://www.npr.org/sections/health-shots/2024/03/04/1235404522/opill-over-counter-birth-control-pill-contraceptive-shop>

²⁸ HB1568 Prescription for Hormonal Contraceptives: <https://iga.in.gov/legislative/2023/bills/house/1568/details>

²⁹ *Contraceptive Deserts 2022 Power to Decide* <<https://powertodecide.org/what-we-do/access/access-birth-control>> [as of 12 Nov., 2022]. Note, this study appears to only include people who identify as women and not people who can become pregnant. It is, therefore, likely that the number of people in need of publicly funded contraception is higher than what is presented here.

³⁰ Louisville Public Media, "New Indiana laws expand access to birth control": <https://www.lpm.org/news/2023-07-03/new-indiana-laws-expand-access-to-birth-control>

³¹ *Contraceptive Use in the United States* Guttmacher Institute (Jul. 2018) <<https://www.guttmacher.org/fact-sheet/contraceptive-use-united-states>>.

a pill, usually taken after unprotected sex or another event that may lead to pregnancy, such as a condom breaking. Emergency contraception is used or inserted within 72 hours after sex. It is not an abortion because it prevents pregnancy altogether.³²

Hormonal pills, like “Plan B”, are available over the counter for \$40-50. To purchase “morning-after” pills without a prescription in most drug stores in Indiana, one needs to be 17 years or older. There are other non-hormonal pills, such as Ella, which contains a synthetic progestogen that mimics the natural female sex hormone progesterone. Ella is available by prescription only at little to no cost with health insurance, and at around \$50 out-of-pocket.³³

C. Rights and Access to Contraception Throughout the U.S.

Although *Griswold v. Connecticut* established a right to contraception and *Carey v. Population Services International* extended this right to minors, the Supreme Court’s decision in *Dobbs* suggests that this right may be threatened under federal law. Despite the majority (written by Justice Alito) limiting the judgment to abortion rights only, the Supreme Court’s legal reasoning and, in particular, Justice Thomas’ concurrence about the legitimacy of other privacy right decisions, suggest that the federal right to contraception is also at risk.

Following *Dobbs*, the House of Representatives passed The Right to Contraception Act to codify the right to contraception under *Griswold*.³⁴ However, this Act has not yet passed in the Senate.

State Laws Pertaining to Contraception:

- 16 other states and the District of Columbia allow pharmacists to provide general contraception.³⁵
- 6 other states (Hawaii, Massachusetts, New Hampshire, Washington, New Mexico, and Maine) allow pharmacists to prescribe emergency contraception.³⁶
- 10 states (Arizona, Arkansas, Georgia, Idaho, Illinois, Louisiana, Mississippi, South Dakota, North Carolina, and Texas) have laws that restrict access to emergency contraception.³⁷

³² Amy @ Planned Parenthood, *What’s the morning-after pill? Is it the same as an abortion?* (14 Oct. 2010) Planned Parenthood <<https://www.plannedparenthood.org/learn/ask-experts/ok-this-like-three-questions-in-one-is-the-morning-after-pill-considered-abortion-how-can-you-get-the-morning-after-pill-how-effective-is-the-pill>>.

³³ “Buying Over-the-Counter Contraceptives”:

<https://www.verywellhealth.com/over-the-counter-birth-control-906825>

³⁴ H.R. No. 8373.

³⁵ *Pharmacist-prescribed contraceptives* Guttmacher Institute <<https://www.guttmacher.org/state-policy/explore/pharmacist-prescribed-contraceptives>> [as of Feb. 1, 2022].

³⁶ *Emergency Contraception* Guttmacher Institute <<https://www.guttmacher.org/state-policy/explore/emergency-contraception>> [as of Feb. 1, 2022].

³⁷ *Emergency Contraception* Guttmacher Institute <<https://www.guttmacher.org/state-policy/explore/emergency-contraception>> [as of Feb. 1, 2022].

D. Rights and Access to Contraception in Indiana

In 2023, Indiana began expanding access to contraception to help prevent unwanted pregnancies in light of new restrictions on abortion access following *Dobbs*. Governor Eric Holcomb signed into effect several contraception laws³⁸:

- SB252: Allows a Medicaid employee to transfer an unused IUD from one Medicaid patient to another, as long as the IUD is still in its original packaging and suitable for another patient.
- SB4: Redirects funds to local health departments to provide maternal and child healthcare, including testing and counseling for STIs.
- HB1001: In accordance with SB4, sets aside \$75 million for “core public health services”, which includes STI testing, maternal and child healthcare, and substance use prevention programs for pregnant people.
- HB1568: Allows pharmacists to independently prescribe contraceptives

E. Funding of Contraception

It has been reported that “of the 66 million women of reproductive age living in the U.S., more than 20 million are in need of publicly funded contraception. Among that 20 million, 19.5 million currently live in contraceptive deserts.” This is alarming considering that universal coverage of contraceptives reduces unintended pregnancy and abortion rates.³⁹

The Affordable Care Act (ACA)

In 2016, over two-thirds of women had access to affordable birth control under the ACA.⁴⁰ Since its inception in 2010, the ACA has greatly expanded access to health care for millions of people, including reproductive health care such as contraceptives. The ACA originally included a provision that required employer-based insurance plans to cover birth control for their employees without employees needing to pay anything extra. However, the Supreme Court limited this provision in *Burwell v. Hobby Lobby, Little Sisters of the Poor Saints Peter, and Paul Home v. Pennsylvania*. And, in 2017, the Trump Administration enacted two rules that allowed employers to object to insurance coverage under the ACA for reproductive health care services on religious or moral grounds.⁴¹ The Biden administration is repealing those rules.⁴²

*Burwell v. Hobby Lobby Store, Inc.*⁴³

³⁸ Guttmacher Institute State Legislation Tracker: <https://www.guttmacher.org/state-legislation-tracker>

³⁹ American College of Obstetricians and Gynecologists, ACOG Committee Opinion No. 707 - Access to Emergency Contraception (Jul. 2017).

⁴⁰ Emily M. Johnston, Brigitte Courtot, *An uncertain future for access to birth control in the United States* (7 Feb., 2017) Urban Institute <<https://www.urban.org/urban-wire/uncertain-future-access-birth-control-united-states>>. Again, this study appears to only have been done in relation to people who identify as women.

⁴¹ 83 Fed. Reg. No. 24512; 83 Fed. Reg. No. 24514.

⁴² Brookings Institute, *Tracking Regulatory Changes in the Biden Era*, (last updated Jan. 30, 2023), <<https://www.brookings.edu/interactives/tracking-regulatory-changes-in-the-biden-era/>>.

⁴³ *Burwell v. Hobby Lobby Stores*, 573 U.S. 682 (2014).

The Supreme Court significantly limited contraceptive coverage under the ACA through its decision in *Burwell v. Hobby Lobby*. The Court ruled that most U.S. corporations can refuse to cover contraceptives under workers' insurance benefits based on the corporation owner's religious beliefs, according to the Religious Freedom Restoration Act (RAFA), which utilized the First Amendment's guarantee of freedom to exercise religion.⁴⁴ This decision extended the reach of RAFA, which originally meant to protect individuals, not corporations. The *Burwell* decision places greater importance on the religious freedom of corporations than on the reproductive rights of individuals.

Little Sisters of the Poor Saints Peter and Paul Home v. Pennsylvania⁴⁵

After the religious and moral exemptions were introduced, Pennsylvania and New Jersey argued that the exemptions allowing employers to refuse to cover reproductive health care services were invalid because the administrative agencies that adopted the exemptions lacked authority to do so and their adoption did not comply with public notice or comment requirements. However, the Supreme Court in *Little Sisters* upheld the validity of the exemptions.⁴⁶ The exemptions to ACA contraceptive coverage remain in place.⁴⁷ As such, employers may choose not to cover the cost of reproductive health care based on religious beliefs.

Indiana-Specific Funding

In recent years, contraceptive access has greatly expanded in Indiana, and many state and federal programs, as well as private nonprofits, help Hoosiers afford basic reproductive care.

These programs include:

- Path4You, a fund that partners with pharmacies to provide same-day prescriptions for contraceptives.⁴⁸ Physicians can consult with patients via telehealth and prescribe free contraception. Path4You requires parental involvement for minors, but its partner clinic, Indiana Family Planning Centers⁴⁹, does not.
- Indiana Family Health Council, a non-profit that funds reproductive clinics across Indiana. It is funded primarily by federal grants such as Title X and focuses on providing reproductive care and counseling to low-income people and teens.⁵⁰
- Planned Parenthood, a worldwide organization of clinics that partners with federal Title X funding to lessen the financial burden of reproductive healthcare for those who don't have insurance. For those who do have insurance, Planned Parenthood accepts Medicaid

⁴⁴ NARAL, U.S. Supreme Court Decisions Concerning Reproductive Rights 1927-2018 (20 Apr., 2019).

⁴⁵ *Little Sisters of the Poor Saints Peter and Paul Home v. Pennsylvania*, (2020) 591 U.S. ____.

⁴⁶ *Little Sisters of the Poor Saints Peter and Paul Home v. Pennsylvania*, 591 U.S. ____, 2.

⁴⁷ See Julie Rovner, *One Year In, How Much of Trump's Health Agenda has Biden Undone?* (27 May, 2022) KHN <<https://khn.org/news/article/trump-health-orders-undone/>>, for a breakdown of specific health orders enacted by the Trump administration that remain in place.

⁴⁸ Path4You: <https://path4you.org/>

⁴⁹ Indiana Family Planning Centers: <https://infpc.org/>

⁵⁰ Indiana Family Health Council: <https://www.ifhc.org/>

and most private health insurances that cover prescription birth control, annual wellness exams, and STI/HIV screenings at no or reduced copay.⁵¹

As of November 2022, 26 states, including Indiana, have expanded Medicaid eligibility for family planning services to those who would not otherwise be eligible. 21 states provide family planning services to both men and women, and 21 states include those younger than 19 years of age.⁵²

6. Abortion

With the overturning of *Roe*, abortion access varies widely for Americans across the country now that each state is able to legislate abortion access.

A. Constitutional Right

As discussed previously, the *Dobbs* decision held that there is no federal constitutional right to abortion and returned the ability to ban and regulate abortion to the states.

Medication Abortion or “the Abortion Pill”

The “abortion pill” is a two-step process of taking two medicines: (1) mifepristone and (2) misoprostol. Mifepristone is first taken to stop the development of the pregnancy, and misoprostol is consumed second to empty the uterus. According to the FDA, they can be used safely in the first 10 weeks of pregnancy. Medication abortion was approved by the FDA in 2000. Medication abortion is used in more than half the abortions in the United States. Recent FDA decisions allow these pills to be prescribed through telehealth, obtained through mail, or from mail-order and retail pharmacies.

Post-*Dobbs*, the Department of Justice has issued guidance regarding medication abortion. As of February 2023, states may not outlaw medication abortion and the USPS can continue delivering medication abortion sent through the mail.⁵³ Federal law does not prohibit the mailing of mifepristone and misoprostol under the 1873 Comstock Act.⁵⁴ With this being said, abortion is

⁵¹ Planned Parenthood of Lafayette, IN:

<https://www.plannedparenthood.org/health-center/indiana/lafayette/47905/lafayette-health-center-2669-90500>

⁵² Medicaid Family Planning Eligibility Expansions Guttmacher Institute <<https://www.guttmacher.org/state-policy/explore/medicaid-family-planning-eligibility-expansions>> [as of 1 Feb., 2023].

⁵³ Attorney General Merrick B. Garland Statement on Supreme Court Ruling in *Dobbs v. Jackson Women’s Health Organization*, (2022), <<https://www.justice.gov/opa/pr/attorney-general-merrick-b-garland-statement-supreme-court-ruling-dobbs-v-jackson-women-s>> (last visited Feb 16, 2023).

⁵⁴ *Application of the Comstock Act to the Mailing of Prescription Drugs That Can Be Used for Abortions*, Op. O.L.C. (Dec. 23, 2022), available at <<https://www.justice.gov/olc/opinion/application-comstock-act-mailing-prescription-drugs-can-be-used-abortions>>.

illegal with few exceptions in Indiana, so obtaining Mifepristone and misoprostol pills from a clinic or hospital is very restricted, and ordering the pills from a website unregulated by the government has physical and legal risks.

B. Federal Legislation

The Partial-Birth Abortion Ban Act of 2003 made it illegal for a doctor to perform a certain type of abortion in the second trimester, unless it is necessary to save the life of the mother. In a so-called “partial-birth” abortion, the fetus may enter into the vagina, but not fully leave the vagina when the pregnancy is terminated. This Act was enacted despite doctors confirming that this method of abortion in the second trimester is often the safest and best procedure to protect a pregnant person’s health.⁵⁵ The Supreme Court held that this Act was constitutional in *Gonzales v. Carhart*, making it the first time the court upheld a ban on a safe abortion method.⁵⁶ In *Gonzales*, the Court found States could restrict specific abortion methods, without an exception to save the pregnant person’s life, where there were other medical options available.⁵⁷ Moreover, the Court formally recognized the state’s interest in the life of the fetus.⁵⁸

In 2013, 2015, and 2017 the House of Representatives passed a bill called the “Pain-Capable Unborn Child Protection Act,” which would have made it illegal to perform an abortion at 20 weeks or more, unless the abortion is necessary to save the mother, or the pregnancy is a result of rape or incest.⁵⁹ However, the bill was filibustered, and the Senate did not have the votes to pass the Bill.

As a result of the overturning of *Roe*, legislators in the House attempted to codify abortion rights. On July 15, 2022, the House of Representatives passed the Women’s Health Protection Act and the Ensuring Access to Abortion Act.⁶⁰ The Women’s Health Protection Act would have protected the right of individuals to obtain abortions and the right of health care providers to provide them. The Ensuring Access to Abortion Act would have protected the right to interstate travel to access abortion services. However, these Acts were blocked by the Senate, so the right to abortion remains unprotected federally.⁶¹

⁵⁵ *Federal and State Bans and Restrictions on Abortion* Planned Parenthood <<https://www.plannedparenthoodaction.org/issues/abortion/federal-and-state-bans-and-restrictions-abortion>> [as of 12 Nov., 2022].

⁵⁶ *Gonzalez v. Carhart*, (2007) 550 U.S. 124.

⁵⁷ *Gonzalez v. Carhart*, (2007) 550 U.S. 124, 166-67; NARAL, *Who Decides? The Status of Women’s Reproductive Rights in the United States* (2019).

⁵⁸ *Gonzalez v. Carhart*, (2007) 550 U.S. 124, 157.

⁵⁹ H.R. No. 1797 (2013); H.R. No. 36 (2015); H.R. No. 36 (2017).

⁶⁰ Annie Karni, *House Passes Two Bills Seeking to Ensure Access to Abortion*, (15 Jul., 2022) New York Times <<https://www.nytimes.com/2022/07/15/us/politics/house-passes-abortion-access-bills.html>>.

⁶¹ H.R. No. 3755; Deepa Shivaram, *A bill to codify abortion protections fails in the Senate*, (11 May, 2022) NPR <<https://www.npr.org/2022/05/11/1097980529/senate-to-vote-on-a-bill-that-codifies-abortion-protections-but-it-will-likely-f>>.

C. Executive Orders

On July 8, 2022, President Biden signed Executive Order 14076, titled Protecting Access to Reproductive health care Services, tasking the Department of Health and Human Services (HHS), the Department of Justice (DOJ), and the Federal Trade Commission (FTC) with protecting reproductive health care access.⁶² Biden directed HHS to protect access to medication abortion, consider updating guidance under the Emergency Medical Treatment and Labor Act (EMTLA), and protect access to contraception. The DOJ, in coordination with the White House Counsel, will assemble a “Reproductive Rights Task Force”, which will monitor state abortion laws and consider the appropriate federal government responses, including whether to take legal action.⁶³ The DOJ will also meet with pro bono attorneys, bar associations and other public interest organizations to encourage lawyers to represent pregnant persons and abortion providers that are criminally charged for seeking, facilitating or providing abortions.⁶⁴ The FTC will consider additional steps to protect consumer privacy when accessing information about reproductive health care. Together, HHS, the DOJ, and the FTC will explore steps to ensure accurate information is accessible online and to fight fraudulent practices.

In response to President Biden’s executive order, HHS and Secretary Becerra issued new guidance under the EMTLA, advising hospitals, that even in states that have criminalized abortion, physicians are obligated to perform abortions for pregnant individuals in their emergency departments if they are in “emergency medical condition” and require such “stabilizing treatment.”⁶⁵ HHS’ new guidance noted that federal law preempts state law that might criminalize such treatment. This has led to conflicting court decisions as to the applicability of the guidance to certain states. Texas’ Attorney General sued Secretary Becerra for this guidance on the basis that it conflicts with state law, and a federal judge in Texas issued a preliminary injunction so the guidance cannot be enforced in Texas.⁶⁶ On the other hand, a federal judge in Idaho blocked part of Idaho’s strict abortion ban, noting that it conflicted with the EMTLA.⁶⁷

⁶² *Fact Sheet: President Biden to Sign Executive Order Protecting Access to Reproductive Health Care Services* (8 Jul. 2022) The White House <<https://www.whitehouse.gov/briefing-room/statements-releases/2022/07/08/fact-sheet-president-biden-to-sign-executive-order-protecting-access-to-reproductive-health-care-services/>>.

⁶³ Justice Department Announces Reproductive Rights Task Force (12 Jul., 2022) Department of Justice <<https://www.justice.gov/opa/pr/justice-department-announces-reproductive-rights-task-force>>.

⁶⁴ Justice Department Announces Reproductive Rights Task Force (12 Jul., 2022) Department of Justice <<https://www.justice.gov/opa/pr/justice-department-announces-reproductive-rights-task-force>>.

⁶⁵ Centres for Medicare & Medicaid Services, Reinforcement of EMTALA Obligations specific to Patients who are Pregnant or are Experiencing Pregnancy Loss (QSO-21-22-Hospitals- UPDATED JULY 2022) (11 Jul. 2022).

⁶⁶ J. David Goodman, Sheryl Gay Stolberg, *Texas Sues Biden Administration Over Access to Emergency Medical Abortions* (14 Jul., 2022) New York Times <<https://www.nytimes.com/2022/07/14/us/texas-biden-administration-abortion-lawsuit.html>>.

⁶⁷ Glenn Thrush, *Judge Halts Part of Idaho’s Abortion Ban, Saying it Violates Health Law* (24 Aug., 2022) New York Times <<https://www.nytimes.com/2022/08/24/us/politics/idaho-abortion-ban.html?searchResultPosition=19>>.

D. Significant Supreme Court Decisions post-*Planned Parenthood v. Casey*



https://www.washingtonpost.com/politics/courts_law/the-last-time-the-supreme-court-was-invited-to-overturn-roe-v-wade-a-surprising-majority-was-unwilling/2019/05/29/2cd37b30-7b39-11e9-8bb7-0fc796cf2ec0_story.html

To date, there have been no federal abortion cases since the overturning of *Roe* and *Casey* in *Dobbs*. However, abortion-related cases decided after *Casey* addressed protesting at pregnancy centers and remain good law today.

Hill v. Colorado: The Court upheld the constitutionality of a provision in Colorado’s clinic protection statute.⁶⁸ Under the provision, a person is prohibited from knowingly going within eight feet of another person without consent for the purpose of protesting, educating, or counseling. This provision applies within 100 feet of abortion clinic entrances. The Court reasoned that the state had an interest in protecting the privacy and safety of persons entering and exiting the clinics.

McCullen v. Coakley: The Court invalidated a Massachusetts law requiring abortion protestors to remain outside of a 35-foot buffer zone, finding that the law was unconstitutional under the First Amendment.⁶⁹ The Court balanced free speech with the state’s interests in maintaining public safety and ultimately found that the law denied anti-abortion protestors the ability to converse with those entering the clinic.

National Institute of Family and Life Advocates v. Becerra: The Court struck down a California law that required crisis pregnancy centers to (1) disclose their status as unlicensed clinics and (2) to post signs

⁶⁸ *Hill v. Colorado*, (2000) 530 U.S. 703.

⁶⁹ *McCullen v. Coakley*, (2014) 134 U.S. 2518.

regarding publicly-funded reproductive health care services.⁷⁰ The Court held that California’s law unduly burdened the free speech of the unlicensed clinics.

E. Indiana’s history protecting abortion rights

Until the 1950s in Indiana, a woman who had, attempted to have, or sought out an abortion (whether or not she went through with it) would be criminalized. In the late 1960s and 1970s, states across the U.S. started reforming abortion laws. In Indiana, abortions became permitted in cases of rape and incest, and while physicians had to assess a pregnant woman’s physical health, they also started taking into consideration her mental health. In 1973, abortion was legalized nationally by *Roe v. Wade*.⁷¹

In the 2000s, Indiana banned abortions after the point of viability, which is generally considered to be 23 weeks after the first day of the pregnant person’s last period. This date was set because a fetus can begin to feel pain at this point, and if the fetus is not diagnosed with a serious medical anomaly, it would likely survive outside of the womb.⁷²

In the following years, the trend toward further restrictions on abortion rights gained momentum. In 2011, a bill was proposed in the Indiana Senate that banned abortion almost entirely, but was eventually shut down. 2013 marked the beginning of Targeted Regulation of Abortion Providers (TRAP) laws, which are laws that specifically target abortion providers. An example of one of these laws is Senate Enrolled Act 371, which required nonsurgical (drug-induced) abortion clinics to provide surgical abortions as well, forcing them to build new procedure, recovery, and scrub rooms.⁷³ In 2019, Justice Brett Kavanaugh was confirmed to the U.S. Supreme Court, replacing the more liberal Justice Anthony Kennedy. In the years following his confirmation, the Republican-dominated Indiana Senate has passed more restrictive legislation, leading to Indiana becoming the first state to pass an anti-abortion law after the overturning of *Roe v. Wade*.

F. Current Abortion Rights in Indiana

As of August 1, 2023, **an almost total ban on abortion went into effect in Indiana, making it illegal to receive an abortion in most circumstances.** The bill containing these new abortion restrictions, Senate Bill 1 (SB1), was first enacted September 15, 2022, but was temporarily blocked by two lawsuits from the American Civil Liberties Union (ACLU). A year later, the

⁷⁰ *National Institute of Family and Life Advocates v. Becerra*, (2018) 138 S. Ct. 2361.

⁷¹ “Abortion in Indiana”: https://en.wikipedia.org/wiki/Abortion_in_Indiana

⁷² “What is the age of Fetal Viability?”: <https://www.whattoexpect.com/first-year/preemies/fetal-viability>

⁷³ “ACLU sues Indiana over abortion clinic law”:

<https://www.usatoday.com/story/news/nation/2013/08/23/indiana-abortion-lawsuit/2691891/>

<https://www.jonline.com/story/news/2021/01/05/abortion-planned-parenthood-indiana-law-ultrasound/4128532001/>

injunction was vacated, and the law went into effect as Senate Enrolled Act 1 (SEA1)⁷⁴. Here is what the law entails:

- **Terminates the licensure of abortion clinics.** Abortions may only be performed in hospitals and outpatient centers owned by hospitals, which performed less than 1.5% of abortions in 2022.⁷⁵ Abortion clinics do not have to cease all operations or close, but they will no longer be permitted to provide abortions under any circumstances.
- An abortion may be performed when
 - (1) prior to 20 weeks postfertilization, **the abortion is necessary to prevent any serious health risk of the pregnant woman or to save the pregnant woman's life**
 - (2) prior to 20 weeks postfertilization, **the fetus is diagnosed with a lethal fetal anomaly**
 - (3) prior to 10 weeks postfertilization, **the pregnancy is a result of rape or incest**
- Before the abortion, the attending physician must certify in writing to the hospital their reasoning and facts for performing the abortion and how it applies to one of the three situations.
- **An abortion inducing drug may not be given after 8 weeks postfertilization.** The physician must provide the pregnant woman with a required statement about the science behind Mifepristone and Misoprostol. Additionally, these drugs must be administered to the pregnant woman by a physician in person at a hospital. This means **telemedicine/telehealth for abortion services is prohibited.**
- Except in cases to save the mother's life, **certain abortion methods are banned, including partial birth and dilation and evacuation (D&E).**
- Aborted fetuses must be disposed of humanely by either cremation or burial.
- **A pregnant minor generally must have the written consent of one parent, legal guardian, or custodian to have an abortion.** However, minors may seek a judicial bypass. Refer to “Chapter 4: Consent to Healthcare” for more information about parental consent requirements and exceptions.
- **At least 18 hours before the procedure, the physician or a designated assistant of the physician must provide the pregnant woman with counseling to ensure she can give “voluntary and informed consent”.** She must then certify in writing that she was

⁷⁴ [IN Code § 16-34-2-1 \(2022\)](#)

⁷⁵ 2022 Indiana Annual Terminated Pregnancy Report, Facilities, Page 21: <https://www.in.gov/health/vital-records/files/2022-TPR-Annual.pdf>

given this counseling. The physician or their designated assistant must provide the patient with certain required information, including:

- the physical and mental risks of the abortion.
- fetal ultrasound imaging and fetal heart tone.
- questioning if she is being coerced to have an abortion.
- required statements, such as “Human physical life begins when a human ovum is fertilized by a human sperm,” and “A fetus can feel pain at or before 20 weeks of postfertilization age”.
- the risks of carrying the child to term.
- information about financial assistance, adoption alternatives, and post-birth medical care that the hospital provides.
- the decision whether the disposition of the aborted fetus is burial or cremation.
- the additional required statement: “Indiana does not allow a fetus to be aborted solely because of the fetus's race, color, national origin, ancestry, sex, or diagnosis or potential diagnosis of the fetus having Down syndrome or any other disability,” and confirmation that the woman is not seeking an abortion for one of these reasons.
- Finally, if the pregnant woman is less than 15 years old, if the pregnancy is a result of rape or incest, and/or if the fetus developed lethal anomalies, additional conditions are required.

It’s important to remember that abortion rights are ever-changing. No matter the current law, Hoosiers on both sides will continue to share their stories and fight for their rights. As mentioned previously, the ACLU⁷⁶ filed two lawsuits filed against SB1. The first lawsuit claims that the bill violates the Indiana Constitution’s right to privacy and equal privileges. This lawsuit failed, allowing the law to go into effect. The second injunction pertains to religious freedom, as some religious groups strongly believe in the right to abortion, including Reform Judaism, Conservative Judaism, and Presbyterian Christianity.⁷⁷ In April 2024, the lawsuit succeeded as SB1 was found in violation of the Indiana Religious Freedom Restoration Act.⁷⁸ Following this ruling, religious lawsuits of this nature will be part of a class action, but the question remains: how will devotion to religion be measured, and therefore who will be granted access to an abortion?

G. Criminalization

A person who knowingly or intentionally performs an abortion that is not in accordance with current Indiana laws may be prosecuted. The State Department of Health may also revoke the license of a physician if they perform an abortion in violation of the law. Certain violations can be charged with a Class A infraction, Class A misdemeanor, or Level 5 felony. Generally,

⁷⁶ ACLU of Indiana lawsuits: <https://www.aclu-in.org/en/news/indiana-abortion-litigation>

⁷⁷ “Where major religious groups stand on abortion”: <https://www.pewresearch.org/short-reads/2016/06/21/where-major-religious-groups-stand-on-abortion/>

⁷⁸ Indiana Religious Freedom Restoration Act: [https://en.wikipedia.org/wiki/Religious_Freedom_Restoration_Act_\(Indiana\)](https://en.wikipedia.org/wiki/Religious_Freedom_Restoration_Act_(Indiana))

infractions only require paying a fine and/or community service. Class A misdemeanors are more serious, and they are punishable by no more than a year in a local or county jail. Level 5 felonies are the most serious of the three, and punishable by incarceration for 1-6 years in a state or federal prison.⁷⁹

SB1 states, “A person who knowingly or intentionally terminates a human pregnancy with an intention other than to produce a live birth or to remove a dead fetus commits feticide, a Level 3 felony. Exempt from the crime of feticide: (1) the pregnant mother; (2) a person who provides medical treatment in good faith to a pregnant woman that results in the accidental or unintentional termination of the pregnancy; and (3) a licensed physician who performs a medical procedure to terminate the pregnancy upon request of the pregnant woman, even if the procedure is not authorized.” **This means that a pregnant person cannot be prosecuted for having an illegal abortion.** However, the doctor or physician is more susceptible to prosecution. If the doctor performs the abortion at the request of the pregnant woman, they are exempt from the crime of feticide but may still be charged with other crimes and/or lose their license.

The criminalization of a medical procedure, especially one as long-standing and common as abortion, is difficult for doctors to navigate. It forces them to err on the side of caution, waiting until a pregnant woman or fetus’s symptoms are serious enough to be considered legally eligible for an abortion. While they wait, the woman can develop long-term health consequences and the abortion process becomes much more traumatic. Kwajelyn Jackson, Executive Director of the Feminist Women’s Health Center explains: “It can be difficult for physicians to make split-second decisions based on their years of experience when they also have to interpret difficult legislation. And the thing that makes this particular period of time all the more dangerous for many - especially those who are not specifically focused on abortion medicine, but are still treating and caring for pregnant people - is that they are now thinking about criminal prosecution if some harm comes to the developing fetus or if they have to make a decision about whether or not a pregnancy is harming someone.”⁸⁰

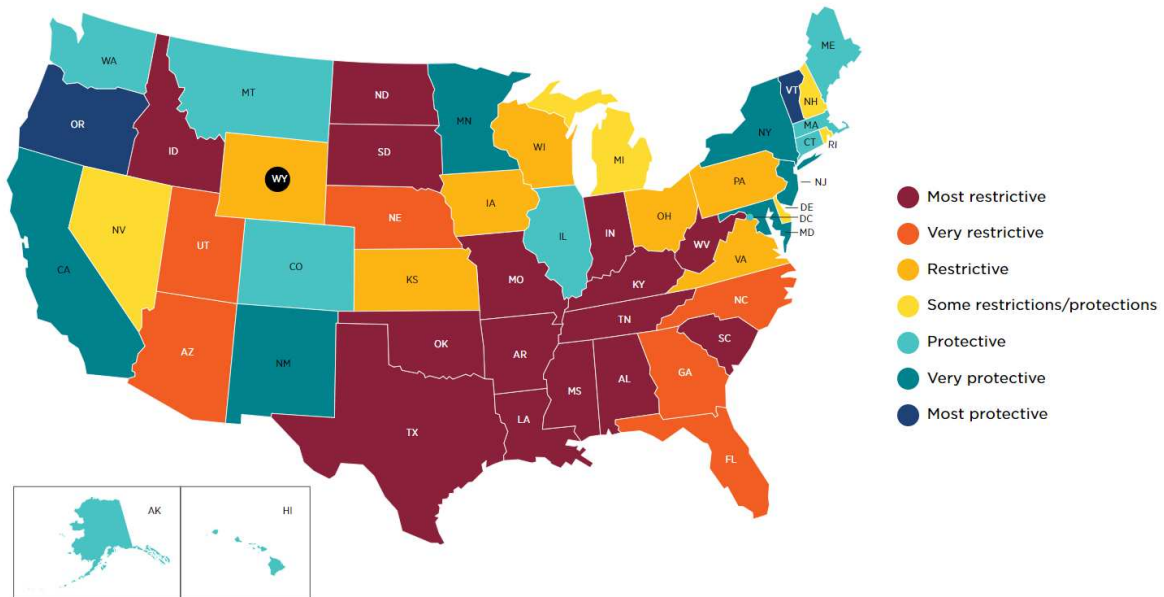
H. Indiana Maternal Mortality Review Committee

The final chapter of SB1 establishes the Indiana Maternal Mortality Review Committee to study how changes in the state’s abortion laws affect the mortality of pregnant mothers. This committee is in effect until June 30, 2027. Unfortunately, this committee will likely not gather data indicative of reality because data can only reliably be gathered at hospitals. With the new law in effect, many mothers who cannot legally have an abortion and cannot afford to travel out of state may resort to the pre-Roe, dangerous methods of back-alley abortions that can often lead to severe health problems or death. But these maternal deaths will not be documented by the committee because these women never went to a hospital.

⁷⁹ “Indiana felony crimes by class and sentences”: <https://www.criminaldefenselawyer.com/resources/criminal-defense/felony-offense/indiana-felony-class.htm>

⁸⁰ Guttmacher Institute: “One Year Post-Roe: Reflections on US and Global Abortion Rights” https://www.youtube.com/watch?v=sCvLKdlsg_E

The map below shows the level of protection and/or restriction of reproductive rights in each state.⁸¹



7. Pregnancy and Childbirth

⁸¹*Interactive Map: US Abortion Policies and Access After Roe* (Nov. 10, 2022) Guttmacher Institute <https://states.guttmacher.org/policies/?utm_source=Guttmacher+Email+Alerts&utm_campaign=af571cd1b8-100dayspostroeupdate&utm_medium=email&utm_term=0_9ac83dc920-af571cd1b8-260758695>.



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A. Raising A Child in Indiana

Raising a child in Indiana involves significant responsibility. Parents are required by law to support their children by providing clothing, shelter, and other necessities. Parents or guardians with legal custody over a child have the right to make critical decisions on the child’s behalf regarding medical treatment, education, and religious or cultural practices.⁸³ The Indiana Department of Child Services (DCS) will remove a child from a parent’s home if the child is not being properly cared for, or is being abused or neglected.⁸⁴

Indiana requires every individual to support their child.⁸⁵ This obligation is imposed on both parents, whether they are married, unmarried, separated, or divorced. Each has an equal responsibility to support and educate the child in a manner suitable to the child’s circumstances, taking into consideration the earning capacity of each parent. Parents may make an agreement on child support, but the courts are unlikely to approve an agreement where any parent waives support.

For an unmarried individual to obtain child support from the other birth parent, it will first be necessary to prove a parental relationship through a DNA test or a “voluntary acknowledgment of paternity/maternity”⁸⁶. Once parenthood is proven, there are many factors, most notably, income, that determine how much child support the noncustodial parent pays to the custodial parent. In Indiana, the amount of child support paid by a noncustodial parent is reduced based on the amount

⁸² See California’s Reproductive FACT Act (Jan. 20, 2016) National Women’s Law Center <<https://nwl.org/blog/californias-reproductive-fact-act-a-step-in-the-right-direction/>>.

⁸³ Understanding Custody: <https://robertbellinglaw.com/understanding-parental-responsibilities-allocations-in-indiana/>

⁸⁴ Indiana DCS – Child Welfare Policy: <https://www.in.gov/dcs/files/4.28.pdf>

⁸⁵ Indiana DCS – Child Support Orders: <https://www.in.gov/dcs/child-support/non-custodial-parent-information/child-support-orders/>

⁸⁶ Teen Parents and Paternity Tests: <https://www.merelfamilylaw.com/blog/2021/september/with-teen-parents-who-is-responsible-for-child-s/>

of time that that parent has custody of the child. A parent pays support until their child is 19 years old and completes high school, unless the child chooses to legally emancipate earlier.⁸⁷

If a parent is unable to provide support for their child, for example, if the parent is in high school with no income, that parent may be eligible for state or federal government assistance under the Temporary Assistance to Needy Families (TANF) program. TANF was created to replace the Aid to Families with Dependent Children (AFDC) program to combine social programs for easier access.⁸⁸

The TANF program includes a lifetime limit of five years for an adult to receive assistance using federal funds, requiring states to engage a certain rate of TANF participants in work, and allowing states the flexibility to design their program how they choose. Indiana's TANF program utilizes this funding to give cash aid and services to eligible families. A variety of services are offered to families that have a child in the home who does not have parental support due to insufficient income.⁸⁹

If a minor has a child, the minor's parents and the parents of the baby's father may be liable to pay child support if their incomes are "deemed available" by the court. Assuming the minors themselves do not generate sufficient income, the minor's parents are required to pay child support until the minor is emancipated. The Welfare Reform Act of 1996 requires the paternal grandparents to pay child support along with the maternal grandparents, whereas before, the paternal family was exempt from child support until the teenage father of the child had a sufficient income.⁹⁰

For a rough estimate on how to pay child support, use this Child Support Calculator: <https://public.courts.in.gov/csc#/parents-home>

B. Placing the Child for Adoption

Why have an adoption? Because of the recent abortion restrictions in Indiana, many more people, including minors, are forced to carry a pregnancy to term. As a mother putting your child up for adoption, you are entitled to many rights, including:

- **You have the right to take as much time as you need.** Your adoption agency should be void of prejudices or time constraints, and put your and your child's needs before all else. You should take the time to choose the right adoptive family and decide on the relationship you want to have with them. The agency and/or prospective parents must understand that

⁸⁷ "Child Support in Indiana: How it's Calculated and What You Need to Know":

https://www.eskewlaw.com/indiana-child-support/#What_Is_Indianas_Child_Support_Law

⁸⁸ Office of the Assistant Secretary for Planning and Evaluation, Aid to Families with Dependent Children (AFDC) and Temporary Assistance for Needy Families (TANF) <<https://aspe.hhs.gov/aid-families-dependent-children-afdc-temporary-assistance-needy-families-tanf-overview>>.

⁸⁹ Family and Social Services Administration – About TANF: https://www.in.gov/fssa/dfr/tanf-cash-assistance/about-tanf/#What_is_TANF

⁹⁰ Teenage Parents : <https://familylaws.uslegal.com/parent-liability-childs-act/civil-responsibility/teenage-parents/>

anything you do or say before giving birth to your child is not legally binding and that it takes time to make a decision this significant.

- **You have the right to separate legal counsel.** You are allowed to employ lawyers unaffiliated with an adoption agency to review documents, as well as go to counseling or therapy with someone other than an agency-provided counselor.
- **You have the right to financial help for medical and other pregnancy-related expenses.** Placing a child for adoption can actually be completely free if you partner with an agency early enough. Agencies or the adoptive parents will pay for certain medical care, counseling, and legal fees. However, utilizing resources unaffiliated with an agency may have to be paid out of pocket. If you don't have healthcare or qualify for Medicaid, Indiana state laws give financial assistance up to \$3000 for medical care and lost wages plus \$1000 for living expenses from the 2nd trimester to 6 weeks after birth.
- **You have the right to confidentiality.** Placing a child up for adoption is one of the hardest decisions a parent can make. All people have the right to make this decision on their own, including minors. **If a minor wishes to place their child up for adoption, they do not need their parent's consent.**
- **You have the right to control post-natal hospital care.** Upon giving birth to your child, you can choose how long you want to stay in the hospital with the baby, who is the first to hold the baby, and how much interaction you have with the adoptive parents. You must also wait 48-72 before completing any adoption paperwork.

If an individual decides to carry a pregnancy to term and place the child for adoption, that adoption is regulated by state law and is confidential. After an adoption, the adopting parents and the adopted child are considered legally related as parents and child. The birth parents of an adopted child are, from the time of adoption, relieved of all parental duties, rights, and responsibilities.⁹¹

If a child is placed for adoption, two alternative procedures are available. In an agency adoption (sometimes referred to as relinquishment), the individual relinquishes the child to a licensed adoption agency which places the child for adoption. Agency adoptions are often well-equipped to work with siblings, older children, or children with special needs. In a private adoption, the individual delivers the child directly to the adopting parents via an attorney. Private adoptions are generally more selective and personal, as the birth parent(s) are able to speak with the adoptive parents. The legal custody of the child remains with the birth parent unless or until the adoption is granted; with an agency adoption, legal custody is relinquished to the agency immediately.⁹² In either case, there must be a finding that the adoption will promote the interest of the child.

Birth parents' consent to the adoption is necessary, including the consent of the father of the child, regardless of the birth parents' relationship.⁹³ The constitutional guarantees of equal protection and due process protect the rights of unmarried fathers who attempt to form a parental relationship with their children, despite the mother's efforts to block that relationship. However, this paternal consent does not apply to fathers who denied paternity before or after the birth, or fathers whose

⁹¹ "What are adoptive parents' rights and responsibilities?":

<https://www.legalshield.com/blog/adoption/what-are-adoptive-parents-rights-responsibilities/>

⁹² "Agency vs. Private Adoption in Indiana: Which one should you choose?":

⁹³ IN Code § 31-19-19-1 (2019)

child was conceived because of their rape, molestation, sexual misconduct with a minor, or incest. Additionally, consent to adoption may be withdrawn within 30 days of the process.

Although adoptions are generally final, an adoption can be reversed under certain limited circumstances and within limited time periods to return the child to a birth parent. Open adoptions, or adoptions where the birth parent(s) still have visitation rights to their child, may be formed prior to or during the child's adoption.⁹⁴ This is a decision more easily made through private adoptions.

C. Indiana's Safe Haven Law

Every state in the U.S. has a "Safe Haven Law", which decriminalizes a person who anonymously leaves an unwanted infant. As long as there are no signs of abuse and the child is left in a safe environment, the Indiana DCS will take the child into its custody and provide it with a medical examination and a caregiver.⁹⁵ Parents can also call Safe Haven 911 for a service member to collect a child, but they must stay with the baby until the service member arrives. A more common approach, though, is baby boxes. There are more than 70 temperature-controlled boxes on the sides of fire stations and hospitals where Hoosiers can surrender their babies safely. Six parents utilized this in 2020.

8. Gender Identity and Expression

Before delving into the rights associated with gender identity and expression, it's important to have a shared vocabulary. The following definitions form the basis of the discussion on this topic.

- **Gender** is a cultural construct of roles, mannerisms, clothing, and norms within societies that is generally categorized into male, female, or nonbinary.
- **Gender identity** is a person's internal sense of their gender. This means feeling like a female, male, both, neither, or anywhere on the spectrum.
- **Gender expression** is the outward representation of someone's gender. This can correlate with a person's gender identity, or it can be different, depending on many factors, like the stage a person is in with their gender identity, or the society around them.
- **Cisgender** is when a person's gender identity matches their biological sex.
- **Transgender** is when a person's gender identity does not align with their sex, such as when a biologically assigned male identifies as a woman, or vice versa.

⁹⁴ IN Code. §§ 31-19-16, 31-19-16.5 (2019)

⁹⁵ IC 31-34-2.5

- **Nonbinary** is when a person does not feel that they fit into the category of man or woman. Nonbinary people can fluctuate with their gender identity and expression, feel like both genders, or feel genderless altogether.⁹⁶
- **Intersex** is when a person is born with an indistinct gender, including variations in genitalia, chromosomes, or hormones. Often, parents of intersex children opt for surgery, choosing a gender for their child at a young age without that child's consent. These parents take the risk of choosing their child's gender identity incorrectly, which may have consequences for that child's mental health later in life. Many advise that the best option for an intersex child is to wait, and allow that child to make their own decisions about their gender when they are older.⁹⁷ It's important to note that intersex is distinct from transgender or nonbinary.
- **Pronouns** are one of the most important ways to express one's gender identity. It's a courtesy to everyone, not just gender-fluid people, to be regarded with the correct pronouns. The same way a cisgender man would not want to be called a woman, a transgender man would not want to be called a "she" when they identify as a "he". Using the correct pronouns for trans and nonbinary people lets them know that you accept them and their identity. The most common pronouns are he/him, she/her, and they/them, or a combination such as he/they and she/they. They/them is often adopted by nonbinary or trans people, but it is also used as a "middle-ground" pronoun to let others know that this person is going through a change in their gender identity. While these are the most common pronouns, there are still others.

A. Gender Affirming Care

Many people with dysphoria from their gender assigned at birth opt for gender affirming care^{98,99}, which is a combination of social, psychological, legal, and medical measures taken to support an individual's gender identity and expression. The goal is to create an understanding environment where the individual can learn to feel comfortable in their body. Social and psychological measures include coming out to others, going to therapy, developing a plan for possible gender reassignment, and undergoing small cosmetic changes such as hair and vocal alterations, or breast binding and padding. Other care is legal, such as changing a name or gender marker. Medical gender-affirming care refers to an individual changing their body, which can be both surgical and nonsurgical. Among these are:

- **Hormone blockers**, drugs that slow or postpone puberty. Going through puberty as the wrong gender can cause severe trauma and irreversible changes to the body that can affect the person's mental state in the future. Hormone blockers give teens more time to

⁹⁶ Wikipedia – "Non-binary Gender": https://en.wikipedia.org/wiki/Non-binary_gender

⁹⁷ InterAct – "What is intersex?": <https://interactadvocates.org/faq/#looklike>

⁹⁸ Healthline – "Everything you need to know about gender affirming care":
<https://www.healthline.com/health/what-is-gender-affirming-care>

⁹⁹ Association of American Medical Colleges – "What is gender affirming care? Your questions answered.":
<https://www.aamc.org/news/what-gender-affirming-care-your-questions-answered>

determine their feelings about their gender identity before puberty makes the decision for them.

- **Hormone replacement treatment**, which refers to receiving testosterone for masculinizing or estrogen for feminizing. Commonly called “T & E,” these hormones can be received via injection, pill, patch, and more options.
- **Surgical procedures**, which include double mastectomies and breast augmentation, phalloplasty (construction of a penis), vaginoplasty (construction of a vagina), orchiectomy (removal of testicles), hysterectomy (removal of the uterus), and additional facial or cosmetic surgeries.

Leaving gender dysphoria untreated can be traumatic, especially for youth. Stress from internal conflicts combined with external stigmas and behaviors leads to increased levels of anxiety, depression, and isolation in the trans community. According to The Trevor Project’s 2020 National Survey on LGBTQ Youth Mental Health, 54% of young people who identified as transgender or nonbinary reported having seriously considered suicide in the last year, and 29% had made an attempt to end their lives.¹⁰⁰ A review published in *Plastic and Reconstructive Surgery* in 2021 found that less than 1% of people who undergo gender-affirming surgery end up regretting the decision.¹⁰¹

B. History of Gender Fluidity

Gender-fluidity is not a new concept, and although Western societies deem it as a controversial movement, other countries have long recognized gender-fluid people in their societies. As far back as the 1500s, some Native North Americans tribes have acknowledged a third gender. Each tribe has their specific name for it, but the 1990-coined term for non-native audiences to use is “two-spirit”.¹⁰² Additionally, a third gender called Hijras¹⁰³ are revered in Indian society and honored in holy texts such as the *Ramayana* and the *Mahabharata*. These books date back to more than 2000 years ago, but Hijras are still prevalent today with over 3 million in India.

In more recent history and closer to home, the 1969 Stonewall Inn Riots in New York City sparked the modern LGBTQ+ Rights Movement. One of the founders, Marsha P. Johnson, would lead at the forefront of future trans rights movements throughout the 70s and 80s. In 1976, New Jersey ruled in *M.T. v J.T.* that trans people may marry based on their gender identity, not their sex assigned at birth. The decision guaranteed the validity of trans marriages in New Jersey, claiming that the post-operative trans woman, M.T., was legally a female, and as such was

¹⁰⁰ Columbia University Department of Psychiatry: <https://www.columbiapsychiatry.org/news/gender-affirming-care-saves-lives>

¹⁰¹ Wikipedia – “Gender dysphoria”: https://en.wikipedia.org/wiki/Gender_dysphoria#Diagnosis

¹⁰² Wikipedia – “Two Spirit”: <https://en.wikipedia.org/wiki/Two-spirit>

¹⁰³ Harvard Divinity School - “The Third Gender and Hijras”: <https://rpl.hds.harvard.edu/religion-context/case-studies/gender/third-gender-and-hijras>

entitled to the marriage with her husband, J.T. However, other states denied this right, such as Texas in *Littleton v. Prange (1999)* and Kansas in *The Estate of J'Noel Gardiner (2001)*.¹⁰⁴

Throughout U.S. history, many trans people have been denied workplace equality. In 1971, Paula Grossman¹⁰⁵, who was fired after transitioning, and Karen Ulane¹⁰⁶, sued to obtain workplace protections as trans people under Title VII of the Civil Rights Act of 1964, which prohibits employment discrimination on the basis of race, color, religion, sex, and national origin. The court ruled that transgender people are not entitled to protections under Title VII.

In the 1990s, hate crimes against the trans community¹⁰⁷ ran rampant and garnered a lot of publicity, leading to national movements for transgender rights. In 1993, Brandon Teena, a transgender man, was raped and murdered when his peers discovered his transition, and six years later, the movie *Boys Don't Cry* was made about him. In 1999, a transgender woman began dating army soldier Barry Winchell. Other soldiers heard of this news and murdered Winchell. The trial became widely publicized and exposed the inability of Bill Clinton's "Don't Ask, Don't Tell" policy in the military to protect LGBTQ+ soldiers. In 2009, the Obama Administration passed the Matthew Shephard and James Byrd Jr. Hate Crimes Prevention Act, which allowed the federal government to investigate and prosecute hate crimes, including those based on sexual orientation and gender identity, when local governments failed to do so.

C. Current Gender Federal Law

In 2015, the Supreme Court passed the landmark case of *Obergefell v. Hodges*, which protected the right to marry regardless of sex under the Due Protections and Equal Protections clauses of the 14th Amendment. While this protected gay rights, it also allowed transgender people to marry and for their marriage to remain valid, regardless of their sex assigned at birth, gender identity, or partner's gender.

Due to the differing politics between the Obama and Trump administrations, the law fluctuated in 2016 to 2017 on whether transgender youth could use the bathroom and locker rooms at school which correlated with their preferred gender identity. Now, many schools utilize a single-use neutral bathroom, while other schools leave the decision up to the trans students. Indiana currently does not have any laws regulating bathroom access, but other states such as North Dakota, Florida, and Kansas do. Additionally, the US Department of Education issued guidelines in 2014 protecting the rights of transgender students to attend boys-only or girls-only schools based on their gender identity, but these guidelines do not have the force or effect of law.

¹⁰⁴ ThoughtCo – “A History of Transgender Rights in the US”: <https://www.thoughtco.com/transgender-rights-in-the-united-states-721319>

¹⁰⁵ Wikipedia – “Transgender Legal history in the US”:
https://en.wikipedia.org/wiki/Transgender_legal_history_in_the_United_States

¹⁰⁶ JUSTIA US Law – “Ulane v. Eastern Airlines”: <https://law.justia.com/cases/federal/appellate-courts/F2/742/1081/213900/>

¹⁰⁷ Wikipedia – “Transgender legal history in the US – Violence against transgender people and their partners”:
https://en.wikipedia.org/wiki/Transgender_legal_history_in_the_United_States

It was not until the landmark case *Bostock v. Clayton County*¹⁰⁸ in 2020 when the Supreme Court found that Title VII protects against employment-based discrimination based on sexual orientation and gender identity. While nationwide employment protection was only guaranteed recently, 25 states and numerous territories already had protections in place based on sexual orientation and/or gender identity.¹⁰⁹ Title VII applies to all job applicants, current employees, and former employees regardless of citizenship or immigration status. However, it doesn't apply to independent contractors or companies with fewer than 15 employees.

In 2023, a large number of laws placing extreme restrictions on gender-affirming care were passed. Forty-nine states introduced a total of 590 restrictive bills into state legislatures, with 85 already enacted, 380 ongoing, and more scheduled to go into effect. These bills target multiple parts of society by censoring LGBTQ+ conversations in schools and literature; limiting access to healthcare, insurance, and ID changes; and creating barriers to trans marriage and employment. One of the most restrictive of these laws, SB129 in Oklahoma, makes it a felony for a physician to provide gender-affirming care to people who are under 26 years old. Arizona has multiple school-oriented bills, such as SB1001, which permits a teacher to choose not to call a student by their preferred name and pronoun even when given parental consent, or HB1700, which allows a parent to ban a book in a school library if it promotes gender fluidity. Other state legislatures target drag artists, such as AZ SB1698, and others threaten gender-affirming medical care for minors, such as FL SB254.

D. Current Gender Rights in Indiana

In 2023 alone, 19 bills endangered gender-affirming care and rights for trans youth in Indiana. Nine targeted healthcare, six affected students and education, two restricted ID changes, and two related to prison. Sixteen of these were defeated in court, and three were passed into law.

1. **SB 480** prohibits a physician or other practitioner from: (1) knowingly providing gender transition procedures to an individual who is less than 18 years of age (minor); and (2) aiding or abetting another physician or practitioner in the provision of gender transition procedures to a minor.¹¹⁰ This case is currently pending in court with resistance from the ACLU. Initially, Governor Holcomb signed the law to prohibit all types of gender-reassignment procedures for minors, but has now been altered to only ban surgical treatments and allow hormonal treatments like puberty blockers, testosterone, and estrogen. As of December 2023, trans youth and the ACLU are still fighting against this bill.

¹⁰⁸ National Law Review - <https://www.natlawreview.com/article/us-supreme-court-extends-title-vii-coverage-to-gay-and-transgender-employees>

¹⁰⁹ Wikipedia – “LGBT employment discrimination in the US – State Law Prior to *Bostock v Clayton County*”: https://en.wikipedia.org/wiki/LGBT_employment_discrimination_in_the_United_States#State_law_prior_to_Bostock_v._Clayton_County,_Georgia

¹¹⁰ SB480: <https://iga.in.gov/legislative/2023/bills/senate/480/details>

2. **HB 1569** prohibits the Indiana Department of Corrections from using any public funds, state resources, or federal payment to administer surgical gender-affirming care to an offender patient.¹¹¹ This went into effect July of 2023 and does not allow transgender prisoners to access surgical treatment for gender-affirming care and gender reassignment. Another prison-related bill, SB 487, which failed earlier in 2023, attempted to place offenders in a facility that correlated with their gender assigned at birth and reproductive biology instead of their gender identity and expression.¹¹² If both of these bills had passed, transgender prisoners would have been in a tricky situation where they were simultaneously required to have a certain biology to be admitted into a facility, while also prohibited from getting gender-reassignment surgery to have that biology.

3. HB 1608 prohibits school employees from providing instruction about “human sexuality” to a student in prekindergarten through third grade. However, the employee may respond to a question from a student. Because the term “human sexuality” is vaguely defined in the law, employees must be cautious. Additionally, a school is required to notify at least one parent in writing if their child requests a name or pronoun change, including notifications as simple as nicknaming Benjamin as “Ben”.¹¹³ This legislation was inspired by the Florida-coined “Don’t Say Gay” bill, and initially required parental consent for a name change, but was watered down to parental notification. Many are worried that this law aims to out trans kids, but others argue that this fosters communication.

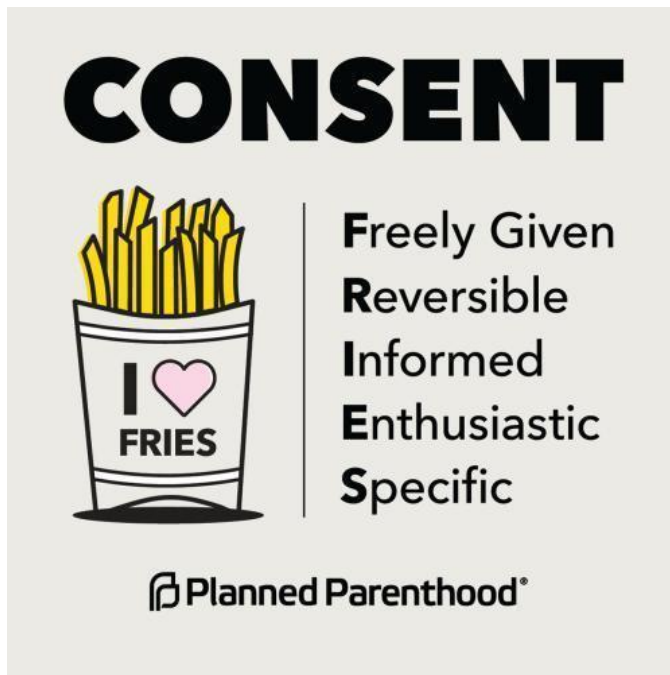
For analyses on more gender legislation in Indiana, visit the Trans Legislation Tracker: <https://translegislation.com/bills/2023/IN>.

¹¹¹ HB1569: <https://iga.in.gov/legislative/2023/bills/house/1569/details>

¹¹² SB487: <https://iga.in.gov/legislative/2023/bills/senate/487/details>

¹¹³ HB1608: <https://iga.in.gov/legislative/2023/bills/house/1608/details>

9. Sexual Assault and Services



<https://www.plannedparenthood.org/learn/relationships/sexual-consent>

Consent is a decision you make about the sexual activities in which you want to engage. It is a decision of personal autonomy, and someone should never make you feel obligated to do something. If they do, there could be legal consequences. Consent must be given freely and can be taken away at any point during intimacy. It must be given enthusiastically and not because of coercion or intoxication. It must be verbally affirmative and clear, not assumed based on body language. A person may be a victim of sexual assault, written in Indiana law as sexual battery, if the act of sexual intimacy occurred when a person was “compelled to submit to the touching by force or the imminent threat of force; or so mentally disabled or deficient that consent to the touching could not be given”¹¹⁴. Consent also should be specific and informed so that both partners understand the desired level of intimacy. Remember that consent is not gendered. Anyone can give, or refuse to give, consent—no matter if the relationship is straight or queer.

Hypotheticals:

1. Jessica, 16, is at a party with her friends. She has been drinking heavily and flirting with Ryan, also 16. Ryan has had some drinks, but he is not nearly as intoxicated as Jessica

¹¹⁴ Indiana code § 35-42-4-1

appears to be. Ryan takes her flirtation as an invitation to hook up, so he attempts to bring her into one of the empty bedrooms. Is this okay? What about legally? Morally?

2. Whitney, 16, and Jerrod, 15, are friends with benefits, and they frequently text each other to hang out. Today, Whitney asks Jerrod if he wants to smoke weed, and he says yes. They share a blunt, and, while Whitney has a strong tolerance, Jerrod does not. Jerrod indicates that he doesn't feel well, but Whitney tries to initiate sex with him anyway. What should Jerrod and Whitney do?

Indiana has defined 12 crimes relating to sexual assault and misconduct, nine of which include statutory crimes. Depending on the severity, sexual assault is punishable by a maximum of 30 years in prison and \$10,000 in fines.¹¹⁵ There are additional crimes, such as distribution of an intimate image, invasion of privacy, criminal stalking, and more that can result in the offender being charged with a Class A misdemeanor or Level 4-6 felony. For more information on abuser crimes in Indiana, including how to obtain a restraining order, visit WomensLaw.org: <https://www.womenslaw.org/laws/in/crimes>.

You have the right to say “no” if you do not want to engage in sexual activities. If this right is violated, the violator can be held accountable legally. Non-consensual crimes include sexual battery; rape (including spousal and statutory); criminal deviate conduct, which is defined as “a perpetrator knowingly or intentionally causing a victim to perform or submit to sexual conduct ... knowing that the victim was furnished with a drug or controlled substance without the victim’s knowledge”¹¹⁶; failure of carriers of dangerous communicable diseases, such as HIV and syphilis, to warn their partner¹¹⁷; incest; and various statutory/child misconduct crimes.¹¹⁸ Indiana also details criminal punishments for incest, human trafficking, sexual misconduct with a minor, and child exploitation, molesting, seduction, and solicitation.¹¹⁹

Sexual battery is any non-consensual, intoxicated, and/or forced sexual intimacy that does not involve penetration. Rape is considered an act of sexual intercourse with a person, including the spouse of the perpetrator, under the following circumstances: 1) the victim is incapacitated without consent; 2) if it results in serious bodily injury; 3) if committed while armed with a deadly weapon; 4) if committed by using or threatening deadly force; 5) if the victim is mentally disabled or deficient; 6) if the victim is unaware that intercourse is occurring.¹²⁰

It's important to remember that being in a relationship does not entitle a person to have sexual activity with their partner. Consent can be withdrawn at any time, and both verbal and nonverbal cues must be acknowledged. Consent and communication should be ongoing, and partners should feel comfortable and safe expressing their feelings before and during any activity.

¹¹⁵ Indiana Age of Consent Laws 2023: <https://www.ageofconsent.net/states/indiana>

¹¹⁶ Indiana code § 35-42-4-2

¹¹⁷ Indiana code § 35-42-1-9

¹¹⁸ RAINN Sex Crimes: Definitions and Penalties – Indiana: https://apps.rainn.org/policy/policy-crime-definitions.cfm?state=Indiana&group=3&_ga=2.110933957.1958574772.1692580484-36061321.1692580484

¹¹⁹ Indiana Sexual Assault Laws: <https://www.ageofconsent.net/laws/indiana>

¹²⁰ Indiana code § 35-42-4-1

Even if both persons say “yes,” a crime may still have been committed. In Indiana, the age of consent is 16. The age of consent is in place to ensure that people make mature and competent decisions before engaging in sexual activity. A child’s brain is not fully developed yet, which makes them more susceptible to emotional manipulation tactics, including grooming, guilt-tripping, and threats. The age of consent varies from state to state but generally ranges from 16 to 18 years old. In Indiana, anyone, including a minor, who has sexually intimate contact with a person under 16 may be liable for statutory rape. However, Indiana is one of many states that has a close-in-age exemption law, or a “Romeo and Juliet” law, which allows 14 and 15 year old teens to consent to sex with partners under age 18, especially if they are in an ongoing relationship. Additionally, Indiana permits a defense if the offender had good reason to believe the victim was over the age of 16, for example, if the person was let into a bar.

If you or someone you know has experienced sexual assault, please consider our resources below.

Hypothetical:

1. José, 15, is queer and wants to start dating. There are very few openly queer students at his school. José makes a Grindr profile, which lists his age as 18. José exchanges messages with a man whose age is listed as 32. They make plans to meet up. **What legal consequences might there be?**
2. Now suppose the other man’s age was listed as 19. **What do you think now?**

***A note about José’s situation:** José could have been put at risk of human trafficking in meeting up with the 32-year-old man. Human trafficking involves “the exploitation of someone for the purpose of compelled labor or a commercial sex act through the use of force, fraud, or coercion”.¹²¹

National Human Trafficking Hotline: 1-888-373-7888

A. Intimate Partner Violence (IPV)

Intimate partner violence (IPV) is connected to other forms of violence, including sexual assault. IPV is abuse or aggression that occurs in a romantic relationship by former or current partners and can range in severity and frequency.¹²² IPV includes physical violence, sexual violence, stalking, and psychological aggression.

Physical violence occurs when your partner tries to hurt you through physical means, such as hitting or kicking. Sexual violence, although also through physical means, is more specific to the types of sexual assault that are discussed above.¹²³ These two forms of IPV are generally easier to identify due to the presence of identifiable injuries.

¹²¹ Indiana DOE “Human Trafficking”: <https://www.in.gov/doe/students/human-trafficking/>

¹²² What is Intimate Partner Violence? (Oct. 11, 2022) Centers for Disease Control and Prevention <<https://www.cdc.gov/violenceprevention/intimatepartnerviolence/fastfact.html>>.

¹²³ Ibid.

Stalking and psychological aggression are more difficult to identify. Stalking is a pattern of unwanted contact or attention by a former or current partner that puts you in fear of your safety or the safety of someone else.¹²⁴ A victim of stalking may experience a perpetrator repeatedly calling them, following them around, sending unwanted gifts, threatening them, or even monitoring them over social media. Psychological aggression is when a partner uses verbal or non-verbal communication with the intent to harm you either mentally or emotionally to exert control in the relationship.¹²⁵ Acts of psychological aggression by a partner are with the intent to humiliate, criticize, blame, dominate, isolate, intimidate, or threaten you.

A person can be held accountable for IPV under Indiana law if the abuse includes an “incident where the defendant uses or attempts to use physical force or threatens to use a deadly weapon against a family or household member.” Under criminal law, a perpetrator can be held accountable through a protective order and, if violated, can be held on domestic violence charges. Indiana also prohibits convicted marital domestic abusers from possessing a firearm.¹²⁶

Unfortunately, IPV is a common experience. IPV disproportionately impacts women and members of the LGBTQIA+ community. Statistics show that 41% of heterosexual women and 26% of heterosexual men have experienced some form of IPV.¹²⁷ Statistics also show between 25.2% to 56.9% of individuals who identify as bisexual, gay, or lesbian have experienced IPV, with the highest percentage being those who identify as bisexual women.¹²⁸ Regarding the transgender community, statistics show 31.1% to 50% experience IPV.¹²⁹

By educating yourself on these topics and learning the warning signs, you can prevent and intervene in IPV situations. If you or someone you know has previously or currently is experiencing IPV, please consider our resources below.

B. Resources for Minors

Indiana City-By-City Suicide Hotlines: <http://www.suicide.org/hotlines/indiana-suicide-hotlines.html>

Indiana Child Abuse and Neglect Hotline: 1-800-800-5556

Indiana Coalition Against Domestic Violence Hotline: 1-800-332-7385

Be Well Crisis Helpline: Dial 211 and enter zip code

¹²⁴ Stalking (2022) Victim Connect Resource Center <<https://victimconnect.org/learn/types-of-crime/stalking/>>.

¹²⁵ The Consequences of Perpetrating Psychological Aggression in Dating Relationships (Apr. 30, 2012) National Library of Medicine <<https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3456993/>>.

¹²⁶ Indiana Domestic Violence Laws: <https://www.criminaldefenselawyer.com/resources/criminal-defense/domestic-violence/indiana-domestic-violence-laws-charges-penalti>

¹²⁷ What is Intimate Partner Violence? (Oct. 11, 2022) Centers for Disease Control and Prevention <<https://www.cdc.gov/violenceprevention/intimatepartnerviolence/fastfact.html>>.

¹²⁸ Brown, Intimate Partner Violence and Sexual Abuse Among LGBT People (Nov. 2015) UCLA School of Law <<https://williamsinstitute.law.ucla.edu/publications/ipv-sex-abuse-lgbt-people/>>.

¹²⁹ Ibid.

Childhelp National Child Abuse Hotline: 1-800-4-A-CHILD (1-800-422-4453)

National Domestic Violence Hotline: 1-800-799-7233

National Suicide Prevention Lifeline Suicide Hotline: 988 or 1-800-273-TALK (1-800-273-8255)

National Dating Abuse Helpline: 1-866-331-9474

National Sexual Assault Hotline: 1-800-656-HOPE (1-800-656-4673)

Rape Counseling Service Hotline: 559-222-7273

The Trevor Project Suicide Hotline for LGBTQ+ youth: 866-488-7386

10. Glossary

Abortion — the medical termination of a pregnancy.¹³⁰

Medication Abortion — a way to terminate a pregnancy that involves taking two pills.

In-Clinic Abortion — a medical procedure that ends a pregnancy.

Affordable Care Act — a law passed in 2010 that significantly changed the healthcare system. The law aimed to make health insurance more available and affordable, expanded the Medicaid program, and supported innovative medical care delivery.¹³¹

Codify — to arrange laws, rules, or regulations into a systemic code. This can involve taking judicial decisions or legislative acts and turning them into codified law.¹³²

Contraception (or Birth Control), generally — a method to prevent pregnancy.¹³³

Condoms — a thin, stretchy pouch worn on the penis during sex to prevent pregnancy and STDs.

Emergency contraceptives — a safe way to prevent pregnancy up to five days after unprotected sex. This includes certain types of IUDs and pills.

IUDs — a small device placed in the uterus to prevent pregnancy. IUDs are long acting and reversible.

The Patch — a patch worn on certain parts of the body that releases hormones through your skin to prevent pregnancy.

The Pill — a medicine with hormones, taken once per day, that acts to prevent pregnancy.

The Shot — an injection, received once every 3 months, that works to prevent pregnancy through hormone regulation.

Crisis Pregnancy Center — clinics that look like real health centers but are run by anti-abortion activists and generally are not legitimate medical clinics.¹³⁴

¹³⁰ Abortion Information (last visited Feb. 17, 2023) Planned Parenthood, <https://www.plannedparenthood.org/learn/abortion>.

¹³¹ Affordable Care Act (last visited Feb. 17, 2023), HealthCare.gov, <https://www.healthcare.gov/glossary/affordable-care-act/>.

¹³² Codify (last visited Feb. 17, 2023) Cornell Law Legal Information Institute, <https://www.law.cornell.edu/wex/codify>.

¹³³ Birth Control (last visited Feb. 17 2023) Planned Parenthood, <https://www.plannedparenthood.org/learn/birth-control>

¹³⁴ What are Crisis Pregnancy Centers? (Nov. 4, 2021) Planned Parenthood <https://www.plannedparenthood.org/blog/what-are-crisis-pregnancy-centers>.

Federal preemption — when a state law and federal law conflict, federal law takes precedence over (or preempts) state law, in accordance with the Supremacy Clause of the Constitution.¹³⁵

Intimate Partner Violence (IPV) — IPV is connected to other forms of violence, including sexual assault. IPV is abuse or aggression that occurs in a romantic relationship by former or current partners and can range in severity and frequency.¹³⁶ IPV includes physical violence, sexual violence, stalking, and psychological aggression.¹³⁷

Parental Consent and Notification Laws — abortion regulations that require parental involvement in a minor’s decision to have an abortion.¹³⁸

Reproductive Justice — broadly, the human right to control our sexuality, our gender, our work, and our reproduction. At its core, is the belief that all people have the right to have children, the right to not have children, and the right to nurture the children they have in a safe and healthy environment.¹³⁹

Reproductive Rights — the legal rights to contraception, abortion, fertility treatment, reproductive health, and access to information about one’s reproductive body. In essence, your legal rights about when and if you have a child.¹⁴⁰

Unprotected sex — when people don’t use condoms and/or any other birth control methods during sex.

Viability — the point at which a fetus could survive outside the uterus, which is typically at around 23 weeks of pregnancy.¹⁴¹

¹³⁵ Preemption (last visited Feb. 17, 2023) Cornell Law Legal Information Institute, <https://www.law.cornell.edu/wex/preemption>.

¹³⁶ What is Intimate Partner Violence? (Oct. 11, 2022) Centers for Disease Control and Prevention <<https://www.cdc.gov/violenceprevention/intimatepartnerviolence/fastfact.html>>.

¹³⁷ Ibid.

¹³⁸ Parental Involvement in Minors’ Abortions (last visited Feb. 17, 2023) Guttmacher Institute, <https://www.guttmacher.org/state-policy/explore/parental-involvement-minors-abortions>.

¹³⁹ Reproductive Justice (last visited Feb. 17, 2023) In Our Own Voice: Black Women’s Reproductive Justice Agenda, [https://blackrj.org/our-issues/reproductive-justice/#:~:text=Reproductive%20Justice%20\(RJ\)%20means%20the,our%20work%2C%20and%20our%20reproduction](https://blackrj.org/our-issues/reproductive-justice/#:~:text=Reproductive%20Justice%20(RJ)%20means%20the,our%20work%2C%20and%20our%20reproduction).

¹⁴⁰ Carolin Schurr & Elisabeth Militz, *International Encyclopedia of Human Geography* (2nd Ed. 2020).

¹⁴¹ Kelly Burch, *3 Key Facts About Fetal Viability and its Pivotal Role in US Abortion Laws*, Insider (Mar. 11, 2022), <https://www.insider.com/guides/health/reproductive-health/fetal-viability>