

Medically Safe, Legally Risky: The Urgent Need to Decriminalize Self-Managed Abortion in the United States



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Issue Brief
Published December 17, 2021

Abstract

Self-managed abortion (SMA) refers to the self-administration of medications in order to terminate an early pregnancy without clinical supervision. Although using these pills to end a pregnancy has been shown to be very medically safe, the same cannot be said for the legal risks of self-managed abortion in the United States. Since 2000, 21 women have been arrested for allegedly attempting to self-manage an abortion or assisting another person in doing so. At least 20 states across the U.S. currently have policies that either explicitly criminalize self-managed abortion or have the potential to be misused for prosecution. This widespread criminalization of self-managed abortion poses a significant and complex threat to public health. Urgent legislative action is needed to decriminalize self-managed abortion at the federal level in order to protect the wellbeing of women and trans people who are at risk for unintended pregnancy.

Problem

The widespread criminalization of self-managed abortion in the United States poses a threat to the health of people who experience unplanned pregnancies by promoting incarceration, limiting access to medication information, and discouraging seeking care in instances when clinical intervention is needed.

Magnitude

Nearly 600 restrictions on abortion have been enacted across the United States since 2011 [1]. These policies are not evidence-based; rather, they are political strategies designed to close abortion clinics and obstruct patients' ability to receive care [2]. As a result, 89% of U.S. counties now have no abortion provider, and waning access to clinical care has led many pregnant people to end pregnancies on their own [3, 4, 5]. This intentional termination of a pregnancy without medical supervision is known as self-managed abortion (SMA).

SMA is much more common than many believe. Researchers recently estimated that one in every 14 American women will self-manage an abortion during her lifetime [6]. In just the fifteen months between January 2019 and April 2020, one Dutch organization that covertly mails abortion medications to Americans received 49,935 requests [5]. With the Supreme Court poised to allow states to prohibit clinicians from providing abortion care, the prevalence of SMA is expected to rapidly increase [7]. For now, abortion provided by licensed clinicians is legal

nationwide, but 20 states already have policies that could be used to prosecute those who choose to self-manage an abortion. Since 2000, at least 21 women have been arrested for allegedly attempting to self-manage an abortion or assisting another person in doing so. Many have served time in prison as a result. Women of color, immigrants, and poor people have been disproportionately impacted [8].

Issues

The criminalization of SMA is a significant and complex threat to public health [9]. The most apparent risk is incarceration, particularly for people of color and low-income people who are systemically targeted by policing and state surveillance [10]. Incarceration itself is a public health crisis known to be associated with a number of negative health outcomes, such as mental illness, infectious disease, chronic health problems, substance use disorders, and violence. Long-term harms like poverty, homelessness, separation from children, and loss of family support can persist even after incarceration ends [11].

In addition to incarceration, the risk of maternal morbidity and mortality related to the criminalization of SMA is a major concern for public health. Mifepristone and misoprostol, the medications most commonly prescribed by clinicians to terminate pregnancies, are extremely safe. Serious adverse events occur in less than 0.3% of patients, and research has shown that both safety and effectiveness remain high when pregnant people use these medications to self-manage an abortion [12, 13, 14, 15]. While the risks are low, these medications must be dosed and taken

correctly like any other. Many people order the pills from international pharmacies, leaving pill recipients to primarily rely on online sources for medication instructions. But even online, the threat of policing makes medically accurate information difficult to find. Plan C and Women Help Women, among a few other organizations, operate websites that provide trusted information on SMA. However, Facebook and Instagram, where many people first hear about these resources, took sweeping action in 2021 to ban their social media accounts and censor any user content that includes information about safely using abortion pills [16]. When pregnant people cannot access accurate information about pill usage, they are more likely to encounter dangerous complications like infection and hemorrhage, which are otherwise very rare. Furthermore, the potential traceability of ordering the pills online can feel too legally risky for some, and they may then turn to using more anonymous and less safe methods for inducing abortions, such as toxic herbs, manual insertion of sharp objects into the uterus, or physical trauma.

Criminalization can also deter those who experience complications from seeking emergency care. The majority of people who have been arrested for allegedly self-managing an abortion were reported to police by a healthcare provider [8]. Although medication abortions are clinically indistinguishable from spontaneous miscarriages, many people who manage their own abortions understandably fear that hospital staff may question them and report suspicious activity [17]. This is particularly a concern for Black patients and other patients of color whose pregnancy outcomes are disproportionately reported to police and child services by healthcare providers [18].

Main Issue

The criminalization of SMA in the U.S. creates unnecessary health risks for people who choose to end their pregnancies without clinical supervision.

Main Policy Question

What legislative action can be taken to reduce the public health harms of criminalizing SMA?

Problem Trajectory

SMA criminalization is primarily motivated by the political view that abortion is unethical and should be

subject to punishment. There is no known evidence to support the implementation of these policies on the basis of health [19]. It is well-established that maternal mortality is highest in countries where abortion is illegal or highly restricted, and researchers have repeatedly demonstrated the safety of using abortion pills without clinical supervision [13]. While opponents have voiced concerns that decriminalizing SMA would increase the prevalence of unsafe abortion, this is not supported by the literature [20].

Previous Policies

As of 2021, at least 20 states across the U.S. have policies that could be used to criminalize SMA. As seen in Figure 1, four states explicitly prohibit SMA: Idaho, Nevada, Oklahoma, and South Carolina. Policy experts believe that at least 16 more have other laws that could be misused to prosecute people who attempt SMA. This includes both fetal harm laws and criminal abortion laws that were enacted before *Roe v. Wade*. In addition to these policies, investigations and arrests related to SMA have also occurred in 11 other states [8].

In contrast, several states, including New York, New Mexico, Delaware, and Massachusetts, have recently removed legislation that could have been used to prosecute SMA [21]. A national “Repro Legal Defense Fund” was also established in 2021 in anticipation of an increased need of legal assistance for those who are arrested for SMA [22].

Pressure for Political Action

As clinical abortion access rapidly shrinks across much of the U.S., the number of SMA arrests is expected to increase. With this in mind, the American Public Health Association voted in late 2021 to adopt a new policy guidance that outlines the extensive harms of SMA criminalization and calls for legal reform to eliminate these policies [19]. The current data point to an urgent need for legislative action to decriminalize SMA [23].

It is clear that this public health matter cannot be left to a piecemeal approach. Nearly half of U.S. states currently have a law on the books that could be used to prosecute people who self-manage an abortion, leaving millions of people vulnerable to criminalization. Furthermore, at least twenty-two states are expected to ban abortion outright once the Supreme Court releases its anticipated ruling to roll back Constitutional right to abortion [24]. Women and

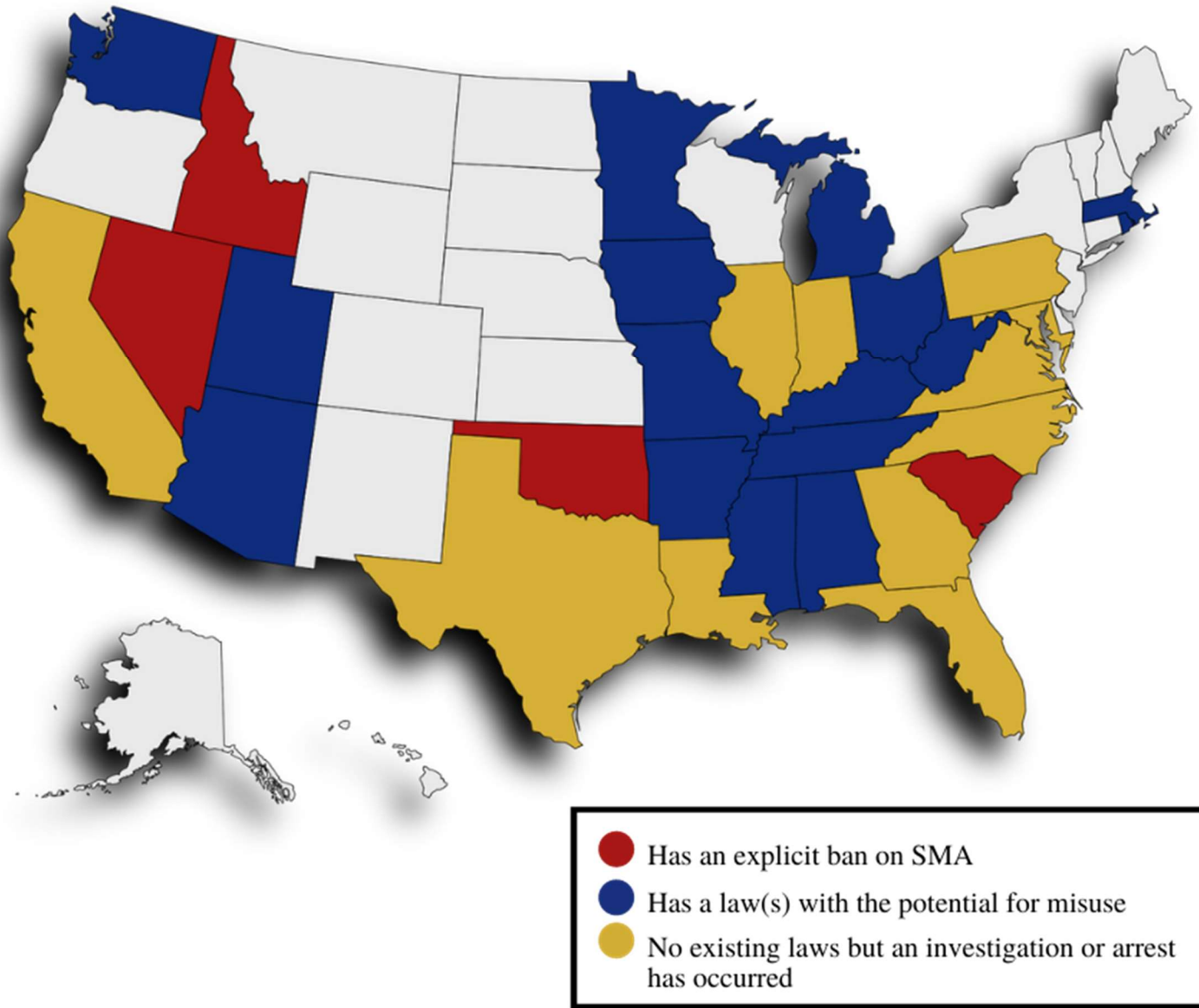


Figure 1: U.S. States Where Self-Managed Abortion (SMA) Is Threatened by Criminalization, 2021 [8].

other people who can become pregnant urgently need Congress to pass federal legislation to decriminalize SMA. Waiting for the criminal cases to pile up will be too late for too many.

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