



# Beyond Roe: Method Bans



Anti-abortion lawmakers have enacted laws across the United States that ban certain abortion methods. For decades, states have attempted to limit access to abortion after the first trimester, and method bans are often used as a tool to do so. These bans interfere with medical decisions made between a provider and a patient, and further reduce the accessibility of and options for abortion care. Emboldened by their success on second trimester method bans, states hostile to abortion rights have more recently targeted methods commonly used in the first trimester as well. Method bans include restrictions on:

## D&X

“Dilation and extraction,” or D&X, is an abortion procedure that, prior to being federally banned, was used in a small share of abortions (.02 percent) that occur after 26 weeks gestation.<sup>1</sup> In 2007, the U.S. Supreme Court upheld a federal-level restriction of the procedure in the case of *Gonzales v. Carhart*, enforcing a ban on D&X nation-wide, except when a pregnant person’s life is endangered. The federal law is currently in effect, along with 21 state-level bans on the D&X method of abortion.<sup>2</sup>

## D&E

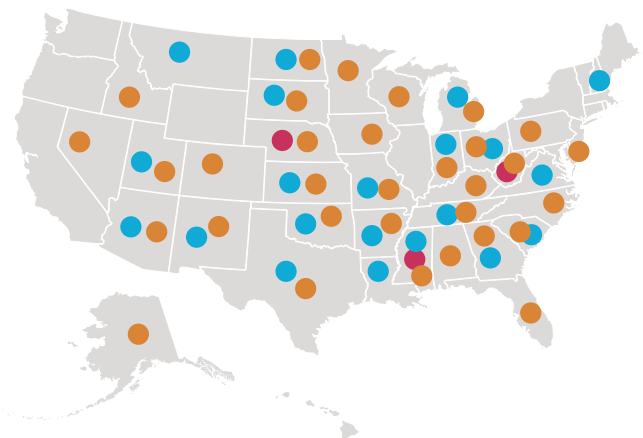
“Dilation and evacuation,” or D&E, is the abortion method most commonly used in the second trimester. Almost all abortions (95 percent) performed at or after 21 weeks are performed by a D&E procedure.<sup>3</sup> States hostile to abortion rights have started enacting laws targeting this method of abortion. Currently, three states have bans on the D&E procedure, allowing the use of the method only when necessary to protect the patient’s life or when their physical health is severely compromised.<sup>4</sup>

## Medication Abortion

Of late, states have adopted multiple restrictions related to medication abortion, which can limit access to abortion in the first trimester. There are 32 states that require providers who administer medication abortion to be physicians. Furthermore, five states have specifically banned telemedicine for abortion provision, and an additional 16 states require that the provider is physically present when the medication is administered,

thus prohibiting the prescription of medication for abortion via telemedicine.<sup>5</sup> Indiana even prohibits the use of medication abortion starting at 10 weeks of pregnancy.<sup>6</sup>

### Method Bans in the U.S.\*



- Restrictions on D&X
- Restrictions on D&E
- Restrictions on medication abortion

\*Federal law in effect for D&X method of abortion

## WHAT IS MEDICATION ABORTION?

Medication abortion is an early, nonsurgical method of abortion that is a safe and effective option at early gestations.<sup>7</sup> It is noninvasive and can be done in a patient's preferred setting, like in the privacy and comfort of their own home. Medication abortion, a protocol that typically involves taking two different drugs — mifepristone and misoprostol — was approved by the U.S. Food and Drug Administration in 2000. It is approved for use up to 10 weeks of gestational age, with additional clinical guidance allowing use up to 11 weeks.<sup>8</sup> Recently, telemedicine has emerged as a viable option to expand the availability of abortion to individuals who either have a far distance to travel to the nearest abortion clinic or wish to have an abortion in the setting of their choosing. However, 19 states require the prescribing provider be physically present when medication abortion is dispensed, effectively banning the use of telemedicine.<sup>9</sup>

## Bans During COVID-19

The U.S. Food and Drug Administration (FDA) requires that the first drug in the two-medication regimen for medication abortion “be dispensed in clinics, medical offices, and hospitals by or under the supervision of a certified healthcare provider.”<sup>10</sup> While the medication must be dispensed in-person, it can be taken elsewhere if the patient chooses. Abortion providers and reproductive health experts have been advocating that the requirement be lifted on the ground that there are no significant safety reasons for in-person dispensing. In July 2020, a federal judge decided to suspend the FDA requirement during the COVID-19 pandemic, arguing that it put people's health at risk to travel and visit clinics.<sup>11</sup> The Trump administration appealed the judge's decision, and in January 2021, the U.S. Supreme Court reinstated the requirement that individuals seeking medication abortions needed to do so in-person during the pandemic. In April 2021, under the new administration, the FDA announced that the agency would temporarily stop enforcing its requirement for in-person dispensing of medication abortion for the duration of the pandemic.<sup>12</sup> Reproductive health providers and experts are now looking to work with policymakers to ensure this principle continues post-pandemic. In May 2021, the Biden administration announced that the FDA will undertake a review of the in-person dispensing requirement.<sup>13</sup> Should the FDA's final guidance state that there is no safety benefit to in-person dispensing of the medication and remove the requirement, barriers to medication abortion will be significantly reduced.

**Method bans alone are harmful; but when working in tandem with other restrictive policies, the barriers to accessing abortion can become insurmountable and deepen existing inequalities — even under *Roe*.**

### Endnotes

- 1 Epner, J. E. (1998). Late-term abortion. *JAMA*, 280(8), 724. <https://doi.org/10.1001/jama.280.8.724>
- 2 Guttmacher Institute. (2021, September 1). *Bans on Specific Abortion Methods Used After the First Trimester*. <https://www.guttmacher.org/state-policy/explore/bans-specific-abortion-methods-used-after-first-trimester>
- 3 Jatlaoui, T. C., Boutot, M. E., Mandel, M. G., Whiteman, M. K., Ti, A., Petersen, E., & Pazol, K. (2018). Abortion surveillance — United States, 2015. *MMWR. Surveillance Summaries*, 67(13), 1–45. <https://doi.org/10.15585/mmwr.ss6713a1>
- 4 Guttmacher Institute. (2021, September 1). *Bans on Specific Abortion Methods Used After the First Trimester*. <https://www.guttmacher.org/state-policy/explore/bans-specific-abortion-methods-used-after-first-trimester>
- 5 Kaiser Family Foundation. (2021, July 15). *The Availability and Use of Medication Abortion*. <https://www.kff.org/womens-health-policy/fact-sheet/the-availability-and-use-of-medication-abortion/>
- 6 Guttmacher Institute. (2021, September 1). *Medication Abortion*. <https://www.guttmacher.org/state-policy/explore/medication-abortion>
- 7 Kaiser Family Foundation. (2021, July 15). *The Availability and Use of Medication Abortion*. <https://www.kff.org/womens-health-policy/fact-sheet/the-availability-and-use-of-medication-abortion/>
- 8 Guttmacher Institute. (2021b, July 2). *Medication Abortion*. <https://www.guttmacher.org/evidence-you-can-use/medication-abortion>
- 9 *ibid*
- 10 Center for Drug Evaluation and Research. (2021, April 13). *Mifeprex (mifepristone) Information*. U.S. Food and Drug Administration. <https://www.fda.gov/drugs/postmarket-drug-safety-information-patients-and-providers/mifeprex-mifepristone-information>
- 11 *American College of Obstetricians and Gynecologists v. U.S. Food and Drug Administration*. (United States District Court, District of Maryland July 2020)
- 12 The American College of Obstetricians and Gynecologists. (2021, April 12). *ACOG Applauds the FDA for its Action on Mifepristone Access During the COVID-19 Pandemic*. <https://www.acog.org/news/news-releases/2021/04/acog-applauds-fda-action-on-mifepristone-access-during-covid-19-pandemic>
- 13 Joint Motion to Stay Case Pending Agency Review in the case of *Chelius v. Becerra* (United States District Court for the District of Hawaii May 7, 2021).

