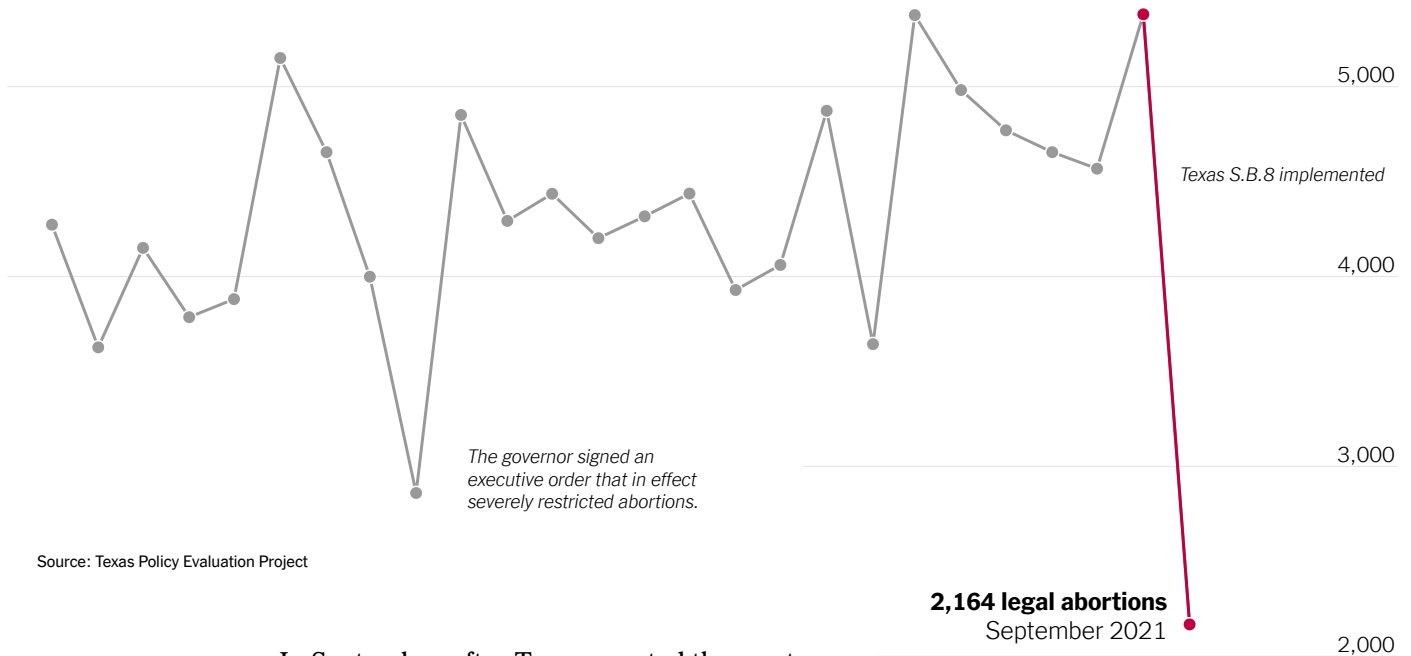


Abortions Fell by Half in Month After New Texas Law

By Claire Cain Miller, Quoctrung Bui and Margot Sanger-Katz Oct. 29, 2021

Number of Legal Abortions Performed in Texas



Source: Texas Policy Evaluation Project

In September, after Texas enacted the most restrictive abortion ban in the nation, the number of legal abortions performed there dropped 50 percent from the same month in 2020, according to data released Friday by a group of researchers at the University of Texas at Austin.

The Texas law bans abortions after cardiac activity can be detected, which is generally when women are around six weeks pregnant. No prior Texas abortion restriction has been followed by a drop so steep. But it is also smaller than many experts predicted. Before the ban, 84 percent of people seeking abortions in Texas were more than six weeks pregnant at their appointment, according to previous research from the same group, the Texas Policy Evaluation Project. It evaluates the effect of Texas legislation on reproductive health and has been independently tallying abortions in the state since 2017.

“It’s one data point in a further downward slide,” Kari White, the project’s principal investigator, said of the September numbers, which cover roughly 93 percent of total abortions in the state. “I would expect we’ll see the number decrease in subsequent months.”

The law, S.B. 8, gives individuals the right to sue anyone who assists in an abortion after about the six-week mark, a time when many women do not yet realize they are pregnant. Though most legal experts say the law conflicts with the legal standard set by *Roe v. Wade*, the structure of the law has made it difficult for abortion providers to challenge it in court. On Monday, the Supreme Court will consider whether federal courts should evaluate the constitutionality of the ban.

The decline in the number of abortions performed in Texas in September was 12 percentage points steeper than the decline in spring 2020, when the governor effectively banned most abortions for a month by postponing all procedures deemed not medically necessary at the beginning of the pandemic. Clinic directors and outside scholars say they expect the number of abortions in Texas will keep falling as long as the law remains in effect.

The sharp decline is in keeping with the goals of the bill's authors.

"The last two months have been a phenomenal success for the pro-life movement," said John Seago, the legislative director of Texas Right to Life, which fought for the law. "We are the first state to be able to enforce a heartbeat bill, and lives are being saved every day because of this work."

Yet it seemed a few factors led to more abortion care than expected.

Abortion providers have more availability to see patients quickly because they are not providing abortions to anyone past about six weeks of pregnancy. And doctors have been working longer hours to try to care for as many patients as possible. (Both dynamics could change if clinics cut staffing to stay afloat.) Also, women who were worried about being unable to get an abortion because of the law might have sought care earlier than they otherwise would have.

"I think people are just high-tailing it as fast as they can into a clinic, because they are just so afraid they are not going to get an abortion," said Amy Hagstrom Miller, the chief executive of Whole Woman's Health, which runs four clinics in the state. "People are coming before they have a positive pregnancy test or before we can see something on an ultrasound, just because they are so afraid."

A flood of donations has also helped people get care sooner. There are many barriers to getting an abortion in Texas, especially for women without financial resources. Advocacy groups have tried to help, though they say that donations are already slowing.

Abortions can be \$500 to \$800, and many patients, especially those who are uninsured, wait until they can save the money. Many abortion clinics in Texas closed after a 2013 law restricting the procedure; about 20 clinics remain. Most are in big cities, so patients living in remote areas typically have to travel long distances. Texas also requires patients to have an informational visit and sonogram at least 24 hours before their procedure, so some patients need to get two days off work or in some cases find child care. Minors without parental consent must go to a judge to get permission.

"What we're seeing here is people are moving heaven and earth to ensure that abortion is accessible," said Elizabeth Nash, a state policy analyst at the Guttmacher Institute, a research group that studies reproductive health and supports abortion rights. "That may not be sustainable for the long term."

At Southwestern Women's Surgery Center in Dallas, about half of patients who thought they were early enough to receive an abortion have been ineligible because fetal cardiac activity was heard, said Dr. Allison Gilbert, a physician and the medical director there.

"I've not told a single patient at this point who has not cried," she said. "It's just devastating; there's really no other word to describe it emotionally. It's always difficult to tell a patient that you're unable to provide them the care they need, but now it's half of patients. As a provider, all you can do is choke back your tears."

The earliest Dr. Gilbert has detected cardiac activity since the law was enacted was at five weeks and four days. Another patient she saw had an IUD, a form of birth control, that had failed.

Abortions at the clinic have declined about 75 percent, though the staff expected a drop as large as 90 percent, she said.

Rough estimates based on previous research on abortion restrictions in Texas suggest that about half of the women who are unable to get abortions at clinics there end up getting one another way, usually by traveling to another state, according to Corey White and Stefanie Fischer, economists at Monash University in Melbourne, Australia. Clinics in Oklahoma, Louisiana, New Mexico and elsewhere reported increases in patients from Texas.

The people most affected by abortion restrictions, in part because they are least likely to be able to travel long distances, tend to be poor; Black or Hispanic; uninsured or on Medicaid; undocumented immigrants; or teenagers, research shows.

"The burden of these restrictions don't fall equally on all women," Professor Fischer said. "Economically disadvantaged women are going to have less means to travel. While some women will find a way, it won't be the case that they all find a way."

Some may also be turning to self-managed abortion, by taking medications that end early pregnancies. In Texas, a service called Aid Access connects patients with European doctors who write prescriptions that are mailed from India. Some women also cross the border to Mexico, where one of the pills that causes abortions is sold over the counter. These methods are not technically legal.

When Texas put in previous abortion restrictions, more women turned to self-managed abortion. Distance to an abortion clinic was one of the top reasons, so it's likely that there was an increase in women doing so in September, said Abigail Aiken, the principal investigator of a University of Texas research group studying self-managed abortion.

Ken Paxton, Texas' attorney general, said recently, "Texas is a national leader in protecting and fostering respect for human life, including unborn life." Another law in the state that goes into effect in December will impose criminal penalties on those who mail abortion pills to a patient in the state, but lawyers say it is unclear whether it would apply to providers outside the United States. Whole Woman's Health is quickly starting a program that would mail pills to a clinic it operates just over the Texas border in New Mexico.

Elements of two court challenges to the law are being considered by the Supreme Court on a rushed schedule. But the longer the law remains in effect, the harder it may be for the Texas clinics to survive. Most of the

state's abortion providers are independent, financed primarily through fees for medical services, and they are currently relying on cash reserves and grants from outside groups.

Other conservative-leaning states may follow Texas' lead. Another case before the Supreme Court this term will challenge the Roe standard of prohibiting states from banning the procedure before fetal viability (or before around 23 or 24 weeks). Should the Supreme Court weaken the standard, abortion would probably quickly become illegal in 22 states.