

MEMORANDUM TO INTERESTED PARTIES

FROM: Jennifer Klein, Director, Gender Policy Council
DATE: September 22, 2022
SUBJECT: Federal Criminal Abortion Ban—Analysis and Impact

Summary

Last week, Senator Lindsey Graham (R-SC) introduced a national abortion ban that would criminalize the provision of abortion services after 15 weeks with limited exceptions. This memo provides a preliminary analysis of the impact that a nationwide criminal abortion ban would have on the medical profession and women's health.

Background

Senator Graham's national abortion ban would criminalize the provision of abortion services after 15 weeks, with narrow exceptions. It imposes a criminal penalty on providers who provide abortion care to their patients in violation of the proposed law, including imprisonment for up to 5 years and/or monetary fines. The bill also leaves in place extreme state abortion bans, including those that begin at fertilization or do not have exceptions for rape or incest. The federal bill itself does not include an exception for the *health* of the mother—meaning that a woman with a serious condition that would threaten her health would not be able to obtain care after 15 weeks. Finally, it imposes onerous burdens on rape and incest survivors in order for them to access care.

Under Senator Graham's ban, doctors could be criminalized for:

- Performing an abortion to save the health of a mother.
- Offering a full range of miscarriage care.
- Providing an abortion to a woman carrying a fetus with little to no chance of survival.
- Treating a rape or incest survivor who has not complied with medically unnecessary delays or reporting requirements.

Analysis

If passed and enacted, this bill would create a nationwide health crisis, imperiling the health and lives of women in all 50 states. It would transform the practice of medicine, opening the door to doctors being thrown in jail if

they fulfill their duty of care to patients according to their best medical judgment. As the American Medical Association, the American College of Obstetricians and Gynecologists, and other medical societies have said, pre-viability abortion bans threaten the very integrity of the medical profession by interfering with providers' duty of care, violating long-established principles of medical ethics, and intruding upon honest, open communication between patients and providers.

A recent study in the *New England Journal of Medicine* analyzed the impact of Texas Law SB8—a six-week ban that has been in effect in Texas since early September 2021. The study concludes that the law, which includes civil penalties for medical providers and third parties, has adversely affected patient care and women's lives. Fearful of legal reprisal, many providers do not even provide information to their patients about abortion in cases of increased maternal risks or poor fetal prognosis, and some also avoid counseling about options to travel out of state for abortion care. Patients carrying fetuses with fatal diagnoses are forced to continue their pregnancies to term regardless of the impact on their health, while patients with pregnancy complications or preexisting medical conditions that may be exacerbated by pregnancy are forced to delay an abortion until their conditions become life-threatening, regardless of the short-term or permanent impact on their health. Providers have sent home patients whose health is in jeopardy, unable to provide care under the law, and only provided appropriate treatment once they returned with signs of a life-threatening condition like sepsis. Finally, the study notes that some providers are planning to leave Texas entirely.