



Texas Senate Bill 8: Medical and Legal Implications

Kari White, Gracia Sierra, Laura Dixon, Elizabeth Sepper, Ghazaleh Moayed

On May 19, 2021, Texas Governor Greg Abbott signed [Senate Bill 8](#) (SB 8) into law.¹ This bill includes two key provisions: it bans abortion upon detection of fetal cardiac activity and allows almost anyone to sue abortion providers and others who “aid and abet” a person obtaining abortion care. In this brief, we explain the provisions and potential impacts of SB 8.

SB 8’s Abortion Ban

SB 8 prohibits physicians from providing abortion care if they detect fetal heart tones, which the law defines as “cardiac activity or the steady and repetitive rhythmic contraction of the fetal heart within the gestational sac.” Fetal cardiac activity can be detected by ultrasound as early as 5-6 weeks’ gestation, before the fetus’ heart has actually developed.² The law allows exceptions only for medical emergencies.

SB 8 would prevent the majority of pregnant people in Texas from obtaining abortion care (Figure 1). Some people may not realize they are pregnant or seek care before 6 weeks’ gestation.³ Because appointments may not be available for several days—or weeks—at some abortion facilities, even people who seek care in early pregnancy may be unable to obtain an abortion before it is prohibited by SB 8.

The law would particularly affect Black patients and those living on low incomes or who live far from a facility that provides abortion because they often experience delays obtaining care.^{3,4} The main reasons Texans are delayed include: the need to come up with enough money to pay for their visits because abortion is not covered by Medicaid and most private insurance plans in Texas; difficulties coordinating appointments around their job, school and childcare; and challenges scheduling the state-mandated ultrasound and separate abortion visits with the same physician as required by Texas law.^{5,i}

SB 8’s Right to Sue

SB 8 creates a private cause of action that permits almost anyone to sue a person who provides or “aids and abets” an abortion after approximately 6 weeks’ gestation. This unprecedented provision bars the state from enforcing the law and instead gives private parties the right to sue, regardless of whether they have any connection to the patient or even live in Texas. People who have had an abortion cannot be sued under SB 8 for receipt of such care.

FIGURE 1: SB 8 WOULD PREVENT MORE THAN 8 IN 10 PEOPLE FROM OBTAINING ABORTION CARE

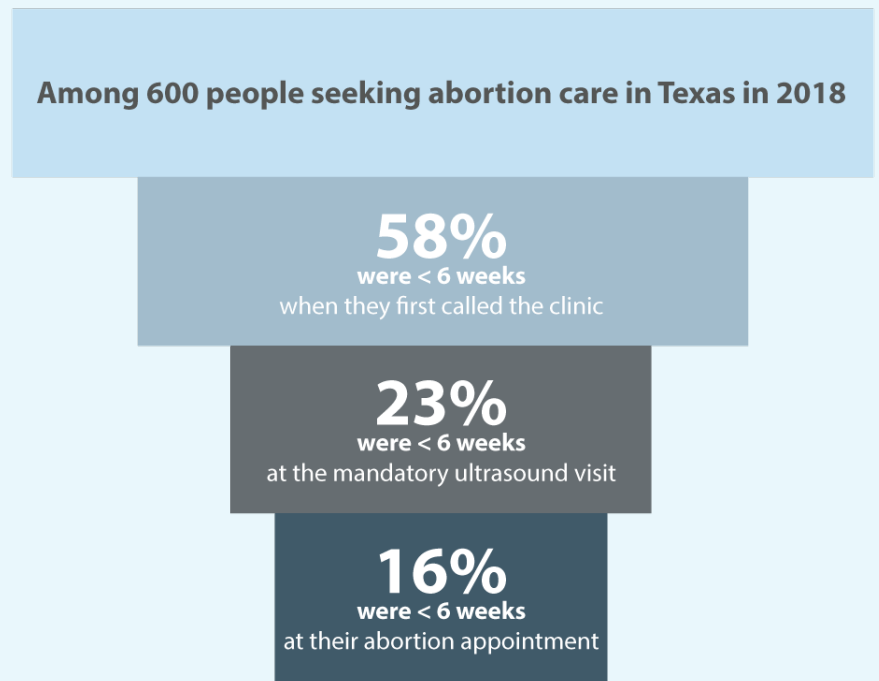


Figure 1. The estimates are based on a 2018 Texas Policy Evaluation Project survey with 603 abortion patients who sought care at one of 12 Texas facilities. A smaller percentage of patients may eligible for abortion than estimated since fetal cardiac activity can be detected before 6 weeks.

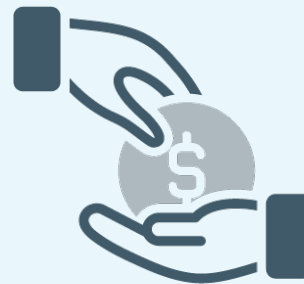
ⁱThese visits have to be at least 24 hours apart, unless the person lives more than 100 miles from the nearest facility where they obtain care, in which case they can obtain abortion at a single visit.

The law's language is so broad that anyone who offers information or referrals for abortion care, drives the patient to a facility, helps them pay for their abortion—or intends to do so—could face a civil suit for \$10,000 for each abortion and be required to pay the plaintiff's court costs. The provision would create a chilling effect that might prevent physicians from providing information on all pregnancy options to patients. It would also subject abortion providers to harassing lawsuits and prevent them from recovering attorney fees, even when they prevail in court. Many Texans who obtain abortion care also rely on others for logistic and financial support (Figure 2), and their friends and family, as well as others who provide assistance, also could be subjected to civil lawsuits under SB 8.

FIGURE 2: MANY TEXANS SEEKING ABORTION CARE RELY ON OTHERS FOR HELP



43% had someone drive them to get an abortion



57% had a friend, family member or partner who helped them pay

SB 8's Implementation Timeline

SB 8 is scheduled to go into effect on September 1, 2021, if a court does not block its implementation. Other states' 6-week abortion bans have not been enforced because they are unconstitutional under 50 years of federal legal precedent set by *Roe v. Wade* that prohibits abortion bans before fetal viability, typically interpreted to be around 24 weeks' gestation. However, in its Fall 2021 term, the U.S. Supreme Court will consider whether all pre-viability abortion bans are unconstitutional when it hears a 15-week abortion ban case from Mississippi. The Court's decision is expected in Spring 2022.

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