

# Legal Epi at Lunch

## Capturing a Rapidly Changing Landscape using Sentinel Surveillance

# Sentinel Surveillance

- The sentinel surveillance of emerging laws and policies project was developed as a new legal mapping method intended to quickly identify, capture, and track emerging laws and legal innovations impacting public health
- Support provided by the Robert Wood Johnson Foundation

# Selection Guidelines

**Accessibility  
of the law**

**Rapid policy  
diffusion**

**Impact on  
health and  
equity**

**Need for  
research**

**Equity**

**Partnership  
potential**

# Process

## Scoping and background research

- Selection criteria

## Question development

- Most critical features

## Research and coding

- Limited or no redundancy

## Quality control

- Research and coding spot checks

## Regular tracking and updates

- Expand the scope or jurisdictions

# Goals of Sentinel Surveillance

- Track the state of the law in question-and-answer format
- Focus on high-level and most critical features of the law
- Questions that you can expand upon moving forward (e.g., future policy surveillance project)

# Key Actors



**Policymakers** see what element of laws have the most movement in other states and can learn to track their own laws.



**Advocacy groups** track progress of campaigns and efforts to change laws and determine where to focus efforts and resources.



**Social scientists** access scientifically sound data that can be used to evaluate the health influences of the laws.



**Government agencies** use this as a metric for the success of larger programs.



**The public** have easier access to key laws in the community.



**Health professionals** measure progress and plan initiatives.

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# Sentinel Surveillance of Emerging Laws Limiting Public Health Emergency Orders

# Sentinel Surveillance of Emerging Laws Limiting Public Health Emergency Orders

- Laws that limit the authority of a governor, state health agency, or state health official, regarding public health emergency orders.
- The longitudinal dataset covers all 50 U.S. states and the District of Columbia, and includes laws that were enacted since January 1, 2021, and were effective on or before May 20, 2022.
- Research was provided by the Association of State and Territorial Health Officials.

# Collaboration

- Sentinel Surveillance  
Advisory Council
- Association of State and  
Territorial Health Officials



ASSOCIATION OF STATE AND TERRITORIAL HEALTH OFFICIALS

# **Laws Limiting Public Health Emergency Orders**

Throughout the COVID-19 pandemic, legislators in almost every state have introduced bills that would limit state executive authority regarding the use of emergency orders to respond to the current pandemic or future public health emergencies. Between January 1, 2021, and May 20, 2022, one or more of these bills were enacted into law and became effective in 21 states.

Legislative efforts to restrict executive public health powers include laws that limit the duration of a state of emergency or emergency order, provide that emergency orders may be terminated by the legislature, or restrict the provisions an emergency order may contain. These laws could have harmful impacts on public health by restricting the ability of a governor, state health agency, or state health official to respond to a future health emergency in a swift and flexible way.

This longitudinal dataset provides an overview of laws that limit the authority of a governor, state health agency, or state health official, regarding public health emergency orders. The dataset uses the *sentinel surveillance of emerging laws and policies legal mapping method*.

Research for the dataset was provided by the Association of State and Territorial Health Officials, with support from the Robert Wood Johnson Foundation. The Center for Public Health Law Research will publish related datasets in Fall 2022 capturing state bills limiting, shifting, or expanding public health authority, bills addressing public health authority measures and preemption, and bills attempting to limit the application of federal law.

[Read more...](#)

CREATED BY: Policy Surveillance Program Staff  
MAINTAINED BY: Policy Surveillance Program Staff  
VALID FROM: January 1, 2021  
UPDATED THROUGH: May 20, 2022

[Data](#) [Codebook](#) [Protocol](#) [Summary Report](#)

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[Map](#) [Profiles](#)

5/20/22 (51 jurisdictions)

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1. Is there a law that was passed since January 1, 2021 that limits state executive authority regarding public health emergency orders?

- Yes  
 No

2. Does the law limit the governor's authority regarding public health emergency orders?

- Yes  
 No

2.1. How is the governor's authority limited?

- Issuance of emergency order is restricted  
 Duration of emergency order is limited  
 Emergency order may be terminated by legislature  
 Scope of order is restricted  
 Local orders may be less stringent than governor's order

3. Does the law limit the authority of a state health official regarding public health emergency orders?

- Yes  
 No

3.1. How is the authority of a state health official limited?

- Issuance of emergency order is restricted

[Legend](#)





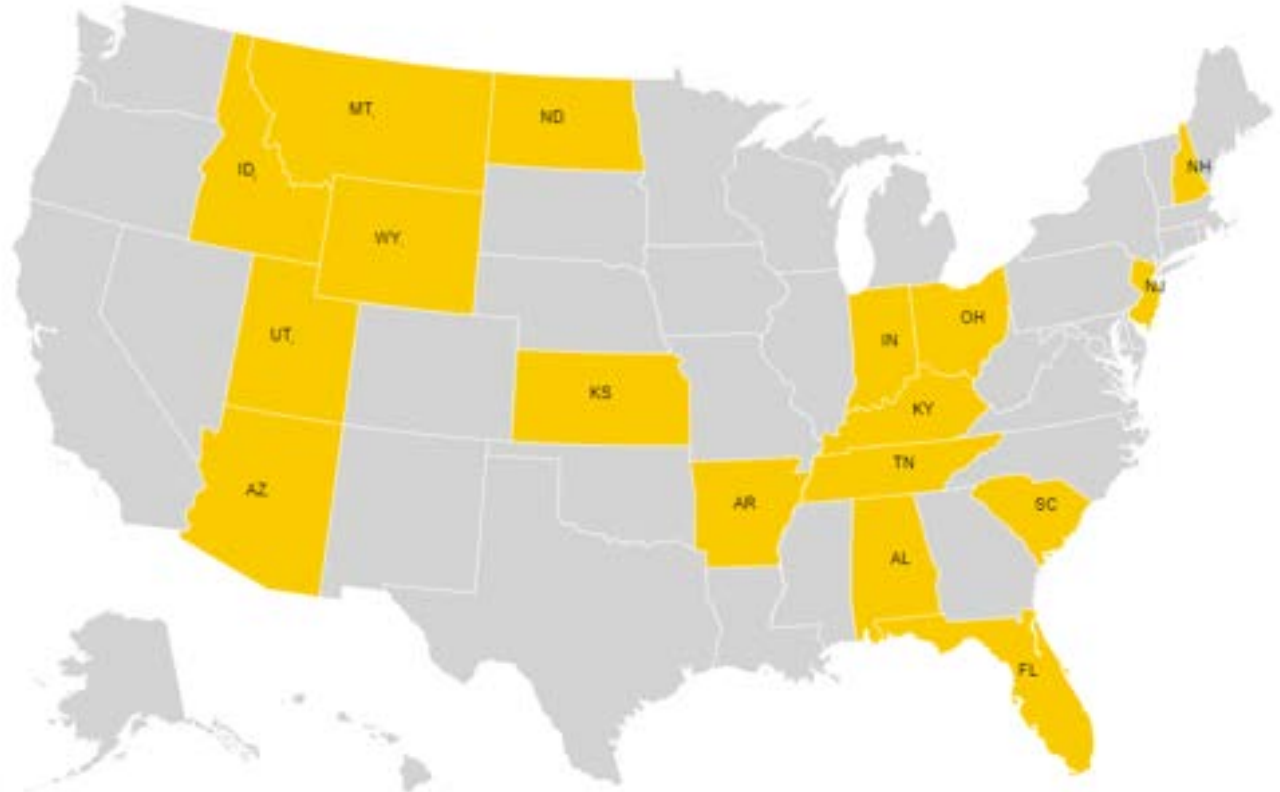
# Progression of Laws Limiting Public Health Emergency Orders



LawAtlas.org data as of May 20, 2022

# Limits on Governor and State Health Official

**Seventeen states limited the authority of the governor and a state health agency or official**



 (17) Meets Criteria |  No data

LawAtlas.org data as of May 20, 2022

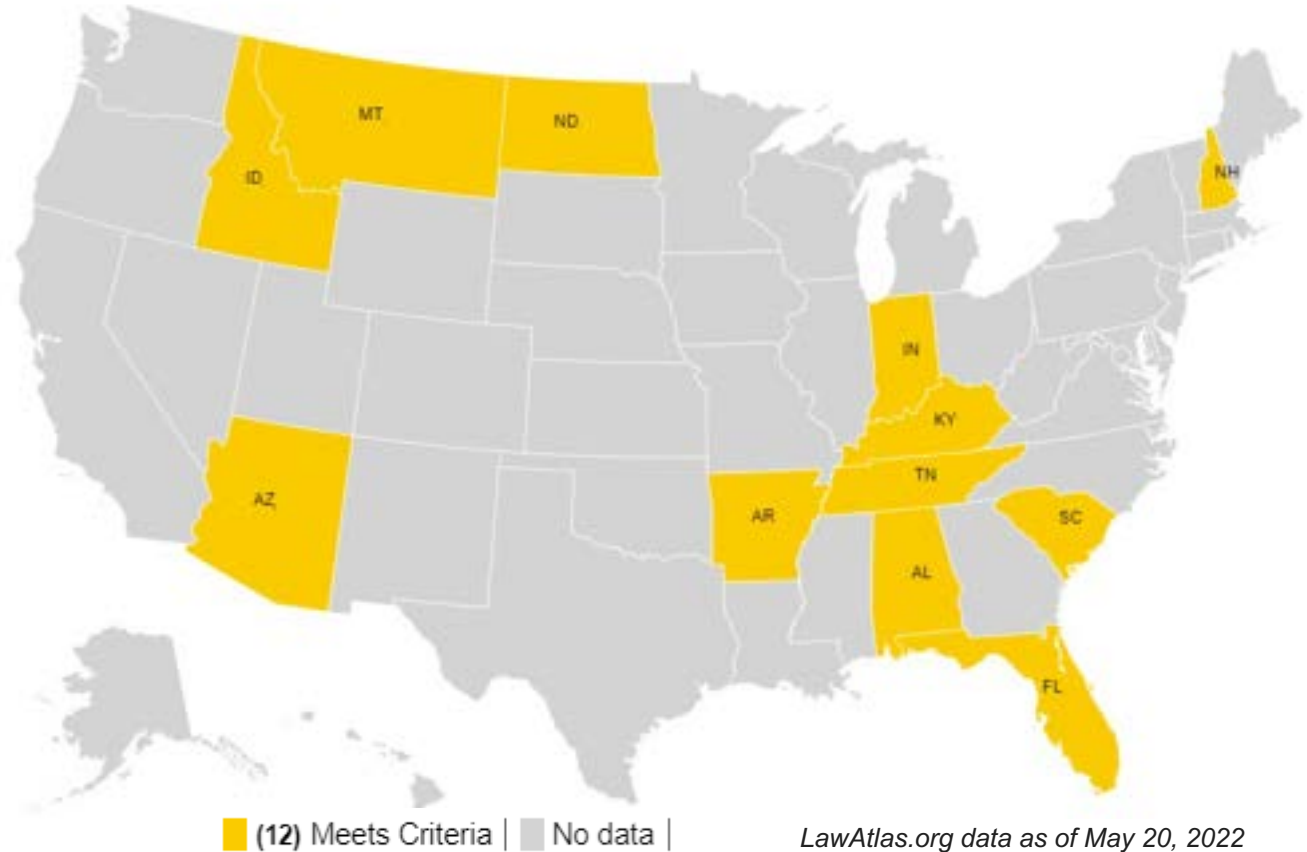


# Additional Findings

- Fourteen states limited the *governor's* authority, the authority of a *state health agency or official*, and the authority of a *local health agency or official*.
- Louisiana and Utah limited the authority of state health officials in all of the areas listed below:
  - Issuance of emergency orders is restricted
  - Duration of emergency orders is limited
  - Emergency orders may be terminated by legislature
  - Scope of emergency orders is restricted

# Scope Restrictions

**Twelve states imposed restrictions on the scope of the governor's orders and orders issued by a state health agency or official.**



# Scope Restriction Examples

- Prohibiting state health officers from mandating use of face masks
- Prohibiting mandates for individuals to receive a COVID-19 vaccination
- Prohibiting governor from inhibiting the gathering of people for any religious, civic, or commercial activity
- Prohibiting a state disaster plan from compelling a private business to deny access to customers

# **Sentinel Surveillance of Emerging Drug Decriminalization Legislation**

**Is there legislation in the state that decriminalizes personal possession of controlled substances?**



| LEGAL PROVISIONS  | OREGON MEASURE 110, ENACTED | NEW YORK S.1284 & A.7109, PENDING | MASSACHUSETTS S.1277 & H.2119, PENDING |
|---|-----------------------------|-----------------------------------|--|
| Reclassifies personal possession from a criminal offense to a civil offense | ✓                           | ✓                                 | ✓                                      |
| Civil fine can be waived with a health assessment                           | ✓                           | ✓                                 | ✓                                      |
| Mechanism to vacate prior convictions for drug possession                   | ○                           | ✓                                 | ○                                      |
| Funding for substance use treatment programs and harm reduction             | ✓                           | ○                                 | ○                                      |

✓ Jurisdiction has this provision

○ Jurisdiction does not have this provision

# Explore Sentinel Surveillance

<https://lawatlas.org/page/sentinel-surveillance-project>

- Interactive maps and tables
- Research Protocol
- Data and Codebook
- Policy Brief



**SCAN TO EXPLORE THE  
DATA**

# State Legislation Addressing Public Health Emergency Authority

- Public Health Authority Limits
- Reallocation of Public Health Authority
- Strengthening Public Health
- State Limits on Enforcement of Federal Law
- Regulating Public Health Measures
- Public Health Preemption



**SCAN TO EXPLORE THE  
DATA**



# Act for Public Health



The Network  
for Public Health Law

 ChangeLab Solutions

 PUBLIC HEALTH  
LAW  
WATCH

 PUBLIC HEALTH  
LAW CENTER  
at Mitchell Hamline School of Law

 **Temple University**  
Beasley School of Law

Center for  
Public Health  
Law Research



SCAN TO VISIT  
[actforpublichealth.org](https://actforpublichealth.org)

# Questions?

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# Using Legal Epidemiology to Enhance Understanding of the Impact of *Dobbs* on State Abortion Regulation

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FEBRUARY 14, 2023

# Background

*Dobbs v. Jackson Women's Health  
Organization*

## Overturing Roe v. Wade

On June 24<sup>th</sup>, 2022, the US Supreme Court overruled nearly 50 years of precedent protecting the right to pre-viability abortions. Since then, state legislatures have been free to legally ban all or most abortions in their state.

# Abortion Access Under Roe

- While *Roe v. Wade* protected the constitutional right to an abortion, states were still able to restrict it as long as it did not impose an “undue burden” (*Casey*)
- This led to a complex patchwork of state laws with varying access by jurisdiction, further complicated by case law, AG opinions and litigation battles
- Examples of restrictions upheld include mandatory waiting periods, insurance and Medicaid bans, and provider and facility requirements.
- Abortion restrictions disproportionately harm BIPOC, people with low incomes, those already parenting, and young people, which make up the majority of abortion seekers in the US

# Aftermath of *Dobbs v. Jackson*

- When the *Dobbs* decision was announced, it led to sudden drastic changes in state law resulting in chaos and uncertainty for providers, patients, and advocates
- “Trigger laws” banning abortion contingent on the overturning of *Roe* and “*pre-Roe*” abortion bans that were not previously in effect suddenly became legally enforceable
- Because many abortion restrictions were held unconstitutional under *Roe* and *Casey*, this leaves the status of these laws unclear and open to new legal challenges
- A sharp divide emerged amongst states moving to ban all or most abortions and those trying to strengthen access for both in and out-of-state abortion seekers

# **Post-Dobbs Legal Tracking**

**Sentinel Surveillance of Emerging Laws and Policies**

# Tracking a Post-Dobbs Legal Landscape

- State abortion laws are complex, overlapping, and changing constantly—even more challenging to track the rapid legal developments following *Dobbs*
- CPHLR and SFP conceptualized a database to serve as a resource for researchers seeking to better understand the impact of the *Dobbs* decision, and is a companion resource to the SFP #WeCount project
- Focus on service delivery impact as legislatures aim to increasingly criminalize anyone involved in providing, supporting, or seeking abortion care
- Important to document historical changes over time in order to support rigorous research on the effects on sexual and reproductive health, wellbeing and equity



# Database Methods and Scope

- Uses sentinel surveillance methods, a type of scientific legal mapping, to collect and code key features of the law and changes over time
- Covers legal developments from June 1, 2022 (updated throughout one year) and includes state statutes, regulations, court opinions, attorney general opinions, and executive orders in all 50 states and DC
- Coding framework focused on existing areas of regulation most likely to be impacted by the decision and emerging legislative efforts to restrict or protect access
- Stakeholder interviews with researchers and experts conducted to further inform the scope and ensure key variables are included

# Dataset Inclusion Criteria

- Key features of the law included:
  - Laws banning abortion, including total or near-total bans, gestational age limits, “fetal heartbeat” bans, method bans, and reason-based bans
  - “Trigger bans” and related certification (e.g. Attorney General certification)
  - Restrictions on medication abortion and telehealth for abortion
  - Criminal, civil, and licensing penalties for violations of certain abortion laws
  - “Shield laws” protecting providers and patients from out-of-state liability
  - Abortion protections such as a codified right to abortion, expanded access, increased funding, insurance coverage, and data privacy measures

# Abortion bans pre and post-Dobbs

State abortion bans, Nov. 1, 2022





# Proactive Policy Responses



15 States w/ "Shield Laws"



17 States Codify Right to Abortion

# Resources for SRH Research

- We will continue to track legal developments over the next year as states innovate in this area—updates will be published periodically (next scheduled release in March 2023)
- CPHLR maintains annual updates to the State Abortion Laws database, which was created in collaboration with experts and advocates, and contains laws across 16 different areas of abortion regulation
- LawAtlas.org is home to over 120 legal datasets on public health topics including global abortion laws, contraception, and more
- All legal datasets are publicly available and free to use, including downloadable data in CSV format with statistical and standard data and a research protocol detailing coding methods

# Access the Post-Dobbs Dataset

<https://lawatlas.org/datasets/post-dobbs-state-abortion-restrictions-and-protections>



**SCAN TO EXPLORE THE DATA**

# Thank You!

## Keep In Touch:

- **Email:** Adrienne.Ghorashi@temple.edu
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## CPHLR Resources:

- Center for Public Health Law Research: <http://publichealthlawresearch.org/>
- LawAtlas: <http://lawatlas.org/>
- PDAPS: <http://pdaps.org/>
- MonQcle: <https://monqcle.com/>
- Twitter: @PHLR\_Temple, @LawAtlas, @PDAPSbyCPHLR



