



Washington State Attorney General's Office

REPRODUCTIVE & GENDER-AFFIRMING CARE

Shielding Providers, Seekers & Helpers from Out-of-State Legal Actions

Complaints or concerns? <https://fortress.wa.gov/atg/formhandler/ago/reproductiverights.aspx>

What You Should Know

Washington protects and supports access to reproductive health care, including abortion, as well as gender-affirming care. Since the U.S. Supreme Court's decision overturning *Roe v. Wade* in 2022, state laws and policies on these issues have diverged sharply, with some states protecting access and others restricting and even criminalizing it.

Washington's Shield Law, enacted in 2023, protects people in Washington from civil and criminal actions in other states that restrict or criminalize reproductive and gender-affirming care ("ban states"). The Shield Law (HB 1469) passed the Washington State Legislature on April 10, 2023, and was signed into law by Governor Jay Inslee on April 27, 2023. Washington Shield Law, 2023 Wash. Laws 193.

In general, when a civil or criminal investigation or court proceeding is initiated under a ban state's anti-abortion or anti-trans law, based on reproductive or gender-affirming care that is lawful in Washington, Washington's Shield Law:

- Prohibits Washington law enforcement from arresting people, with or without a warrant, for violating the ban state's law
- Prohibits Washington state and local agencies and law enforcement from providing information to or cooperating with the ban state
- Prohibits Washington-based companies and other private entities from complying with subpoenas or providing information to the ban state
- Prohibits the Governor from extraditing non-fugitives to the ban state
- Prohibits Washington courts from ordering wiretaps and issuing arrest warrants, and requires them to quash subpoenas
- Protects people in Washington against criminal process and subpoenas for their testimony or documents
- Prohibits Washington courts from applying the ban state's law in civil or criminal cases in Washington
- Protects health care providers from threats and harassment by making them, and their family members, eligible for Washington's Address Confidentiality Program

The Shield Law also creates a cause of action for interference with protected health care services, which protects against lawsuits filed in other states related to reproductive or gender-affirming care that is lawful in Washington. Those harmed by such out-of-state lawsuits can file a counter-suit in Washington for damages and recover their costs and attorneys' fees.



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FAQ

What is the effective date of the Shield Law?

All provisions of the Shield Law went into effect on April 27, 2023.

What is the Attorney General's role in enforcing the Shield Law?

Section 16 of the Shield Law provides that the Attorney General may bring an action to enjoin violations of the statute, and may recover the AGO's costs and attorneys' fees.

What health care services are protected by the Shield Law?

"Protected health care services" under the Shield Law include reproductive health care services and gender-affirming treatment.

- "Reproductive health care services" means all forms of health care related to the human reproductive system — which includes pregnancy, assisted reproduction, contraception (birth control), miscarriage management, and pregnancy termination (abortion). This includes self-managed abortion, where a pregnancy is terminated without the involvement of a licensed health care provider.
- "Gender-affirming treatment" means health services or products that support and affirm an individual's gender identity — which includes social, psychological, behavioral, and medical or surgical interventions.

Does the Shield Law apply to any and all conduct related to reproductive and gender-affirming care?

The Shield Law only applies to protected health care services that are lawful in the state of Washington. It does not cover conduct that is unprotected under Washington law. For example, the Shield Law does not apply to investigations or lawsuits alleging medical malpractice.

Who does the Shield Law protect? Does it apply to people other than licensed health care providers?

The Shield Law's provisions protect anyone who provides, receives, attempts to provide or receive, assists in providing or receiving, or attempts to assist in the provision or receipt of protected health care services. This includes not only licensed health care providers and their staff, but also other service providers, patients, care-seekers, and friends, family, and other helpers who participate in facilitating access to protected health care services.

Does a person in Washington have to respond to a subpoena from a court in another state demanding documents or testimony related to protected health care services?

The Shield Law prohibits Washington courts from enforcing out-of-state subpoenas seeking information related to protected health care services that are lawful in Washington. Whether a particular subpoena is enforceable can raise complex legal questions. If you receive a subpoena seeking information related to protected health care services, you should consult with legal counsel. Legal resources for reproductive health care providers and others are available, at no cost, through <https://abortiondefensenetwork.org/>.



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FAQ (cont.)

Can a person be arrested in Washington if they help someone in another state access care?

The Shield Law prohibits Washington law enforcement from arresting a person or participating in an arrest — with or without a warrant — if the arrest is based on providing, receiving, or facilitating access to protected health care services. The Shield Law also prohibits Washington courts from issuing arrest warrants based on the violation of another state's anti-abortion or anti-trans law.

Can a person be extradited to a ban state for prosecution if they violate that state's ban on abortion or gender-affirming care?

It depends. If a person commits a crime in one state and then flees to another state, the U.S. Constitution requires that person to be extradited back to the state where they committed the crime. This is known as fugitive extradition. However, if a person commits a crime as defined under a ban state's law, but the person was not present in the ban state, extradition is not required. This is known as non-fugitive extradition. Washington's Shield Law prohibits the Governor from extraditing non-fugitives for crimes involving protected health care services that are lawful in Washington.

Are businesses in Washington allowed to comply with subpoenas issued by courts in other states? How can a business be sure whether the subpoena is related to protected health care services?

Business entities that are incorporated or headquartered in Washington may not knowingly provide records, information, facilities, or assistance in response to a subpoena, warrant, court order, or other process related to the investigation or enforcement of another state's law that is against Washington's public policy of protecting access to protected health care services.

However, business entities may comply with a subpoena or other process if it is accompanied by an attestation that it is not related to the investigation or enforcement of such a law. The Shield Law requires subpoenas from other states to include an attestation when the subpoena seeks documents or testimony related to protected care. The Shield Law establishes a \$10,000 penalty for making a false attestation.



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FAQ (cont.)

When can a person file a countersuit under the Shield Law?

Some states that are hostile to reproductive and gender-affirming care have adopted “bounty” laws that enable private citizens to file lawsuits to enforce those states’ health care bans. Some states allow such lawsuits in more limited circumstances, such as where the person filing the lawsuit is related to the recipient of the health care services.

Under Washington’s Shield Law, any person who is named as a defendant in such a lawsuit, or any person who receives a subpoena in such a lawsuit, may file a counter-suit in Washington if:

- The “bounty” lawsuit is based on the person’s provision, receipt, or facilitation of access to protected health care services;
- The “bounty” lawsuit is based on conduct occurring in Washington;
- The “bounty” lawsuit is based on a cause of action or criminal liability that has no equivalent in Washington law; and
- The “bounty” lawsuit is objectively baseless and brought for an improper purpose.

What is the Address Confidentiality Program? How can a provider of protected health services apply for this program?

The Address Confidentiality Program is designed to help people who are targets for threats or harassment maintain a confidential mailing address, so that perpetrators cannot locate them through public records such as driver licenses, voter registries, and marriage records.

For more information about the Address Confidentiality Program, including instructions for how to apply, visit the Secretary of State’s webpage at <https://www.sos.wa.gov/address-confidentiality-program-acp>.

** This FAQ may be periodically updated and is provided as a resource for general educational purposes and is not provided for the purpose of giving legal advice of any kind. Readers should not rely on information in this guide regarding specific applications of the law and instead should seek private legal counsel.*