

# KNOW YOUR RIGHTS: SHIELD LAW

## Shielding Massachusetts Providers, Seekers, and Helpers from Out-Of-State Legal Actions

IN MASSACHUSETTS, YOUR RIGHT TO ACCESS REPRODUCTIVE AND SEXUAL HEALTH CARE SERVICES, INCLUDING ABORTION, GENDER-AFFIRMING CARE, AND CONTRACEPTION, IS SECURED BY THE CONSTITUTION AND LAWS OF THE COMMONWEALTH.

Since the U.S. Supreme Court's decision in *Dobbs v. Jackson Women's Health Organization*, ending federal legal protection for abortion, some states have adopted laws that severely restrict or outright ban access to abortion, sometimes with criminal penalties. To respond to these events, in July 2022, Massachusetts enacted a law (often referred to as the "Shield Law") that protects people in Massachusetts from the consequences of civil and criminal actions in other states that restrict or criminalize reproductive and gender-affirming care. This law was the first of its kind to extend protections for care provided by a Massachusetts provider regardless of the patient's location at the time the care was provided. The Attorney General's Office has prepared this guide to break down the key components of these protections and answer frequently asked questions about the law.

### The Shield Law

In general, the Shield Law protects people physically present in Massachusetts from the consequences of out-of-state civil or criminal investigations, lawsuits, or prosecutions for legally protected health care activity, which includes accessing, helping others to access, or providing reproductive health care services and gender-affirming care in Massachusetts, so long as the care is provided by a licensed provider in Massachusetts and is consistent with good medical practice under relevant standards of care. The Shield Law's protections, however, end at the Massachusetts border and cannot protect people when they are physically in another state.

The Shield Law applies regardless of the patient's location at the time the care was provided, so long as the care provided meets these requirements.

### ... applies to

The Shield Law applies to legally protected health care activity, which is defined as:

- Exercising or attempting to exercise the right to reproductive health care services or gender-affirming health care in Massachusetts; or
- Helping another to exercise or attempt to exercise the right to reproductive health care services or gender-affirming health care in Massachusetts.

For health care activity to constitute legally protected health care activity, the reproductive health care or the gender-affirming health care must:

- Be performed by a licensed provider under Massachusetts law, who is physically present in Massachusetts at the time the care is provided;
- Be permitted under Massachusetts law (for example, it would not apply to investigations or lawsuits into medical malpractice); and
- Meet applicable professional standards of care.



# THE MA SHIELD LAW

... is available to:

## Providers

This includes physicians, physician assistants, pharmacists, nurses and advanced practice clinicians, psychologists, genetic counselors, and social workers.

- Providers who are located in other states cannot avail themselves of the Shield Law, even if they are licensed in Massachusetts.
- Providers who travel to other states are subject to the laws of the states where they visit. This means that you can be arrested, extradited, or served while in another state and the Massachusetts Shield Law will not protect you. The law will protect you as long as you are in Massachusetts.

If you plan to provide abortion or gender-affirming care to individuals located in states with abortion or gender-affirming care bans or restrictions, you may want to consult with legal counsel. You can contact the free and confidential Abortion Legal Hotline at **1 (833) 309-6301**.

## Patients

Anyone accessing reproductive or sexual health care in the Commonwealth who is physically present in Massachusetts.

- Patients are always welcome to come to Massachusetts for abortion care. Please be advised, however, that Massachusetts law cannot protect people located in other states.
- If you are an out-of-state patient looking to obtain an abortion from a provider based in Massachusetts and would like information about the law or potential legal risk, please contact the free and confidential Abortion Legal Hotline at **1 (833) 309-6301** or at [reproequitynow.org/hotline](https://reproequitynow.org/hotline)

## Helpers

Anyone located in Massachusetts who helps someone access legally protected health care.

- Examples include driving an abortion-seeker to their abortion appointment, paying for someone's gender-affirming or abortion care, or covering travel and lodging expenses.
- This also includes non-licensed staff who work for abortion and gender-affirming care providers in Massachusetts, as well as friends, family, and school personnel.

In addition to these categories, the Shield Law also applies to any person or entity engaged in legally protected health care activity in Massachusetts, including entities such as insurers, employers, and schools to name a few.



# THE MA SHIELD LAW

## ... shields criminal and civil liability in other states by:

Prohibiting Massachusetts state courts, police officers, and other law enforcement officials from helping other states investigate or prosecute legally protected health care activity.

This means that:

- Massachusetts police and law enforcement officers cannot cooperate with or provide any information to aid in or help an out-of-state investigation into legally protected health care activity.
- Massachusetts courts, police, and law enforcement officers are not permitted to honor, carry out, or enforce warrants (e.g., search or arrest warrants), subpoenas, or other legal process from other states that target an individual for engaging in legally protected health care activity.
- The Massachusetts Governor is prohibited from extraditing to another state any individual charged with engaging in legally protected health care activity while they were in Massachusetts.

- Erecting barriers to using Massachusetts state courts to enforce an out-of-state judgment concerning legally protected health care activity
- Creating a new civil rights cause of action that would allow people who have been targeted by abusive litigation in other states (which is a lawsuit or other legal action in another state that is intended to deter, prevent, sanction, or punish people who engage in legally protected health care) to counter-sue in Massachusetts courts for injunctive relief or money damages.

## ... extends additional protections to providers in MA including:

- Preventing state licensing bodies from imposing consequences against a provider's license for engaging in legally protected health care activity. This includes suspension, revocation, or any other consequence.
- Prohibiting medical malpractice insurance from discriminating against providers, including by raising their premium charges or adjusting their risk classification on the basis of:
  - the fact that the reproductive or gender-affirming care is illegal in another state;
  - another state's law creates actual or potential liability for providing the care;
  - or a provider could face a judgment in frivolous or harassing litigation.



# THE MA SHIELD LAW

## Frequently Asked Questions:

### Does the Shield Law only apply in MA?

**Yes.** The Shield Law is limited to Massachusetts and the people or organizations located in Massachusetts. Unfortunately, Massachusetts and its state agencies and institutions cannot control actors in another state. That is why it is critical that patients, providers, and helpers take additional steps to protect themselves, such as consulting with a lawyer. If you need help finding a lawyer, please contact the Abortion Legal Hotline at **1 (833) 309-6301** or online at <https://reproequitynow.org/hotline>. Additional legal resources are available below.

### Does the Shield Law also protect telehealth providers who operate in MA?

**Yes.** The Shield Law's protections apply, regardless of where the patient is located at the time the legally protected health care is provided so long as:

- the provider is physically located in Massachusetts at the time the care is provided,
- the provider is licensed under Massachusetts law, and
- the care provided meets applicable professional standards of care under Massachusetts law.

As noted above, providers who are located in other states cannot avail themselves of the Shield Law, even if they are licensed in Massachusetts. Providers who travel to other states are subject to the laws of the states where they visit. This means that a provider can be arrested, extradited, or served in another state and the Massachusetts Shield Law's protections will not apply.

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

**The Shield Law only applies to legally protected health care services that are lawful in Massachusetts and provided by a licensed provider located in the state.** It does not cover conduct that is not protected under Massachusetts law. For example, the Shield Law does not apply to investigations or lawsuits alleging medical malpractice. It also would not apply to reproductive care that is itself illegal under Massachusetts law, such as providing an abortion to minor under 16 without parental consent or a judicial bypass.



# THE MA SHIELD LAW

## Frequently Asked Questions:

**Can a person be arrested in MA if they help someone in another state access care in MA or elsewhere?**

**The Shield Law prohibits Massachusetts 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 legally protected health care services. The Shield Law also prohibits Massachusetts courts from issuing arrest warrants based on the violation of another state’s anti-abortion or anti-trans law.

**What do I do if I am arrested or receive a subpoena?**

**Massachusetts police officers and law enforcement will not always be able to tell when an out-of-state arrest warrant concerns legally protected health care activity.**

For this reason, if you are concerned about the possibility that you may have an out-of-state warrant that could trigger an arrest in Massachusetts, you should carry on your person your medical credentials (if applicable) and any other relevant information about the type of care that you provide or help others access, as well as the contact information for your attorney (if you have one).

Should you be arrested or detained, you should immediately contact with a lawyer.

- If you are concerned about the possibility of an arrest or a subpoena, we encourage you to proactively retain an attorney who can help you navigate these issues should they arise. The Abortion Legal Hotline (1-833-309-6301) will connect you with an attorney.
- If you have been arrested or detained in Massachusetts and you do not have an attorney, you can still contact the Abortion Legal Hotline (1-833-309-6301) to be connected with an attorney. We also encourage you and the police department to immediately contact the Massachusetts Attorney General’s Office Criminal Bureau at **617-963-2223**.

Should you have a law enforcement encounter in Massachusetts based on an out-of-state warrant for legally protected health care activity, please note that, because it will not always be apparent to law enforcement that a particular out-of-state warrant concerns legally protected health care activity, you may be arrested or detained while the police verify the Shield Law’s applicability.



# THE MA SHIELD LAW

## Frequently Asked Questions:

**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*. For example, extradition would be required, regardless of the Shield Law, if a Massachusetts provider travelled to a state that criminally bans abortion, provided an abortion in that state in violation of that state's law, then returned to Massachusetts. However, if a person commits a crime as defined under one state's law, but the person was not present in that state when the crime was committed, extradition is not required. This is known as *non-fugitive extradition*. The Shield Law prohibits the Governor from extraditing non-fugitives for crimes involving legally protected health care services that are lawful in Massachusetts. For example, the Governor is prohibited under the Shield Law from extraditing a provider who provides an abortion in Massachusetts that violates another state's criminal abortion ban.

**Does a person in MA 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 Massachusetts courts from enforcing out-of-state subpoenas seeking information related to protected health care services that are lawful in Massachusetts.** Whether and how to respond to a particular subpoena and/or determine its enforceability 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 the Abortion Legal Hotline (1-833-309-6301) and <https://abortiondefensenetwork.org/>.

**Does MA Have Programs to Allow for Confidential Plates and Address Confidentiality?**

**Yes.** Health care providers may be eligible for confidential license plate numbers if they face heightened risk of harm from the disclosure of their identity, address or other personal information. 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 these programs, please contact the Reproductive Justice Unit at [reprojustice@mass.gov](mailto:reprojustice@mass.gov).



# THE MA SHIELD LAW

## Frequently Asked Questions:

**What if I live in MA and I am targeted in an out-of-state anti-abortion litigation for my reproductive health activities in MA?**

**The Shield Law will bar recognition of out-of-state subpoenas for documents or information or for your testimony concerning legally protected health care activity.**

This means that you cannot be forced to turn over documents or provide oral testimony or other information in connection with an out-of-state civil litigation concerning legal protected health care activity. Some states that are hostile to legally protected health care have adopted novel “bounty hunter” laws that enable private citizens to file lawsuits to enforce those states’ bans. Other 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 the Shield Law, these actions would be considered “abusive litigation,” which the law defines as any legal action intended to deter, prevent, sanction, or punish any person for engaging in legally protected health care activity. If you are the target of an abusive litigation in another state, you should immediately contact an attorney. If you need help finding a lawyer, please contact the Abortion Legal Hotline at **1 (833) 309-6301** or online at <https://reproequitynow.org/hotline>.

The Shield Law provides a way for people targeted by abusive litigation to counter-sue the person, organization, or agency who targeted them, and receive damages and injunctive relief. These lawsuits can be filed in Massachusetts state courts.

**Should I be worried about my privacy when trying to access reproductive health care or gender-affirming care?**

**Privacy is always important – especially when accessing health care.** And the stakes are higher as more states restrict or criminalize abortion and gender-affirming care. If you are traveling to Massachusetts from an anti-abortion state to get an abortion, some privacy protection steps include:

- Avoid posts on social media about your travel plans to access care.
- Only share the details of your travels with people you need to know.
- Turn off or, at minimum, limiting locating sharing on apps on your phones.
- Utilize an encrypted messaging service that does not store communications within the cloud.
- Utilize a privacy-protected web browser and search engine to limit the collection and storage of your search data and information about you.
- For additional steps you can take, check out the Digital Defense Fund Guide to Abortion Privacy: <https://digitaldefensefund.org/ddf-guides/abortion-privacy>



# KNOW YOUR RIGHTS: SHIELD LAW

## Resources & Assistance

### **For legal questions about accessing legally protected health care in Massachusetts:**

- Contact the Abortion Legal Hotline at **1 (833) 309-6301** or online at <https://reproequitynow.org/hotline>.
- Call the ACLU of Massachusetts at **617-482-3170** or online at: [legalresources@aclum.org](mailto:legalresources@aclum.org).
- Call GLBTQ Legal Advocates and Defenders at **1 (800) 455-4523** or go to [GLADAnswers.org](http://GLADAnswers.org).

### **For legal questions nationwide:**

- Contact the Repro Legal Helpline at **1 (844) 868-2812** or online at <https://www.reprolegalhelpline.org/>. For funding regarding bail or legal fees for criminal, family, or immigration defense:
- Call the Repro Legal Defense Fund at **1 (866)363-RLDF** or online at <https://reprolegaldefensefund.org/>.
- Contact the Massachusetts Bail Fund at <https://www.massbailfund.org/bail-referral.html>

### **To find an abortion provider in Massachusetts:**

- Go to <https://reproequitynow.org/find-a-provider-massachusetts>
- Go to [abortionfinder.org](http://abortionfinder.org) or [abortionondemand.org](http://abortionondemand.org) for state-by-state provider information.
- Go to [laterabortion.org](http://laterabortion.org) for information on clinics that provide abortions at 24 weeks and later.

### **To find a gender-affirming health care provider:**

- See the Mental Health and Gender-Affirming Care Resource Guide: <https://www.mass.gov/doc/maaglgbtq2iamentalhealthgenderaffirmingcareenglish/download>

If you have additional questions, please contact our Reproductive Justice Unit at **[reprojustice@mass.gov](mailto:reprojustice@mass.gov)**

## About the RJU

The Reproductive Justice Unit within the Office of the Massachusetts Attorney General is committed to mobilizing communities to build a Commonwealth that actualizes reproductive justice for all. By centering marginalized communities who remain extremely vulnerable to threats and oppression, the RJU works to ensure Massachusetts remains a national leader protecting access to reproductive and sexual health care.

