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Explainer: What New York's New Abortion Law Does and Doesn't Do  
(Abridged)

Last week, on the anniversary of the Roe v. Wade decision, New York state enacted a new abortion law, called the Reproductive Health Act (RHA). Much of the coverage describing the law and its effects has been polarizing, with advocates on each side describing each other's accounts of it as biased.

As with any charged and divisive issue, the choice of emphasis and focus in coverage can give the same facts very different interpretations and implications-and it is likely that I will be accused of doing the same in this article. However, it is worth trying to get to a more even-handed account of what the law does and does not do in order to have a clearer conversation about it, even if we do not expect to fully convince people on the other side.

Much of the disagreement and confusion around what the law does is the result of which abortion cases advocates choose to focus on. Pro-life advocates argue that the R.H.A. potentially allows the most extreme forms of abortion without any serious restriction-and they are right. Pro-choice advocates respond that the late-term abortions up to the point of birth that pro-lifers highlight are rare and almost always involve cases of extreme medical complexity-and they are right.

Before unpacking in detail what the law does and does not do, let me highlight two points that this disagreement tends to obscure.

First: One major aim of the law was to change the terms of the debate. Its practical effects on the number of abortions conducted in the state of New York are likely to be fairly small. The primary reason for its passage was to stake out New York's position in favor both of preserving and expanding Roe v. Wade's guarantee of access to abortion. And the way the law accomplishes that is to remove anything in New York law that could have been interpreted to limit abortion or to extend any protection to a child before birth.

Second: New York already has one of the highest rates of abortion in the country. In New York City, about one in every three pregnancies ends in abortion. To judge by the numbers, a lack of access to abortion in New York is not a problem. But these extremely high rates tell us that far too many women are facing pregnancies in circumstances where abortion seems to them to be their best or only choice. Many of the potential explanations for this - an extremely high cost of living, a lack of affordable housing, and scarce availability of parental support and child care- deserve attention from policymakers and could be points of agreement between pro-life and pro-choice activists. Unfortunately, those issues do not get anywhere near the attention that the arguments about late-term abortions do, even though they are deeply involved in the (far more numerous) early abortions.

*Does the R.H.A. allow abortion up to the point of birth?*

The new law allows abortion under any of three conditions: 1) if it is performed earlier than 24 weeks of pregnancy; 2) in an “absence of fetal viability”; or 3) if necessary to “protect the patient’s life or health.”

So abortion is allowed without any restrictions during the first and second trimesters. Later than that, the question is how fetal viability and protection of the life and health of the mother are determined. The R.H.A. says that those judgments are to be made according to “the practitioner’s reasonable and good faith professional judgment based on the facts of the patient’s case”; it does not impose any objective medical standard.

Pro-life critics of the law are pointing out that the exception for health, which is not restricted to a physical definition and can be interpreted to cover psychological and emotional health, subject only to the medical judgement of the abortion provider, is broad enough to cover basically any possible late-term abortion. Insofar as the goal of the law was to guarantee access to abortion and remove restrictions on it, this is part and parcel of that goal. The new law does not contain any meaningful restriction that is likely to ever prevent an abortion.

Pro-choice advocates point out that one reason for that is that the very small fraction of abortions that are conducted at 21 weeks or later (a little more than 1 percent) are almost always in response to some medical issue. Those issues could include acute risks to the life of the mother or conditions that make the child unable to survive to birth-but they also include situations where the child would face a terminal condition, significant suffering or a severe disability after birth, and where abortion is chosen to “spare” the child such pain. However, some providers have acknowledged that they are willing to perform late-term abortions even absent medical necessity, though it is impossible to estimate how many late-term abortions fall under that description.

The tragedy of this law is not only that it makes late-term abortions more available in NY. The bigger tragedy is that it more deeply entrenches our divisions over abortion by adopting the most absolutist pro-choice position imaginable and leaves New Yorkers less able to work together to address or even acknowledge the factors that contribute to our state’s catastrophically high abortion rate.

This article was abridged in the interest of space; however, it is well worth the full read by going to [www.americamagazine.org](http://www.americamagazine.org) and searching for the **Explainer: What New York’s New Abortion Law Does and Doesn’t Do** by Sam Sawyer, S.J.