

STATE

# Does the Texas abortion law protect victims of sexual assault?

**Madlin Mekelburg** Austin American-Statesman

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During debate on the restrictive Texas abortion bill earlier this year, lawmakers added a provision that prohibits someone who impregnates a woman through rape or incest from bringing a civil suit under the law — but other individuals are still eligible to sue over the same abortion.

Gov. Greg Abbott, who signed the bill into law, and Republican authors have faced questions over how the law, which does not include exceptions for cases of rape or incest, treats victims of sexual assault.

The law, which took effect Sept. 1, outlaws abortions after about six weeks of pregnancy and allows any individual to sue abortion providers or others who aid and abet an abortion in violation of the law.

At least one Republican lawmaker is asking Abbott to allow legislators to pass a bill during the current special legislative session to create an exception to the law in instances of rape or incest.

Rep. Lyle Larson, R-San Antonio, sent a letter to Abbott on Wednesday, asking for this “common sense fix that will maintain the pro-life intent of the bill while honoring the traditional philosophy that there should always be a rape and incest exception to an abortion prohibition.”

“We must allow women who undergo such a horrific experience to make the decision whether to seek an abortion without government intervention,” he wrote.

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Abbott's office declined to comment on the request, and he has not added the provision to the special session agenda.

When asked by Fox News host Chris Wallace on Sunday whether he would sign a bill adding a rape and incest exception, Abbott called the question "hypothetical."

"That is not going to happen because that bill is not going to reach my desk," Abbott said. "But, second, again, the goal is to protect the life of every child with a heartbeat."

## **Lawsuit provision**

The only reference to rape or incest in the abortion law is a provision that says a person who impregnates someone through rape or incest does not have standing to bring a civil suit against an abortion provider (or other individuals) under the law.

This is the only limit on who can bring a civil action under the law. It allows any person to bring a legal challenge, regardless of relationship to the patient or provider. Successful litigants can claim \$10,000 in damages.

Some advocates have questioned whether this limitation can be enforced, given data about limited arrests and convictions made in sexual assault cases, or lead to unintended consequences for victims. The law allows friends or relatives of an offender to bring a lawsuit.

"It's like adding a grain of sand to something that's already offensive," said Seth Chandler, a law professor at the University of Houston. "It is already bizarre and unprecedented that a complete stranger can sue the abortion provider for damages, and I suppose it makes it a little bit more bizarre that among the class of people who can sue are friends of the rapist."

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Chandler said his reading of the law is that it would not require a conviction to show that a person did not have standing to bring a lawsuit, but rather that a "preponderance of the evidence showed the pregnancy was the result of rape."

A remaining question is whether plaintiffs must prove they are not a rapist or incestuous parent and have standing to bring the case or whether the defendant would have to establish that the plaintiff was a rapist or incestuous parent, Chandler said.

“The statute does not require you to prove there was a rape beyond a reasonable doubt and it does not require a conviction,” he said. “It seems more likely that the real issue will be: Who gets the benefit of a tie?”

Meredith Duncan, a fellow law professor at the University of Houston, said the law lacks clarity.

“This particular provision does give rise to a lot of questions, and I don’t think that the statute tells us the answer to any of them,” Duncan said. “Ideally, legislation should be clear.”

One question is how the provision could affect abortion patients and, in this case, victims of sexual assault. While the law is crafted to prohibit lawsuits brought against patients, this provision could end up forcing them into a courtroom to testify.

Duncan said there is other evidence that could be used when trying to establish whether a sexual assault occurred for the purposes of proving whether the plaintiff has standing, but that testimony from the victim would be the most effective.

Although there is confusion about how the provision would work, Chandler said it is unlikely that a situation will arise to test it.

“I don’t think it is likely we’re going to see a lot of cases brought by rapists and incestuous parents because it exposes them to potential criminal liabilities.” he said. “Their statements made in the civil trial to try and prove their case could be used against them in a subsequent rape prosecution.”

In the nearly four weeks since the law went into effect, just two civil lawsuits have been filed against an abortion provider under the law. An Arkansas man and another from Illinois filed separate actions against a San Antonio doctor who said he violated the law in early September.

*Story continues below.*

## **Understanding assault**

Even though the law prevents people from profiting from an abortion resulting from a rape they committed, dynamics between abusers and victims are complex and the language in the provision might not cover all circumstances of abuse.

Heather Bellino, the chief executive officer of the Texas Advocacy Project, said that in domestic violence situations, abusers can use reproductive coercion as means of power and control.

“Nobody marries their abuser or starts dating their abuser,” Bellino said. “They date somebody that they are attracted to and that they’re in love with. The abuser slowly but surely takes away their power and control, isolates them from friends and family.”

One third of all Texans have experienced some form of sexual assault, and roughly 70% of those assaults are committed by someone known or related to the victim, according to a 2015 study from the Institute on Domestic Violence and Sexual Assault at the University of Texas.

The same study found that more victims become pregnant as a result of sexual assault (10%) than report their assault to law enforcement (9.2%).

“It’s a really hard crime to report because of trauma, and the close proximity of the relationship between the victim and the offender really complicates things,” said Noël Busch-Armendariz, director of the institute. “Victims don’t always believe that the veracity of their story will be believed.”

**More:** Two lawsuits filed against Texas doctor who violated abortion ban could test law's constitutionality

Busch-Armendariz said Texas is progressive when it comes to understanding sexual assault through empirical research funded by the state. Her team at UT conducts a prevalence study every 10 years and works on other research projects to understand the issue.

But at the same time, Busch-Armendariz said the new Texas abortion law doesn’t reflect the data.

“This law negates this idea that people are being sexually assaulted by people who are known and related to them, that they’re living with, that they’ve been in intimate relationships with and that have some authority over them,” she said.

Laura Stromberg Hoke, spokeswoman for the Texas Association Against Sexual Assault, said she is concerned that Senate Bill 8 could create a chilling effect for victims who already struggle with the decision to come forward about an assault.

“Long before SB 8, the burden has fallen to victims, and their lack of faith in the system is what leads to such severe underreporting,” she said. “Removing options available to

