

Emerging Trends in State and Local Legislation Post-*Dobbs*

The Use of Enacted Anti-Protest/Riot Laws:

(Current Laws in 11 States: [Alabama](#), [Arkansas](#), [Florida](#), [Iowa](#), [Missouri](#), [Oklahoma](#), [South Dakota](#), [Tennessee](#), [Texas](#), [Utah](#) and [West Virginia](#))

ALABAMA

[SB 152](#): NEW CONTROLS ON PROTEST LOCATIONS AND COSTS FOR PROTEST ORGANIZERS

Signed into law by Gov. Kay Ivey on April 27, 2021, allowing municipalities in Lauderdale County to prohibit spontaneous protests by controlling demonstration locations and requiring permits when demonstrations involve more than a certain number of individuals as established by the municipality.

- Municipalities can also charge demonstration organizers permit fees for the costs of cleanup, law enforcement officers and other administrative costs incurred by the city.

ARKANSAS

[HB 1508](#): NEW PENALTIES FOR PROTESTERS WHO BLOCK TRAFFIC, “RIOT,” OR DAMAGE MONUMENTS

Signed into law by Gov. Asa Hutchinson on April 29, 2021, to increase penalties for obstructing a “public passage” from a Class C to a Class A misdemeanor.

- The state attorney general may initiate an investigation into cases of riot, inciting riot, and obstructing a highway or other public passage.
- Individual demonstrators can face up to one year in jail for making a sidewalk impassable to pedestrians.
- Mandatory minimum sentence of 30 days in jail for “rioting.”
 - Rioting is defined as engaging with two or more persons in violent conduct that creates a “substantial risk” of “public alarm.”
- Requires reimbursement for any injury or damage as a result of the offense.
- Amends the definition of “act of terrorism” under Arkansas law to include any act that causes “substantial damage” to a public “monument.”
 - It’s not clear whether graffiti or other painting applied to a monument as part of a protest could be considered a terrorist act.

[HB 1578](#): EXPANDED CIVIL LIABILITY FOR THOSE WHO INCITE A RIOT AND CRIMINAL PENALTIES FOR OBSTRUCTING FIRST RESPONDERS

Signed into law by Gov. Asa Hutchinson on April 6, 2017, this measure allows for a person who is injured or has property damaged as a “direct or indirect” result of a riot to take a legal action against a rioter or a person or entity who incites a riot.

- The riot and incitement to riot statutes broadly create potential liability for protesters or organizations that are involved in urging others to have engaged in tumultuous or violent conduct.
- To knowingly obstruct or interfere with a first responder in providing medical services is a:
 - Class A misdemeanor; punishable by up to one year in jail.
 - Class D felony, if the same is done purposefully; punishable by up to six years.

FLORIDA

[HB 1/SB 484](#): EXPANDED DEFINITION OF “RIOT” AND NEW PENALTIES FOR PROTESTERS

Note: Provisions of HB 1 related to the law’s new definition of “riot” were preliminarily enjoined by a federal district judge on Sept. 9, 2021, temporarily blocking enforcement of those provisions.

Signed into law by Gov. Ron DeSantis on April 19, 2021, to expand the legal definition of “riot” to include:

- Any group of three or more individuals whose shared intent to engage in disorderly and violent conduct results in “imminent danger” of property damage or personal injury, or actual damage or injury.
 - The new definition does not require that the individuals’ conduct be disorderly or violent, or that they commit any actual damage or injury.
 - “Riot” is defined as consisting of 25 or more people, and is a third-degree felony. An “aggravated riot” is one that “endangers the safe movement of a vehicle,” and is automatically a new second-degree felony offense.
 - Large groups of protesters or ones that block traffic, even temporarily, could face up to 15 years in prison.
 - “Inciting” someone to participate in a riot is a third-degree felony, punishable by five years in prison.
- Creates a new criminal offense of “mob intimidation” that is a first-degree misdemeanor, punishable by up to one year in jail.
 - Defined as a group of three or more people who act with a “common intent” to compel or attempt to compel another person to “do or refrain from doing any act,” or “assume, abandon, or maintain a particular viewpoint” against their will.
- The law creates a new third-degree felony offense, punishable by up to five years in prison, for anyone who “willfully and maliciously defaces, injures, or otherwise damages by any means” statues, flags, paintings, displays or other “memorials,” and the value of the damage is more than \$200.
 - Since “deface” is not defined, protesters who apply paint or graffiti to a monument in the course of a peaceful protest could face up to five years in prison.

- The law may encourage violence against protesters by creating a new affirmative defense in civil lawsuits for personal injury, death or property damage, such that a defendant can avoid liability by establishing that the injury, death or damage they committed “arose from” conduct by someone “acting in furtherance of a riot.”
- Finally, the law holds a municipal government legally obligated for damages, including personal injury or property damage, if it fails to “respond appropriately to protect persons and property during a riot or unlawful assembly.”
 - These provisions may encourage municipal governments to adopt overly aggressive law enforcement responses to protests in order to avoid lawsuits.

IOWA

[SF 342](#): HEIGHTENED PENALTIES FOR PROTESTERS CONVICTED OF “RIOT,” “UNLAWFUL ASSEMBLY” OR BLOCKING TRAFFIC, AND IMMUNITY FOR DRIVERS WHO INJURE THEM

Note: This law was introduced and passed by the Senate as SF 534, but passed by the House as an amendment to SF 342.

Signed into law by Gov. Kim Reynolds on June 16, 2021, to expand penalties for protesters under the following conditions:

- Introduces felony penalties for the offense of “riot,” and is punishable by up to five years in prison and \$7,500 in fines.
 - Preexisting law defines “riot” as a group of three or more people assembled “in a violent manner,” at least one of whom uses any unlawful force or violence against another person or causes property damage.
- Converts “unlawful assembly” to an aggravated misdemeanor.
 - Preexisting law defines “unlawful assembly” as a group of three or more people, any of whom are acting “in a violent manner,” and who intend that any of them will commit an offense.
- It is a serious misdemeanor to “obstruct” a sidewalk, street or “other public way” with the intent to hinder its use by others, punishable by one year in jail and an \$1,875 fine.
 - If an individual obstructs a sidewalk or street while “present during an unlawful assembly,” it is an aggravated misdemeanor, punishable by two years in jail and a \$6,250 fine.
 - If an individual obstructs a sidewalk or street while “present during a riot,” it is a Class D felony, punishable by up to five years in prison and a \$7,500 fine.
- A driver who injures someone who’s participating in a “protest, demonstration, riot, or unlawful assembly,” engaging in “disorderly conduct” and blocking traffic is immune from civil liability as long as the driver was exercising “due care” and the protester did not have a permit to be in the street.

- Allows law enforcement who experience a physical or other injury while on duty to pursue civil damages from a person, group or organization.
- Finally, the law creates a new felony offense for “defacing” public property, “including a monument or statue.” The offense, a Class D felony, is punishable by up to five years in prison, a \$7,500 fine and mandatory restitution for any property damage.

MISSOURI

[HB 1413](#): LIMITING PUBLIC EMPLOYEES’ ABILITY TO PICKET

Note: A judge of the Circuit Court of St. Louis County found HB 1413 unconstitutional in its entirety and granted a permanent injunction against the enforcement of the law on Jan. 27, 2020.

Signed into law by Gov. Eric Greitens on June 1, 2018, to bar certain public employees from picketing.

- Requires all labor agreements negotiated between a “public body” and a labor organization “shall expressly prohibit all strikes and picketing of any kind.”
 - “Public body” is broadly defined in the law to include “the state of Missouri, or any officer, agency, department, bureau, division, board or commission of the state, or any other political subdivision or special district of or within the state”; accordingly, the law may apply to many labor agreements.
 - “Picketing” is not defined under the law.
 - Missouri Code elsewhere refers to “picketing or other organized protests” as “constitutionally protected activity,” indicating that picketing as used in HB 1413 includes protests and demonstrations unrelated to labor strikes.
- Mandates such agreements provide for the “immediate termination” of “any public employee who...pickets over any personnel matter.”

OKLAHOMA

[HB 1674](#): PENALTIES FOR PROTESTERS WHO BLOCK TRAFFIC, IMMUNITY FOR DRIVERS WHO HIT PROTESTERS, AND LIABILITY FOR ORGANIZATIONS THAT WORK WITH PROTESTERS

Note: Portions of HB 1674 were preliminarily enjoined by a federal district judge on Oct. 27, 2021, temporarily blocking enforcement of the law’s 1) penalties for protesters who obstruct traffic, and 2) penalties for organizations that “conspire” with someone who is convicted of certain protest-related offenses.

Signed into law by Gov. Kevin Stitt on April 21, 2021, to create new penalties for protesters who obstruct traffic while participating in a “riot,” and protects drivers who “unintentionally” hit them.

- A person who participated in a “riot” and “obstructed” the “normal use” of a public street or highway is guilty of a misdemeanor punishable by up to one year in prison, a \$5,000 fine and restitution for any property damage that occurs.
 - The law defines “obstruct” to include rendering the street or highway “unreasonably inconvenient or hazardous” for cars’ passage, including by “standing” on the street or highway.
 - “Riot” is broadly defined under existing Oklahoma law to include a group of three or more people who make “any threat to use force.”
- The new law also shields from liability a driver who injures or kills someone while “fleeing from a riot,” as long as they did so “unintentionally,” were “exercising due care” and held a “reasonable belief” that they needed to flee to protect themselves.
 - Such a driver cannot be held civilly or criminally liable for the injuries or death they caused.
- An organization found to have “conspired” with individuals who are found guilty of certain offenses—including “unlawful assembly,” “riot,” “incitement to riot,” refusing to aid in the arrest of a “rioter” and remaining at the scene of a “riot” after being ordered to disperse—will be fined 10 times the maximum amount of the fine authorized for the individual’s offense.

HB 2095: RACKETEERING PENALTIES FOR THOSE INVOLVED IN “UNLAWFUL ASSEMBLIES”

Signed into law by Gov. Kevin Stitt on April 28, 2021, to add “unlawful assemblies” to the offenses that can be prosecuted as “racketeering activity” under Oklahoma’s RICO statute.

- An organization or individual found to have “attempted” or “conspired” with individuals to engage in or encourage a protest that is deemed an “unlawful assembly” can be prosecuted under RICO and subject to felony penalties.
 - “Unlawful assembly” is broadly defined to include a group of three or more people who gather without lawful authority in a manner “as is adapted to disturb the public peace.”

SOUTH DAKOTA

HB 1117: NEW CRIMINAL AND CIVIL LIABILITY FOR “INCITEMENT TO RIOT”

Signed into law by Gov. Kristi Noem on March 23, 2020, to revise the state’s laws on rioting and replace a “riot-boosting” law that was passed in 2019 but later blocked by a federal court as unconstitutional. Both 2019’s “riot-boosting” law and HB 1117 appear to target protests against construction of the Keystone XL and other pipelines.

- Revises the definition of “riot” under South Dakota law to be “any intentional use of force or violence by three or more persons, acting together and without authority of law, to cause any injury to any person or any damage to property.”
- “Incitement to riot” is a new felony offense, punishable by up to five years in prison and \$10,000 in fines, and defined as conduct that “urges” three or more people to use force or violence to cause personal injury or property damage, if the force or violence is “imminent” and the urging is likely to “incite or produce” the force or violence.
- Defines “urging” to include “instigating, inciting, or directing,” but excludes “oral or written advocacy of ideas or expression of belief that does not urge” imminent force or violence.
- Individuals may also be civilly liable for riot and incitement to riot, which can lead to lawsuits against protesters by the state, counties or municipalities.

[SB 189](#): EXPANDED CIVIL LIABILITY FOR PROTESTERS AND PROTEST FUNDERS

Note: According to an Oct. 24, 2019, settlement agreement that resulted from a constitutional challenge to SB 189, the state will not enforce many of the provisions of the law that could be applied to peaceful protesters and organizations that support them.

Signed into law by Gov. Kristi Noem on March 27, 2019, to create new civil liability for “riot boosters.”

- Created liability for a person or organization that “does not personally participate in any riot but directs, advises, encourages, or solicits other persons participating in the riot to acts of force or violence.”
 - Defines “riot” broadly such that it can cover some forms of peaceful protest.
 - Unclear what might have constituted “advice” or “encouragement” to carry out an act of force; an individual might be implicated for shouting encouragement on the sidelines of a disruptive protest, or organizations that provided advice about conducting a peaceful but disruptive protest.
- Even though the state will not enforce this provision following the Oct. 24, 2019, settlement, the state can still establish liability for any person or organization that is advised or encouraged by another, and that “makes any threat to use force or violence, if accompanied by immediate power of execution” in a group of three or more persons.
 - The state or a third party may sue the person or organization for extensive civil damages, including punitive damages.
- Individuals, organizations and funders are still liable for “riot boosting” if they engage in it personally “or through any employee, agent, or subsidiary,” and may be held liable for substantial amounts of money for any involvement in a disruptive protest.
 - Damages recovered by the state shall be deposited in a “riot boosting recovery fund,” which may be used to pay for the state’s response to disruptive protests.

SB 176: EXPANDING GOVERNOR'S POWER TO RESTRICT CERTAIN PROTESTS

Signed into law by Gov. Dennis Daugaard on March 14, 2017, to expand the governor's authority to restrict protest activities on public lands and protests that interfere with highway traffic.

- Enables the governor and sheriff to prohibit gatherings of 20 or more people on public land, if the gathering might damage the land or interfere with the renter's use of the land.
- The South Dakota Department of Transportation can prohibit an individual or vehicle from stopping, standing, parking or being present on any highway if it interferes with traffic.
- Expands criminal trespass to an individual who defies a posted order not to enter a zone where assembling has been prohibited.
 - Obstructing traffic or committing criminal trespass are classified as Class 1 misdemeanors, punishable by one year in jail or a \$2,000 fine, or both.

TENNESSEE

SB 0902: NEW PENALTIES FOR PROTESTERS WHO BLOCK TRAFFIC

Signed into law by Gov. Bill Haslam on April 12, 2017, to fine any person who intentionally, knowingly or recklessly obstructs a public highway or street during a protest, and in doing so interferes with an emergency vehicle's access to or through the highway or street. Sponsors made clear the law was aimed at protests that obstructed highways.

- "Emergency vehicle" is broadly defined as "any vehicle of a governmental department or public service corporation when responding to an emergency," a police or fire department vehicle, or an ambulance.
- Unlawful obstruction of a street or highway is a Class C misdemeanor subject to up to 30 days in jail and a \$200 fine.

TEXAS

HB 9: NEW PENALTIES FOR PROTESTERS WHO BLOCK TRAFFIC

Signed into law by Gov. Greg Abbott on June 1, 2021, to harshen existing penalties for anyone who "knowingly prevents the passage of an authorized emergency vehicle" if the vehicle "is operating the vehicle's emergency audible or visual signals" from a Class B misdemeanor to a state jail felony.

- "Emergency vehicle" is broadly defined as "a municipal department or public service corporation emergency vehicle," a police or fire department vehicle, an ambulance, a vehicle of a blood or tissue bank, or a "private vehicle of an employee or volunteer of a county emergency management division."

- Conviction of preventing the passage of an authorized emergency vehicle will be punishable by no less than 10 days in jail even if the court grants community supervision to the defendant.

UTAH

S.B. 173: CRIMINAL PENALTIES FOR PROTESTS THAT DISTURB LEGISLATIVE OR OTHER GOVERNMENT MEETINGS

Signed into law by Gov. Gary Herbert on March 30, 2020, to create penalties for individuals protesting legislature convenings or other meetings of government officials.

- Expands “disorderly conduct” to include a person who causes public inconvenience, annoyance, or alarm by making “unreasonable noises” at an official meeting or in a private place that can be heard at an official meeting.
- “Disorderly conduct” also includes obstructing pedestrian traffic at an official meeting or refusing to leave an official meeting when asked by law enforcement.
 - Punishable by a \$750 fine on the first offense (an infraction), up to three months in jail if a person was warned to cease prohibited conduct (Class C misdemeanor), up to six months for a second offense (Class B misdemeanor) and up to one year for a third offense (Class A misdemeanor).
- The law could be used to penalize silent protesters who refuse to leave a legislative committee meeting.

WEST VIRGINIA

HB 4618: ELIMINATING POLICE LIABILITY FOR DEATHS WHILE DISPERSING RIOTS AND UNLAWFUL ASSEMBLIES

Signed into law by Gov. Jim Justice on March 10, 2018, to reaffirm West Virginia’s problematic law on rioting, and adds the West Virginia Capitol Police to those authorities who cannot be held liable for the deaths and wounding of individuals in the course of dispersing riots and unlawful assemblies.

- Prior West Virginia law: The state police, sheriffs and mayors had authority to use means such as curfews and warrantless searches to disperse riots and unlawful assemblies.
 - The law adds Capitol Police to existing provisions eliminating liability if anyone present “as spectator or otherwise, be killed or wounded,” while the authorities used “any means” to disperse riots or unlawful assemblies or arrest those involved.
 - If a bystander is asked to assist in the dispersal and fails to do so, he or she “shall be deemed a rioter.”

- The law was passed during a statewide strike by West Virginia teachers, thousands of whom protested in February 2018 at the State Capitol.

Establishing Criminal Codes Targeting Women

- *(Example of a bill introduced in 2022 session): Louisiana: [HB 813](#)*: A bill that would allow women who get abortions to be charged with homicide. The text of the bill, which protects life “from the moment of fertilization,” expands the state definition of homicide to include unborn babies and would be enforced “without regard to the opinions and judgments of the Supreme Court of the United States.” Critics attacked the legislation as “blatantly unconstitutional” and said it could have sweeping detrimental consequences, intended or otherwise. In addition to punishing women who obtain abortions, opponents said the bill would arguably criminalize in vitro fertilization and forms of birth control. **Status: Defeated when the session adjourned sine die (no date set for reconvening).**

Criminal Codes Against Providers; Prohibition on Out-of-State Mailing of Abortion-Inducing Medicine and the Like

- *(Example of a bill introduced in 2022 session): Missouri: [HB 2012](#)*: This measure includes a provision that makes it a felony to distribute or administer abortion-inducing drugs in a way that violates state or federal law. Under this provision, family members, including a spouse, parents or even children could seek a wrongful death suit in the specific instance of a baby “born alive” after an abortion attempt dying. An exception was added so that perpetrators of sexual assault would be unable to sue their victims if their assault resulted in an aborted pregnancy. The bill also would have barred out-of-state pharmacies from delivering drugs meant to induce an abortion directly to patients in Missouri. **Status: Defeated when the session adjourned sine die.**

Protecting Persons Who Seek Reproductive Health Care Who Travel from States Where There are Bans or Restrictions

- The governors of California, Oregon and Washington on Friday, June 24, 2022, pledged to maintain access to safe, legal abortions following the U.S. Supreme Court 5–4 decision radically revising the 49-year-old *Roe v. Wade* ruling. A copy of the Multi-State Commitment to Reproductive Freedom can be found [here](#).

Prohibiting or Restricting the Ability to Go Out of State to Receive Reproductive Health Care Services

- [The Thomas More Society, a conservative legal organization, is drafting model legislation for state lawmakers that would allow private citizens to sue anyone who helps a resident of a state that has banned abortion from terminating a pregnancy outside of that](#)

[state](#). The draft language will borrow from the novel legal strategy behind a Texas abortion ban enacted last year, in which private citizens were empowered to enforce the law through civil litigation.

Online Data Privacy

- The ruling by the U.S. Supreme Court that overturned *Roe v. Wade* has brought online privacy issues around women's reproductive health front and center. States such as Texas have focused on aggressively limiting abortion availability and indicated a zero-tolerance approach in the absence of *Roe v. Wade*. These concerns go beyond the already-regulated data collected by health care organizations. Additional online data includes GPS data that law enforcement could use to place people in locations that have abortion clinics, as well as data collected by consumer-focused reproductive health apps, such as the apps that track menstrual cycles.