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Potential Enforcement of State Abortion Laws on Federal Property

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SUMMARY

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Potential Enforcement of State Abortion Laws on Federal Property

In the wake of the Supreme Court's decision in *Dobbs v. Jackson Women's Health Organization*, a number of state laws now regulate pre-viability abortions. At the same time, several federal agencies, including the Department of Defense and Department of Veterans Affairs, provide abortions in certain cases, potentially in facilities located in states where such abortions would otherwise be illegal under state law. Some stakeholders have also suggested that private providers use federal property to expand abortion access in states with abortion restrictions.

The conflict between state restrictions on abortion, on one hand, and federal provision of abortions or the use of federal facilities to do so, on the other, poses the question of when state abortion laws may be enforced on federal property. Answering this question depends on several factors, including (1) the jurisdictional status of the federal property; (2) the nature of the actor potentially subject to the state law; and (3) whether federal law preempts the state law.

First, the federal and state governments may exercise different degrees of control over federal property, depending on how the federal government acquired that property and which rights a state retained or received with respect to it. In areas under *exclusive jurisdiction*, only the federal government may enforce laws; the state government lacks the authority to do so. Where federal property is under *concurrent*, *partial*, or *proprietorial jurisdiction*, however, a state may be able to enforce its laws to varying degrees. If a state lacks the ability to enforce its laws directly, the federal government might choose to incorporate state criminal laws into federal law through the Assimilative Crimes Act, permitting enforcement of the state law's provisions by the federal government.

Second, when a state possesses jurisdiction to enforce its own abortion laws, it may not enforce such laws against federal employees acting within the scope of their federal employment. Similarly, the federal government likely could not charge federal employees acting within the scope of their employment under the Assimilative Crimes Act. Other individuals, however, such as federal employees acting outside the scope of their employment or non-employees, might still be subject to state laws, either directly or under the Assimilative Crimes Act.

Third, a state abortion law may be *preempted* by federal law. This preemption could occur if a federal law *explicitly* preempts state law. It might also occur if a federal law *implicitly* preempts state law, either because Congress intended to occupy the field of regulation (*field preemption*) or because federal and state law conflicted (*conflict preemption*).

Assuming that (1) a state has jurisdiction to enforce its laws (or that the federal government chose to do so through the Assimilative Crimes Act); (2) the law would not be enforced against a federal employee acting within the scope of federal employment; and (3) no federal law preempts the state law, it is possible that state abortion laws could be enforced on federal property. Accordingly, determining whether a specific state law could be enforced on a particular federal property requires a case-by-case analysis of each of these factors.

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On June 24, 2022, the U.S. Supreme Court issued its decision in *Dobbs v. Jackson Women's Health Organization*, holding that the U.S. Constitution does not confer a right to an abortion, thereby overruling the Court's prior decisions in *Roe v. Wade* and *Planned Parenthood of Southeastern Pennsylvania v. Casey*.[1] In the wake of *Dobbs*, a number of states now regulate pre-viability abortions, either through laws that predated the overturning of *Roe*—so-called "trigger laws"—or through new laws enacted after *Dobbs*.[2]

Some stakeholders have suggested that federal agencies (such as the Department of Defense and the Department of Veterans Affairs) or third parties could use federal lands to increase abortion access in states with such abortion restrictions.[3] Others, including White House Press Secretary Karine Jean-Pierre, have questioned whether such a use of federal property could lead to unintended consequences.[4]

This CRS report first describes four categories of state and federal jurisdiction over federal property: *exclusive*, *concurrent*, *partial*, and *proprietorial jurisdiction*. It then briefly discusses federal preemption of state laws and the Assimilative Crimes Act, 18 U.S.C. § 13. The report concludes by assessing states' ability to enforce laws restricting or prohibiting abortion on various types of federal property.

Legal Background

Interplay of State and Federal Jurisdiction

Whether a state may enforce its own laws on federal property—such as a law prohibiting abortions in all or certain circumstances—depends in part on whether the state has *jurisdiction* over that property. As an initial matter, ownership and jurisdiction are not synonymous; the fact that land or a building is controlled by the federal government and considered "federal property" does not necessarily mean that the state lacks jurisdiction over it. The federal government may acquire property within a state's geographical limits or may have retained property after a state's admission to the Union. That acquisition or retention, however, does not automatically create federal jurisdiction, nor does it necessarily withdraw the property from that state's jurisdiction.[5]

[1] Dobbs v. Jackson Women's Health Org., 142 S. Ct. 2228 (2022), *overruling* Roe v. Wade, 410 U.S. 113 (1973), and Planned Parenthood of Se. Pa. v. Casey, 505 U.S. 833 (1992). For more information about the *Dobbs* decision, see CRS Legal Sidebar LSB10768, *Supreme Court Rules No Constitutional Right to Abortion in Dobbs v. Jackson Women's Health Organization*, by Jon O. Shimabukuro.

[2] For more information on these state laws, see CRS Legal Sidebar LSB10779, *State Laws Restricting or Prohibiting Abortion*, by Laura Deal, and CRS Legal Sidebar LSB10346, *Reviewing Recently Enacted State Abortion Laws and Resulting Litigation*, by Jon O. Shimabukuro.

[3] *E.g.*, Elizabeth Warren, et al., Letter to President Biden, at 3 (June 7, 2022), https://www.warren.senate.gov/imo/media/doc/2022.06.07%20Letter%20to%20POTUS%20on%20Abortion%20EO.pdf.

[4] Mark Moore, *White House Rejects Push to Permit Abortions on Federal Lands*, N.Y. POST (June 28, 2022), https://nypost.com/2022/06/28/white-house-rejects-push-to-permit-abortions-on-federal-lands/.

[5] Surplus Trading Co. v. Cook, 281 U.S. 647, 650 (1930) ("It is not unusual for the United States to own within a State lands which are set apart and used for public purposes. Such ownership and use without more do not withdraw the lands from the jurisdiction of the State. On the contrary, the lands remain part of her territory and within the operation of her laws, save that the latter cannot affect the title of the United States or embarrass it in using the lands or interfere with its right of disposal."); *see also generally* Adams v. United States, 319 U.S. 312 (1943).

The United States is not required to obtain *exclusive jurisdiction*—jurisdiction that precludes state jurisdiction—over land it acquires.[6] In certain circumstances, a state may voluntarily transfer or cede all or part of its jurisdiction to the United States, but the United States must formally accept such jurisdiction to complete that transfer.[7] Federal and state jurisdiction can overlap, with each government able to enforce its respective laws; in these cases, the property is said to be under the *concurrent jurisdiction* of the federal and state governments.[8]

The status of state jurisdiction over a specific federal property depends on the particular circumstances of how the federal government obtained that property and any subsequent agreements with the state. The United States may obtain *exclusive* or *concurrent* jurisdiction over federal lands in a state in one of three ways:[9]

1. a state statute consenting to the purchase of land by the United States for the purposes enumerated in the Constitution's Enclave Clause;
2. a state cession statute; and
3. a reservation of federal jurisdiction upon the admission of a state into the Union.[10]

In 1964, the General Services Administration compiled a comprehensive inventory of the jurisdictional status of federal areas within the states as of June 30, 1962 (the "1962 Inventory"),[11] but to CRS's knowledge, no subsequent inventory of this type has been prepared. Thus, determining the precise jurisdictional status of specific federal property, especially if acquired after 1962, requires researching the circumstances of each individual acquisition and any subsequent transfers of jurisdiction to or from the federal government.

The 1962 Inventory divides lands into several categories of federal property interest in order of decreasing federal authority: Exclusive, Concurrent, Partial, Proprietorial, and Unknown. In the first category, which includes *federal enclaves*, state law generally does not apply.[12] Article I, Section 8, clause 17 of the U.S. Constitution—the Enclave Clause—authorizes Congress to "exercise exclusive Legislation . . . over all Places purchased by the Consent of the Legislature of the State in which the Same shall be, for the Erection of Forts, Magazines, Arsenals, dock-Yards,

[6] 40 U.S.C. § 3112(a).

[7] *See id.* § 3112(c); *Adams*, 319 U.S. 312. Prior to February 1, 1940, acceptance of jurisdiction was generally presumed absent evidence of a contrary intent by the acquiring agency or Congress. *See* Silas Mason Co., Inc. v. Tax Comm'n, 302 U.S. 186 (1937).

[8] *See, e.g.*, North Dakota v. United States, 495 U.S. 423, 429 n.2 (1990) (noting that "[a] territory under concurrent jurisdiction is generally subject to the plenary authority of both the Federal Government and the State").

[9] *See* Collins v. Yosemite Park Co., 304 U.S. 518 (1938).

[10] Because no new states have been admitted to the Union since 1962, the 1962 Inventory likely represents a complete accounting of federal lands obtained in this manner.

[11] GEN. SERVS. ADMIN., INVENTORY REPORT ON JURISDICTIONAL STATUS OF FEDERAL AREAS WITHIN THE STATES AS OF JUNE 30, 1962 (1964), https://publiclandjurisdiction.com/wp-content/uploads/2020/01/JURISD1.pdf [hereinafter 1962 Inventory].

[12] As noted in the 1962 Inventory, even in areas of exclusive federal jurisdiction, a state may retain the right to serve civil or criminal process in the area for activities that occurred outside of the area. *Id.* at 6.

and other needful Buildings."[13] The Supreme Court has construed "exclusive Legislation" to be consistent with exclusive jurisdiction.[14]

In the remaining categories, state laws could potentially be enforced on federal property. *Concurrent jurisdiction* means that both state and federal laws may be executed. In *partial jurisdiction* areas, the state has reserved some subset of its jurisdictional powers, whether exclusive of federal jurisdiction or concurrent with it.[15] For example, a state may reserve the right to tax private property located on federal lands. *Proprietorial jurisdiction* means that, although the federal government has obtained some right or title to the property, the area is for most purposes treated the same as other nonfederal land within the state.[16] In each of these areas, depending on what rights a state has reserved, the state may be able to enforce its abortion laws with respect to conduct that takes place on the property. **Table 1** summarizes the degree of control the federal and state governments exercise under each type of jurisdiction.

Table 1. Federal and State Authority Based on Jurisdictional Status

Federal Jurisdictional Status	Federal Authority	State Authority
Exclusive Jurisdiction	Full Authority	No Authority[a]
Concurrent Jurisdiction	Full Authority	Full Authority
Partial Jurisdiction	Requires case-by-case analysis, but typically less than full authority	Requires case-by-case analysis, but typically less than full authority
Proprietorial Jurisdiction	Limited Authority	Full Authority

Source: CRS, based on information in the 1962 Inventory, *supra* note 11.

a. In areas under exclusive federal jurisdiction, states typically retain the authority to serve civil or criminal process.

Figure 1 shows the acreage of federal property by state and type as listed in the 1962 Inventory. The fraction of federal lands over which the federal government has exclusive jurisdiction (represented by dark red) is so small that it is difficult to see in most states. Arizona and Wyoming have the largest total areas by acreage under exclusive jurisdiction, with approximately 735,000 and 2.1 million acres, respectively.

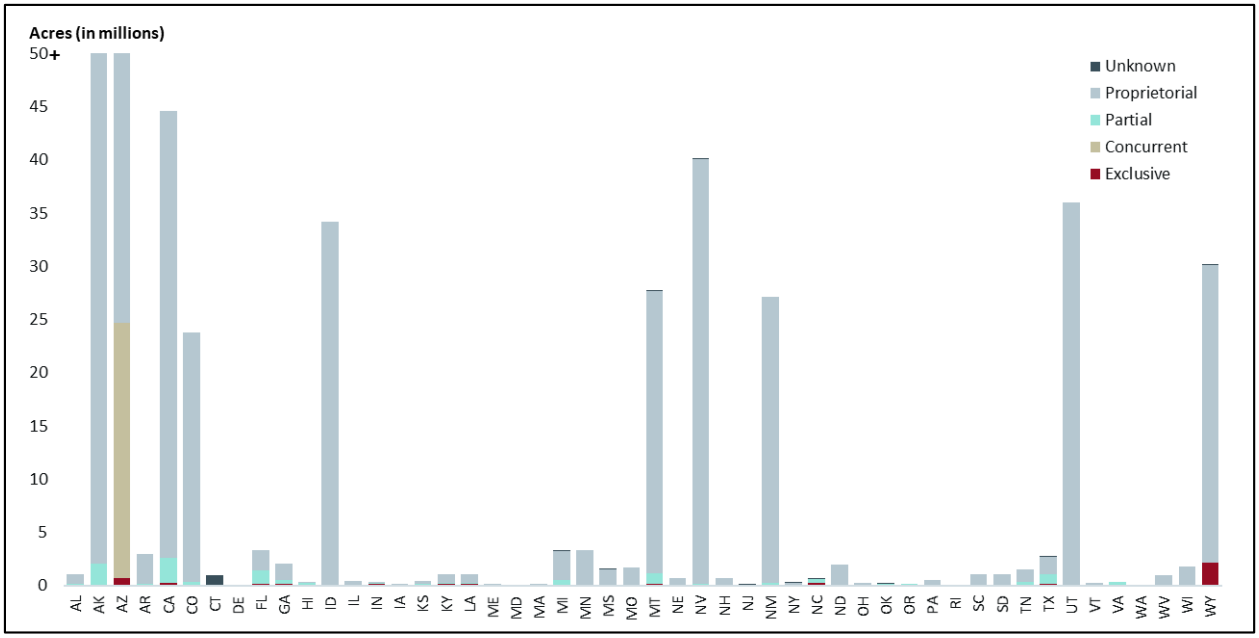
[13] Cong. Rsch. Serv., *Powers Over Places Purchased*, CONST. ANNOTATED, https://constitution.congress.gov/browse/essay/artI-S8-C17-2/ALDE_00001081/ (last visited Oct. 18, 2022); Cong. Rsch. Serv., *Federal and State Power Over Public Lands*, CONST. ANNOTATED, https://constitution.congress.gov/browse/essay/artIV-S3-C2-2/ALDE_00013510/ (last visited Oct. 18, 2022).

[14] James v. Dravo Contracting Co., 302 U.S. 134, 141 (1937) (citing Surplus Trading Co. v. Cook, 281 U.S. 647, 652 (1930).

[15] 1962 Inventory, *supra* note 11, at 6.

[16] *Id*.

Figure 1. Jurisdictional Status of Federal Lands in 1962



Source: CRS, based on 1962 Inventory, *supra* note 11.

Notes: Both Alaska (AK) and Arizona (AZ) have total areas of federal lands that would extend past the 50 million acre mark on the y-axis. In the interest of space and readability, the y-axis was artificially capped.

Table A-1, included as an appendix to this report, shows the total acres of land under exclusive federal jurisdiction by state as contained in the 1962 Inventory. Several states—Alaska, Hawaii, and Nevada in particular—have few or no federal enclaves.

The Assimilative Crimes Act

Even in areas where the state lacks jurisdiction to enforce state law restrictions, it is conceivable that federal law enforcement could nonetheless choose to enforce those restrictions as a matter of federal law. In areas under the federal government's exclusive or concurrent jurisdiction and in federal enclaves, the Assimilative Crimes Act adopts as *federal* law any state criminal laws governing acts "not made punishable by any enactment of Congress."[17] Prosecutions under the Assimilative Crimes Act do not enforce state law; instead, they enforce federal law by using state law "to fill in gaps" where Congress has not "define[d] the missing offenses."[18] Assimilation does not occur, however, when a state's criminal law has been "displaced by specific laws enacted by

[17] 18 U.S.C. § 13(a) ("Whoever within or upon any of the places [defined in 18 U.S.C. § 7] is guilty of any act or omission which, although not made punishable by any enactment of Congress, would be punishable if committed or omitted within the jurisdiction of the State . . . by the laws thereof in force at the time of such act or omission, shall be guilty of a like offense and subject to a like punishment."); *see id.* § 7(3) (defining "special maritime and territorial jurisdiction of the United States" as including, among other areas, "[a]ny lands reserved or acquired by the United States, and under the exclusive or concurrent jurisdiction thereof, or any place purchased or otherwise acquired by the United States by consent of the legislature of the State in which the same shall be, for the erection of a fort, magazine, arsenal, dockyard, or other needful building"). The Assimilative Crimes Act, with some exceptions, likely applies in Indian country, as well as federal enclaves. *See, e.g.*, AMERICAN INDIAN LAW DESKBOOK § 4:8.

[18] Williams v. United States, 327 U.S. 711, 718–19 (1946).

Congress,"[19] or when Congress has "covered the field with uniform federal legislation."[20] This could potentially include situations where a state's law prohibiting a criminal act is preempted pursuant to the Constitution's Supremacy Clause by federal law or regulation authorizing that act.[21]

The Supremacy Clause and Federal Preemption

Aside from the issue of *where* states may enforce their laws, it also matters *what* laws may be enforced. Under the Constitution's Supremacy Clause, the "Constitution, and the Laws of the United States . . . shall be the supreme Law of the Land."[22] The Supreme Court has interpreted the Supremacy Clause to invalidate state laws that "interfere with, or are contrary to," federal law[23]—a doctrine known as *federal preemption*. The Court has recognized two types of *federal preemption* of state laws:[24]

- *Express preemption*, when a federal law contains explicit language overriding or superseding state law;[25] and
- *Implied preemption*, when a federal law does not explicitly override state law, but "the scheme of federal regulation is sufficiently comprehensive to make reasonable the inference that Congress 'left no room' for supplemental state regulation."[26] Implied preemption takes two forms:
    - *Field preemption*, where the field is one in which "the federal interest is so dominant that the federal system will be assumed to preclude enforcement of state laws on the same subject;"[27] and
    - *Conflict preemption*, under which "state law is nullified to the extent that it actually conflicts with federal law,"[28] as when "compliance with both federal and state regulations is a physical impossibility"[29] or state law "stands as an obstacle to the accomplishment and execution of the full purposes and objectives" of federal law.[30]

Both federal statutes and federal regulations may preempt state laws.[31]

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[19] Franklin v. United States, 216 U.S. 559, 568 (1910).

[20] *Williams*, 327 U.S. at 724.

[21] *See* S.D. Mining Ass'n, Inc. v. Lawrence Cnty., 155 F.3d 1005, 1011 (8th Cir. 1998) ("A local government cannot prohibit a lawful use of the sovereign's land that the superior sovereign itself permits and encourages. To do so offends both the Property Clause and Supremacy Clause of the federal Constitution.").

[22] U.S. CONST. art. VI, cl. 2.

[23] Gibbons v. Ogden, 9 Wheat. 1, 211 (1824).

[24] For more information on federal preemption, see CRS Report R45825, *Federal Preemption: A Legal Primer*, by Jay B. Sykes and Nicole Vanatko.

[25] Hillsborough Cnty. v. Automated Med. Labs, 471 U.S. 707, 713 (1985).

[26] *Id.* (quoting Rice v. Santa Fe Elevator Corp., 331 U.S. 218, 230 (1947)).

[27] *Rice*, 331 U.S. at 218.

[28] *Hillsborough Cnty.*, 471 U.S. at 713.

[29] Fla. Lime & Avocado Growers, Inc. v. Paul, 373 U.S. 132, 142–43 (1963).

[30] Hines v. Davidowitz, 312 U.S. 52, 67 (1941).

[31] *See, e.g.*, Capital Cities Cable, Inc. v. Crisp, 467 U.S. 691, 699 (1984).

Potential Enforcement of State Abortion Laws on Federal Property

Assuming the federal government were to provide abortion services either directly or through a third party on its property, state laws restricting or prohibiting abortion services could apply in some instances. This jurisdictional application could result in the arrest, prosecution, or civil liability of some categories of persons who perform, undergo, or provide assistance to those undergoing abortions. This section examines how state laws—or state laws assimilated as federal law—might apply to such individuals.

Criminal Prosecution or Civil Liability

Whether an individual might face criminal prosecution or civil liability for abortions performed in violation of state law appears to depend primarily on three factors: (1) the degree of jurisdiction exercised by the state over the federal property; (2) in the case of a providing clinician, whether the individual concerned is a federal employee acting within the scope of his or her employment; and (3) whether any federal laws preempt the state law.

This section examines each type of federal jurisdiction in turn. **Table 2** summarizes this information, and **Figure 2** illustrates how each of the factors noted above may affect whether state laws are enforceable on federal property.

Exclusive Jurisdiction

In federal property under exclusive federal jurisdiction, state criminal and civil laws generally would not apply, other than state criminal laws incorporated into federal law under the Assimilative Crimes Act.[32] It is unclear the extent to which a state law criminalizing abortion might be assimilated into federal law. Although federal law currently criminalizes only partial-birth abortions,[33] federal laws regulating how agencies may provide abortion services, including appropriations restrictions, could arguably constitute an implicit preemption of state criminal laws, at least to the extent that federal law allows some abortions.[34] If state abortion laws were

[32] For example, under Department of Veterans Affairs (VA) policy, the Assimilative Crimes Act "will be used at facilities having exclusive or concurrent jurisdiction in those instances where a crime has been committed and no specific Federal law exists defining the offense. The local U.S. Attorney will be consulted when considering use of the Assimilative Crimes Act." U.S. DEP'T OF VETERANS AFFS, VA HANDBOOK 0730: SECURITY AND LAW ENFORCEMENT 27 (2000) [hereinafter VA HANDBOOK].

[33] 18 U.S.C. § 1531.

[34] Examples of federal laws restricting abortions include 10 U.S.C. § 1093 (prohibiting the use of Department of Defense funds or facilities to provide abortions, except in cases where "the life of the mother would be endangered if the fetus were carried to term" or when the pregnancy "is the result of an act of rape or incest"), 38 C.F.R. §§ 17.38(c)(1) and 17.272(a)(64) (prohibiting the Department of Veterans Affairs from providing abortions except where the "life or health of the pregnant [beneficiary] would be endangered if the pregnancy were carried to term" or the pregnancy is the result of rape or incest), and several appropriations limits in the Consolidated Appropriations Act, 2022, including the "Hyde Amendment." *See* Consolidated Appropriations Act, 2022, Pub. L. No. 117-103, div. H, tit. II, §§ 506–507, 136 Stat. 49, 496 (prohibiting Department of Health and Human Services funds from being used for abortions except in cases of rape, incest, or "where a woman suffers from a physical disorder, physical injury, or physical illness, including a life-endangering physical condition caused by or arising from the pregnancy itself, that would, as certified by a physician, place the woman in danger of death unless an abortion is performed"). For more information on federal abortion funding restrictions, see "Hyde-Type Amendments to Appropriations Measures" in CRS Report RL33467, *Abortion: Judicial History and Legislative Response*, by Jon O. Shimabukuro, and CRS In

assimilated into federal law, the Attorney General and U.S. Attorneys would likely have discretion not to prosecute violations of those laws.[35] In a June 24, 2022, statement, Attorney General Merrick Garland opined that federal employees performing abortions in the scope of their employment would not violate the Assimilative Crimes Act.[36] The Department of Justice's Office of Legal Counsel agreed and expanded on that opinion in an August 12, 2022, memorandum opinion.[37]

It is possible, however, that individuals who obtain or assist others in obtaining an abortion on federal property under exclusive federal jurisdiction could be prosecuted or sued for associated conduct that takes place outside the federal property. For example, the Texas Heartbeat Act (S.B. 8) authorizes civil proceedings and a private right of action against someone who knowingly engages in conduct within the state that aids or abets the performance or inducement of a prohibited abortion.[38] To the extent that such conduct takes place outside federal property under exclusive federal jurisdiction, that conduct may still be subject to state law.

Concurrent Jurisdiction

In federal property subject to concurrent federal and state jurisdiction, states would likely be able to enforce their criminal and civil laws regulating abortions, with several possible exceptions. First, federal employees acting within the scope of their employment are generally immune from state criminal and civil liability, unless such immunity has been waived.[39] Accordingly, federally employed clinicians providing abortion services or other federal employees assisting in those services likely would not be subject to state abortion restrictions.[40] Nonfederal clinicians, patients,

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Focus IF12167, *The Hyde Amendment: An Overview*, by Edward C. Liu and Wen W. Shen.

[35] For example, various Attorneys General have set Department of Justice policy with respect to enforcing federal laws governing marijuana use and distribution. *Compare* Memorandum from Deputy Attorney General James M. Cole to all U.S. Attorneys (Aug. 29, 2013), https://www.justice.gov/iso/opa/resources/3052013829132756857467.pdf ("In jurisdictions that have enacted laws legalizing marijuana in some form[,] . . . enforcement of state law by state and local law enforcement and regulatory bodies should remain the primary means of addressing marijuana-related activity."), *with* Memorandum from Attorney General Jefferson B. Sessions to all U.S. Attorneys (Jan. 4, 2018), https://www.justice.gov/opa/press-release/file/1022196/download ("Previous nationwide guidance specific to marijuana enforcement is unnecessary and is rescinded, effective immediately."), *and* Rachel LaBruyere & Slates Veazey, *Attorney General Garland Reconfirms the DOJ's Hands-Off Approach Toward Federal Marijuana Regulation*, JD SUPRA (May 3, 2022), https://www.jdsupra.com/legalnews/attorney-general-garland-reconfirms-the-9983989/.

[36] Press Release, U.S. Dep't of Justice, Attorney General Merrick B. Garland Statement on Supreme Court Ruling in *Dobbs v. Jackson Women's Health Organization* (June 24, 2022), https://www.justice.gov/opa/pr/attorney-general-merrick-b-garland-statement-supreme-court-ruling-dobbs-v-jackson-women-s [hereinafter Garland Statement].

[37] Application of the Assimilative Crimes Act to Conduct of Federal Employees Authorized by Federal Law, slip op. at 1 (Op. O.L.C. Aug. 12, 2022).

[38] TEX. HEALTH & SAFETY CODE ANN. § 171.208(a)(2) (authorizing civil actions against any person who "knowingly engages in conduct that aids or abets the performance or inducement of an abortion").

[39] *See, e.g.*, *In re* Neagle, 135 U.S. 1, 75 (1890) ("[I[f the prisoner is held in the state court to answer for an act which he was authorized to do by the law of the United States, which it was his duty to do as marshal of the United States, and if, in doing that act, he did no more than what was necessary and proper for him to do, he cannot be guilty of a crime under the law of the state of California."); United States v. Washington, 142 S. Ct. 1976, 1984 (2022) ("We will find that Congress has authorized regulation that would otherwise violate the Federal Government's intergovernmental immunity 'only when and to the extent there is a clear congressional mandate.'" (quoting Hancock v. Train, 426 U.S. 167, 179 (1976))); Idaho v. Horiuchi, 215 F.3d 986, 992 (9th Cir. 2000) (discussing immunity of federal employees under state law), *vacated as moot*, 266 F.3d 979 (9th Cir. 2001).

[40] *See, e.g.*, Intergovernmental Immunity for the Department of Veterans Affairs and Its Employees When Providing Certain Abortion Services, slip op. at 2–3 (Op. O.L.C. Sept. 21, 2022) (reiterating that federal employees acting within

and individuals who provide assistance to patients may be subject to state prosecution or civil liability for abortions performed on federal property under concurrent jurisdiction, as well as for conduct outside the federal property, as discussed above. It is possible, however, that the Supremacy Clause could shield patients who undergo abortions authorized by federal law from state liability.[41]

Because the federal government also has jurisdiction over facilities subject to concurrent jurisdiction, the Assimilative Crimes Act could potentially authorize federal prosecution for violations of assimilated state law, as described above.

Partial Jurisdiction

For federal property under partial jurisdiction, potential liability would depend on the nature of the jurisdiction retained by the state. For example, a state may retain criminal, but not civil, jurisdiction over a federal property. In such a case, the factors discussed above for federal property under concurrent jurisdiction would apply to the state's criminal laws, while the factors relevant to exclusive federal jurisdiction would likely apply to the state's civil laws. Determining the extent of a state's jurisdiction would require a case-by-case analysis of the rights retained by the state.

Proprietorial Jurisdiction

For federal property under proprietorial jurisdiction, states likely would be able to enforce their criminal and civil laws regulating abortions, subject to the same limitations discussed with respect to concurrent jurisdiction, such as federal employee immunity and state law preemption.[42]

Arrest

The above sections addressed whether a state could prosecute or sue individuals for violations of its criminal and civil laws on federal property. A related but distinct question is whether a state has the authority to conduct arrests on federal property. As a matter of law, whether a state has arrest authority on a federal property generally corresponds with the applicability of its criminal laws, depending on the nature of federal and state jurisdiction at the facility.[43] In some cases, however, state law enforcement officers may be able to arrest an individual on federal property

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the scope of their employment are entitled to *intergovernmental immunity* from state laws).

[41] *Cf.* Planned Parenthood Affiliates of Mich. v. Engler, 73 F.3d 634, 638 (6th Cir. 1996) ("All circuits to address the interplay between the 1994 Hyde Amendment and state laws restricting abortion funding have held that a state participating in Medicaid must fund abortions of pregnancies resulting from rape or incest, as well as abortions necessary to save the life of the mother." (citing Hope Med. Grp. for Women v. Edwards, 63 F.3d 418 (5th Cir. 1995); Little Rock Family Plan. Servs. v. Dalton, 60 F.3d 497 (8th Cir. 1995), *cert granted in part and rev'd in part sub nom.* Dalton v. Little Rock Family Plan. Servs., 516 U.S. 474 (1996); Hern v. Beye, 57 F.3d 906 (10th Cir. 1995))); *id.* ("Earlier cases confronting conflicts between state law and previous Hyde Amendments have also uniformly held that participating states must fund those abortions defined as medically necessary by the Hyde Amendment." (citing Roe v. Casey, 623 F.2d 829 (3d Cir. 1980); Hodgson v. Bd. of Cnty. Comm'rs, 614 F.2d 601 (8th Cir. 1980); Zbaraz v. Quern, 596 F.2d 196 (7th Cir. 1979); Preterm Inc. v. Dukakis, 591 F.2d 121 (1st Cir. 1979))).

[42] *See, e.g.*, VA HANDBOOK, *supra* note 32, at 27.

[43] *See id.* at 34 (providing that "local and state officers may effect patient or employee arrests" at facilities under concurrent or proprietorial jurisdiction, whereas "only Federal officers (including VA police) may arrest without a warrant" at facilities under exclusive federal jurisdiction, and local or state officers may arrest with a warrant at such facilities only "when the state act of cession reserves the right of the state to serve or execute state civil and criminal process on the property").

when exercising a warrant, even when the facility is under exclusive federal jurisdiction, if the state has reserved the right to do so.[44]

Table 2. Comparison of Likely Prosecution and Arrest Authority in Various Jurisdictions

Type of Jurisdiction	State Prosecution or Civil Liability	Federal Prosecution Under Assimilative Crimes Act	State Arrest Authority
Exclusive	No	Yes	No, with exceptions
Concurrent	Yes	Yes	Yes
Partial	Possible, depending on jurisdiction retained by the state	Possible, depending on jurisdiction retained by the state	Possible, depending on jurisdiction retained by the state
Proprietorial	Yes	No	Yes

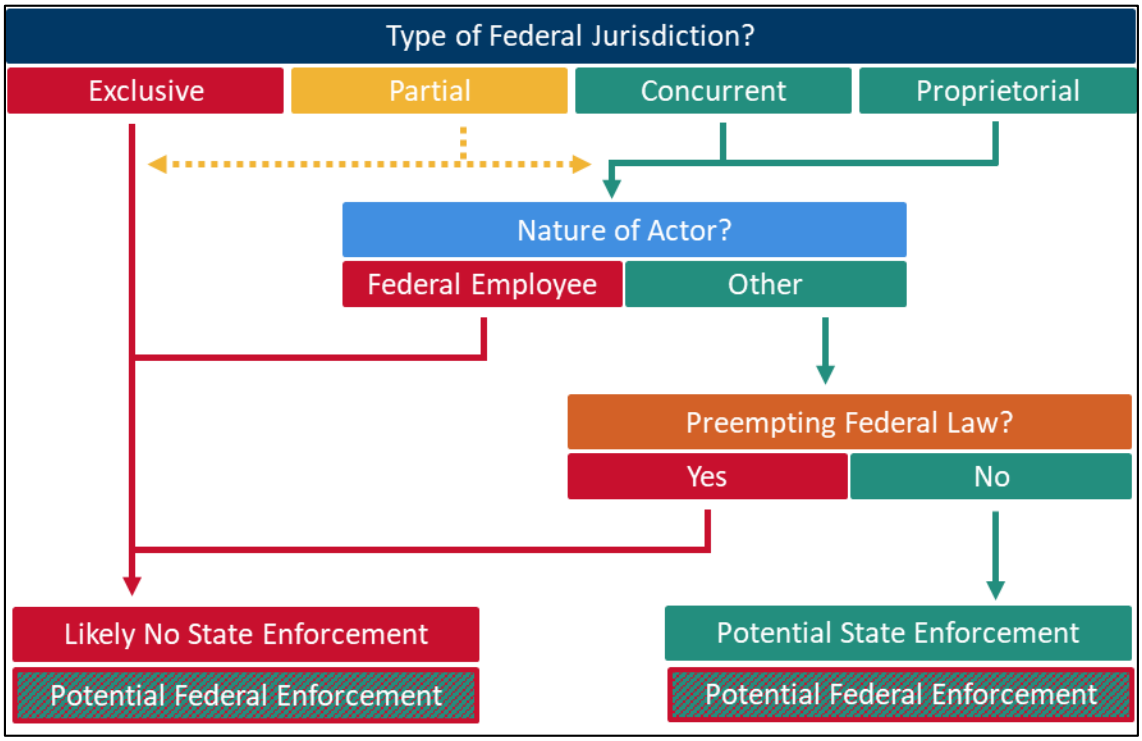
Source: CRS.

Notes: As discussed above, assessing whether states have criminal or civil jurisdiction over a particular location does not necessarily mean that such jurisdiction may be exercised over all persons and activities at that location, such as federal employees acting within the scope of their official duties.

[44] *See id.* ("Local or state officers may only arrest with a warrant on property under exclusive Federal jurisdiction when the state act of cession reserves the right of the state to serve or execute state civil and criminal process on the property.").

Figure 2. Potential Enforcement of State Law

Depending on jurisdictional status, whether an actor is a federal employee and whether federal preemption applies



Source: CRS.

Notes: "Federal employee" means a federal employee acting within the scope of federal employment. "Potential federal enforcement" refers to potential incorporation of state law into federal law through the Assimilative Crimes Act, 18 U.S.C. § 13(a).

Conclusion

Abortions performed on federal property might be subject to state laws regulating abortions. The applicability of state laws to such abortions would depend on multiple factors, including the nature of the state's jurisdiction over the specific federal property and whether the abortion was performed by a federal employee. Ultimately, whether a state could prosecute or pursue civil actions for abortions performed on federal property would require a fact-specific, case-by-case analysis.

Appendix.

Table A-1. Acreage of Exclusive Federal Jurisdiction by State (1962)

State	Exclusive Jurisdiction (Acres)
Alabama	45,563.1
Alaska	0
Arizona	734,995.1
Arkansas	87,615.5
California	208,453.40
Colorado	143,151.1
Connecticut	1,159.4
Delaware	3,395.4
Florida	157,700.9
Georgia	118,621.5
Hawaii	0
Idaho	75,700.6
Illinois	81,849.3
Indiana	140,478.5
Iowa	20,301.8
Kansas	1,130.7
Kentucky	194,496.9
Louisiana	148,360.5
Maine	22,738
Maryland	124,123.7
Massachusetts	23,094.7
Michigan	20,614.1
Minnesota	7,204
Mississippi	8,914.8
Missouri	748.8
Montana	147,015.2
Nebraska	71,158.5
Nevada	14.1
New Hampshire	114.7
New Jersey	70,350.3
New Mexico	107,284.5
New York	30,857.5
North Carolina	237,942.1
North Dakota	366.4

Ohio	50,257.9
Oklahoma	84,639
Oregon	16,313.8
Pennsylvania	4.690.2
Rhode Island	6,602.2
South Carolina	88,834.1
South Dakota	55,035.7
Tennessee	6.964.6
Texas	118,834.5
Utah	53,133.8
Vermont	12,540.5
Virginia	85,857.4
Washington	78,955.8
West Virginia	664.5
Wisconsin	60,824
Wyoming	2,102,917.9
U.S. Total	**5,922,581**

Source: CRS, based on information in the 1962 Inventory, *supra* note 11.

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