

## [Boom! Lawyered: 'He Performed an Abortion and Then Burned Down My House!'](#)

- Imani Gandy: Hello, fellow law nerds! Welcome to another episode of Boom! Lawyered, a Rewire.News podcast hosted by the legal journalism team that would like to wish you a very happy Thanksgiving and hopes that you don't have arguments with your racist uncle while fighting over the turkey leg. I'm Imani Gandy.
- Jessica Pieklo: And I'm Jess Pieklo. Rewire.News is dedicated to bringing you the best reproductive rights and social justice news, commentary and analysis on the web. The team legal podcast is part of that mission. A big thanks to our subscribers and a welcome to our new listeners!
- Imani Gandy: Jess, something is wrong in Ohio and somebody needs to fix it.
- Jessica Pieklo: Wait, what do you mean?
- Imani Gandy: Well, Republican lawmakers in Ohio have introduced yet another pre-viability abortion ban, and this one is the most bizarre yet. I just feel like there's got to be something that we can do to fix Ohio. Like we got to run a diagnostics test or maybe one of our listeners who lives in Ohio could turn Ohio off and then turn it on again.
- Jessica Pieklo: Totally. Maybe someone should unplug Ohio for like 30 seconds and plug it back in or take the cartridge out and give it a good blow.
- Imani Gandy: Yes, exactly. Gosh.
- Jessica Pieklo: Why are we troubleshooting Ohio? Oh wait, you must be talking about the abortion ban that makes performing an abortion a felony subject to life imprisonment or in some cases, death.
- Imani Gandy: Not only that, this ban makes getting an abortion a felony, somehow, "pro-life Republicans" in Ohio think it's a good idea to put people who get abortions in prison for life, and in some cases, to execute them.
- Jessica Pieklo: What?
- Imani Gandy: That means pregnant people who already have children, and we know that about 67% of people who get abortions already have children. Those people could be put to death for choosing to not have another child and to instead focus on the children that they already have. How are they supposed to raise their kids if they were in prison or dead? Make it make sense.
- Jessica Pieklo: I don't think I can. I mean, this is so much, but in this episode we're going to explain just what this new law could mean for pregnant people in Ohio. We're going to talk about the new felonies that Ohio has created. Abortion murder and aggravated abortion murder.

Imani Gandy: What the fuck is aggravated abortion murder? It doesn't even make any sense. Like, the words don't go together.

Jessica Pieklo: No, no it doesn't. It really doesn't.

Imani Gandy: It's just all very disturbing and Gileadian.

Jessica Pieklo: I'm sorry, come again.

Imani Gandy: Gileadian as in of or related to Gilead. You know, that dystopian hellscape in *The Handmaid's Tale*. It's like Latin or something.

Jessica Pieklo: You just made up that word right now, Imani.

Imani Gandy: No, I didn't.

Jessica Pieklo: You just straight up made that up.

Imani Gandy: It's Latin, Jess.

Jessica Pieklo: Imani, no.

Imani Gandy: Okay, fine, so what if I did? I'm allowed to make up words.

Jessica Pieklo: All right. That's where we're at.

Imani Gandy: That is where we're at for sure. Jess, what are Republicans in Ohio smoking? Because the law that they introduced last week is a real doozy. I feel like whatever they're smoking, they should be sharing with me personally.

Jessica Pieklo: Seriously, it is bananas. Ohio Republicans have introduced HB 413, which is a 723 page bill. Let me say that again, 723 pages of abortion law. I love abortion law, that's so much abortion law.

Imani Gandy: It's too much, too much!

Jessica Pieklo: It's a 720 page bill that bans abortion almost entirely. It says that no person is allowed to perform an abortion and no person is allowed to have an abortion, and there is no exception for rape and incest.

Imani Gandy: There's a health exception if you can even call it that, and that health exception requires a physician to believe that it is, "highly probable" that the pregnant woman will die from a certain fatal condition. Now the bill defines fatal condition as, "a disease or injury that will lead to a patient's death and does not include either a condition related to the patient's mental health or the pregnancy itself."

Jessica Pieklo: Lawmakers are trying to be clever here by crafting out this little narrow exception, but if it were to pass and be enacted, it would functionally ban abortion in the state.

Imani Gandy: As if that's not enough. The bill requires that a physician who performs an abortion to preserve the life of a pregnant person, that physician has to take all possible steps to preserve the life of the fetus, including if applicable... This is where it gets super fucked up, attempting to re-implant an ectopic pregnancy into the woman's uterus, which as I have written before, I wrote a piece about this a couple of weeks ago, that is not something that is medically possible. You can't just pop an ectopic pregnancy back into the uterus like you're fricking resetting a dislocated shoulder.

Jessica Pieklo: I have all sorts of terrible images happening right now, but it's not even just that you can't do it, that's just so dangerously false. People will die if you think that that shit is possible. I feel like every episode in the last six months has just at some point resulted in me like being reduced to nothing but sputtering and stuttering and a couple of fart noises. It's so much, Imani.

Imani Gandy: It really is but that's not even the most bizarre part of this bill is it?

Jessica Pieklo: No, it's not. The most bizarre part is that this bill adds two new felonies to Ohio's criminal code, abortion murder and aggravated abortion murder.

Imani Gandy: What the fuck is aggravated abortion murder? I don't understand. What are they doing? They're just making shit up. Help me. Help me understand what this is about.

Jessica Pieklo: Abortion murder sounds like something that you would have like that you would shout at somebody in a fit of rage like it's word salad. Okay, but here's what the bill says. It says that a person is guilty of abortion murder, I'm sorry, I'm not going to not be able to laugh at that. They're guilty of abortion murder if they purposely perform or have an abortion. Basically, abortion is murder in Ohio if this bill passes. The bill also prohibits "whoopsie-daisy abortions." It says that no person shall cause an abortion as a proximate result of committing or attempting to commit a first or second degree felony aside from the abortion itself.

Imani Gandy: This sounds a little bit like felony murder to me, right? I know that Ohio recently abolished felony murder, but did they just bring back felony murder like so much sexy specifically for abortion? What is happening? We're bringing abortion murder back. We're bringing felony murder back. We're bringing sexy back.

Jessica Pieklo: Did you just say bringing sexy back?

Imani Gandy: Yes, I did.

Jessica Pieklo: Well, okay, you should probably explain what felony murder is. We just dropped a whole lot of criminal law on folks.

Imani Gandy: Okay. We sure did. In some states, criminal law recognizes felony murder, and that means you are charged with murder if an intentional killing results from the commission of another crime. Let me break that down for you. For example, let's say you and I plan a Thomas Crown Affair type heist, right? We're going to go do that in New York and we're going to steal some paintings. I'm masterminding the whole plot and you get a crew together to actually do the heist while I'm just sitting in my lair stroking a white cat, just masterminding the whole thing.

Jessica Pieklo: Naturally, I'm the muscle in this. I love this.

Imani Gandy: You're the muscle, I'm the brains.

Jessica Pieklo: This is amazing.

Imani Gandy: Let's say in connection with this heist, you murder a security guard at the museum.

Jessica Pieklo: As I want to do.

Imani Gandy: As you often do. I am culpable for that murder of the security guard even though I didn't pull the trigger and even though I wasn't even on the scene. I'm just sitting in my lair stroking a white cat, right? What it means is that you can be culpable for a murder that results from any sort of felony, any sort of criminal activity of which you were a part. Now, Ohio recently abolished felony murder because frankly, felony murder laws lead to some really absurd results.

Jessica Pieklo: They do.

Imani Gandy: For example, there are cases in which a police will shoot a suspect who is fleeing a crime scene and other people who are involved in that crime will be liable for the killing of that fleeing suspect because they were involved in this violent felony that led to the killing of that suspect. You know, that's just weird. We're running away from a crime. A cop shoots you, I'm still running away from the crime. Suddenly I'm liable for your killing because I was involved in a crime that led to your killing. It doesn't make any sense.

Jessica Pieklo: It really extends the universe of people who can be liable for murder.

Imani Gandy: To the point of ridiculousness.

Jessica Pieklo: Yes, and so this new Ohio bill reintroduces felony murder as a concept in the cases of abortion, like you said. Okay, let's talk about this in the context of abortion here. We're in a heisty mood.

Imani Gandy: Heisty, I'm feeling rather heisty.

Jessica Pieklo: Let's say you and I rob a bank and on the way out the door I have a miscarriage. If you don't take me to the hospital, you could be on the hook for felony abortion murder.

Imani Gandy: What?

Jessica Pieklo: That's the only appropriate response I think is, what?

Imani Gandy: You know what I mean? What if I don't even know that you're pregnant? How am I culpable for some shit I didn't even... It's insane, but it's happened before. Right? Remember Marshae Jones? She was that woman in Alabama who was shot in the stomach during an altercation with another woman who thought was her baby's daddy's girlfriend or what have you, right?

Jessica Pieklo: There was some drama. It got a little messy.

Imani Gandy: There was some drama. It got a little heavy, and so she got shot in the stomach when she was five months pregnant. She lost the pregnancy as a result of the shooting and was charged with manslaughter.

Jessica Pieklo: She was charged.

Imani Gandy: She was charged. She got shot. Some other person shot her.

Jessica Pieklo: She got charged for being shot.

Imani Gandy: She was charged with manslaughter for being shot. The alleged shooter was also charged with manslaughter as a result of this shooting, but a grand jury decided not to indict her because police claimed that Marshae Jones, the woman who got shot in the stomach, had actually started the fight and the alleged shooter had acted out of self-defense.

Jessica Pieklo: The shooter wasn't charged but the person who got shot was. This is why felony murder can be bonkers.

Imani Gandy: It's absolutely bonkers. Alabama doesn't have abortion murder or aggravated abortion murder, but Jones was charged under the fetal homicide statute. Now, fetal homicide statutes are not supposed to ensnare pregnant people. If you can't get at pregnant people through the fetal homicide statutes, then this new abortion murder nonsense is a real nifty way to get around that problem.

Jessica Pieklo: It really is, but we also probably should not give Alabama any ideas.

Imani Gandy: Yeah, they're wont to just go a little bit bananas.

Jessica Pieklo: I want to get back to this idea of the whoopsie-daisy abortion.

Imani Gandy: Yes.

Jessica Pieklo: That's where it's caused by a first or second degree violent felony. As we were getting ready for this episode, I went into the Ohio criminal code and I was like, okay, well, what are some of the first or second degree violent felonies that could fall under this category? Here are a couple. Extortion, intimidation of an attorney, victim or witness. That is having or committing an abortion in the context of intimidating an attorney.

Imani Gandy: Right, because oftentimes you know, you got to perform an abortion on an attorney in order to make them do what you want them to do. That's just the thing that often happens.

Jessica Pieklo: Frequently.

Imani Gandy: Yes, yes.

Jessica Pieklo: Inducing panic.

Imani Gandy: Like what? This whole thing is ridiculous and honestly I really think that we should publish the slack conversation that we had yesterday where for an hour we were trying to figure out hypotheticals about felony murder, including what would happen if you and I were to extort our producer Marc. Then the process happened to accidentally performed an abortion on his girlfriend, his partner. Would that be felony murder? This is just bizarre. Like, hey Marc, if you don't do what we say, we're going to turn you over to the cops and also we're going to accidentally perform an abortion on your partner. What? It doesn't make sense.

Jessica Pieklo: I see a holiday coffee table book in the making, Imani.

Imani Gandy: Yes. Slack conversations, insight into the addled minds of Imani Gandy and Jessica Mason Pieklo.

Jessica Pieklo: If the prospect of a whoopsie-daisy abortion murder, like we are going to do a girl band one day and it's going to be called whoopsie-daisy abortion murder.

Imani Gandy: Also, and who's going to open for us? Death certificates for fetuses.

Jessica Pieklo: Yes.

Imani Gandy: Because they are an excellent band, sort of in the death cab for cutie vibe, but a little bit more hardcore.

Jessica Pieklo: I feel like we missed an inducing panic at the abortion disco joke earlier too. Anyway, anyway, anyway, if the prospect of that isn't bizarre enough, the bill

gets even weirder like every episode we're like you think the states can get even more bonkers? Oh, hold onto your butts. It says that if a person is guilty of aggravated abortion murder if they purposely perform an abortion while committing or attempting to commit kidnapping, rape, aggravated arson, arson, aggravated robbery, robbery, aggravated burglary, burglary, trespass in habitation where a person is present or likely to be present, terrorism, or escape.

Imani Gandy: This is basically creating another set of abortion related crimes that really don't even make any sense. What the entire fuck is arson abortion? How are you committing aggravated abortion murder if you are performing abortions while you're committing arson? Are you just going to construction sites and stealing all the coil, the copper that people steal from construction sites and then torching the building just to cover your tracks, but oh no, there's a secretary working in the office, so I'm going to go ahead and perform an abortion on her right before I torched the place. What are you talking about?

Jessica Pieklo: Right. I mean, just the idea that Ohio is actively creating new criminal laws that encompass pregnancy loss very specifically. I mean, we're laughing and breaking this down because it's so ridiculous but the end result is really very serious. They have said, you know what? Pregnancy loss, we're going to presume that's a criminal act rather than something else, something not criminal, something none of the state's goddamn business. Right?

Imani Gandy: Right.

Jessica Pieklo: I mean, the penalties just also speak to how intense anti-choice lawmakers are on really punishing pregnant people. The penalty for abortion murder is imprisonment for 15 years to life, 15 years to life.

Imani Gandy: That's just bananas.

Jessica Pieklo: The penalty for aggravated abortion murder is life imprisonment or the death penalty, capital punishment for a pregnancy loss.

Imani Gandy: The death penalty, the death penalty. People of pro-life, "pro-life" people want to execute people for exercising their constitutional right to abortion. It is bizarre. Frankly, Ohio, what the fuck? Right? I mean, you know this is unconstitutional. Three pre-viability abortion bans that you have enacted, you, Ohio, have enacted into law had been blocked this year alone.

Jessica Pieklo: Let's count them. First, we have in April this year, a federal court blocked Ohio's ban on dilation and evacuation abortions. Those are the most common second trimester abortion procedures. The court ruled in that case that the law imposes an undue burden on a large fraction of pregnant people seeking a pre-viability second trimester abortion.

Imani Gandy: In July of this year, a federal court issued a preliminary injunction blocking Ohio six week ban. That court ruled that the law places an undue burden on a patient's right to choose a pre-viability abortion.

Jessica Pieklo: Just last month, the Sixth Circuit Court of Appeals blocked the state's down syndrome ban.

Imani Gandy: That's three pre-viability abortion ban that had been struck down in the last six or seven months. What does Ohio do? They decided to go ahead and just criminalize abortion, create aggravated abortion murder and abortion murder as new felonies, and to generally act like a bunch of assholes.

Imani Gandy: Listener, just to be clear, can you guess why each of those bans were blocked and why this total abortion ban will be blocked as well? Because pre-viability abortion bans are unconstitutional.

Jessica Pieklo: I mean, come on, Imani. How many times do we have to say this?

Imani Gandy: Apparently today, tomorrow, and every day for the rest of our lives.

Jessica Pieklo: At least until the Supreme Court steps in and decides that counter to, I don't know, 46 some odd years of precedent pre-viability abortion bans are actually just hunky-dory.

Imani Gandy: Until that time comes, abortion remains legal in Ohio, legal. Abortion is legal in Ohio.

Jessica Pieklo: And everywhere else.

Imani Gandy: And everywhere else as well. That's going to wrap it up for us today. If you happen to know of anyone who is capable of performing abortions while committing arson, I'd really like to talk to that person because it seems like that person would be really great at multitasking. I feel like they might have some tips for me in how to manage my ADD. I don't know.

Jessica Pieklo: We could use the advice.

Imani Gandy: We really, really could, but you know, if you want to talk to us about aggravated abortion murder or what happens if someone breaks into your home, steals your diamond and then accidentally performs an abortion on you, you can find us on Twitter. I'm @AngryBlackLady. Jess is @Hegemommy, H-E-G-E-M-O-M-M-Y. You can follow Rewire.News @Rewire\_News. You should join our Facebook group because it is popping off.

Jessica Pieklo: Do it.

Imani Gandy: You can commiserate with your fellow law nerds about whatever it is you're going to have to discuss around the Thanksgiving table on Thursday.

Jessica Pieklo: Come up with more ridiculous hypotheticals for what would constitute aggravated abortion murder with us.

Imani Gandy: Yes, please. Hit us up on Twitter. We'd love to hear it. On that note, we are going to see you on the tubes.

Jessica Pieklo: We'll see you on the tubes, folks.

Imani Gandy: Boom! Lawyered is created and hosted by Jessica Mason Pieklo and Imani Gandy. Marc Faletti is our producer. Jess is also the Rewire.News interim president and editor in chief.