Research Protocol for Abortion Requirements for Minors

Prepared by the Policy Surveillance Program Staff

December 2019
Abortion Requirements for Minors

Abortion Law Database

I. Date of Protocol Creation: December 2019

II. Scope: Compile state laws, regulations, case law, and attorney general opinions that restrict access to abortions for minors. This dataset is one of 16 datasets examining laws regulating abortion laws in the United States.

III. Primary Data Collection


b. Dates Covered in the Dataset: This dataset started out as cross-sectional, analyzing abortion requirements for minors as they were in effect at one point in time, December 1, 2018. The dataset was then updated to be longitudinal, covering changes in the law from December 1, 2018 to December 1, 2019.

c. Data Collection Methods: The Policy Surveillance Program Staff (“Team”) building this dataset consisted of four legal researchers (“Researchers”) and one supervisor (“Supervisor”). WestlawNext was used to identify which states had abortion restrictions for minors. Subject matter experts from Guttmacher Institute, Resources for Abortion Delivery, American Civil Liberties Union, Center for Reproductive Rights, National Abortion Federation, and Planned Parenthood Federation of America were consulted to assist with defining the scope of the laws included in the Abortion Law Project.

d. Databases Used: Research was conducted using WestlawNext and state-specific legislature websites. The Researchers also consulted a combination of secondary sources from the Guttmacher Institute.

   i. Full text versions of the laws were collected from each respective state legislature website.

e. Search Terms:

   i. Keyword searches and search strings were supplemented by examination of the table of contents of each relevant section of the state law identified for statues and regulations related to abortion restrictions for minors:
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a. ("abortion" “minors")
b. ("abortion" “notification")
c. ("abortion" “consent")
d. ("abortion” “judicial bypass”)

f. Initial Returns and Additional Inclusion or Exclusion Criteria:
   i. Included laws pertaining to restrictions on minors’ access to abortion:
      • Laws requiring the notification and/or consent of a parental figure or legal guardian for a minor’s abortion.
      • Laws detailing the judicial bypass procedure for a minor seeking an abortion.
      • Court decisions and attorney general opinions directly affecting enforceability of state laws regulating abortion for minors. **Citations for relevant court or attorney general opinions were included in the legal text. However, the text of the opinions was not included in the dataset.** Details of relevant court and/or attorney general opinions were captured in caution notes.
   ii. Excluded laws pertaining specifically to:
      • Laws requiring the discussion with a minor or the possibility of involving the minor’s parents in the decision-making process regarding the minor’s pregnancy.

IV. Coding

a. Development of Coding Scheme: The Team conceptualized and created the coding questions, then circulated them to the subject matter experts from Guttmacher Institute, Resources for Abortion Delivery, American Civil Liberties Union, Center for Reproductive Rights, National Abortion Federation, and Planned Parenthood Federation of America to review and finalize. When the questions were finalized, the Team entered the questions into MonQcle, a web-based software coding platform. As the Team developed the coding scheme they recorded the dataset terminology below:
   i. Dataset terminology:
      a. “Abortion” is the induced termination of pregnancy by medical or procedural/surgical means.

b. Coding Methods:
   i. The legal text coded was limited to requirements relating specifically to abortion requirements for minors laws. Statutes and regulations that are cited or cross-referenced in these policies were only coded and included in the legal text if necessary to answer a coding question. External third-party
“guidelines” incorporated by reference into policies are referenced but not coded or included in the legal text.

ii. As stated above, citations for relevant court and/or attorney general opinions were included in the legal text. However, the text of the opinions was not included in the dataset. Details of relevant court and/or attorney general opinions were captured in caution notes.

Below are specific coding rules used when coding the questions and responses in the Abortion Requirements for Minors dataset. Note that this section only lists questions and responses that required further explanation of the question itself, the responses, or to understand specific coding decisions and rules.

**Question 2:** “Has the law been limited in whole or in part?”
- This question was coded “yes” where there was a relevant court opinion or attorney general opinion affecting the enforceability of one or more of the requirements coded.

**Question 2.1:** “Has the law been limited by a court decision?”
- This question was coded “yes” where there was a relevant court opinion affecting the enforceability of one or more of the requirements coded.
- A brief summary of the opinion’s ruling, including which provisions were affected by the ruling, were captured in a caution note.
- Where related court opinions were not in scope of the dataset, this question was coded as “No.”

**Question 2.2:** “Has the law been limited by an attorney general opinion?”
- This question was coded “yes” where there was a relevant attorney general opinion affecting the enforceability of one or more of the requirements coded.
- A brief summary of the opinion’s ruling, including which provisions were affected by the ruling, were captured in a caution note.
- Where related attorney general opinions were not in scope of the dataset, this question was coded as “No.”

**Question 3:** “Does the law require parental notice prior to a minor’s abortion?”
- “Yes” was coded where the law required that “legal guardians” provide notice prior to a minor’s abortion.
- When the law gives an option for either parental notice or consent, the less restrictive option was coded. A Caution Note was then included for both the notice and consent parent questions.

**Question 3.2:** “What minors, if any, are excluded from the parental notification requirement?”
- “Emancipated minors” was coded where the law excluded minors with the “disability of nonage removed.”

**Question 3.4:** “Who must deliver the notice?”
• Where the law gave multiple individuals the ability to deliver the notice, all included answer choices were coded.
• Where the law gives a primary individual for the delivery of notice, and alternative individuals if the primary individual fails, only the primary individual was coded and the alternative individuals were noted in a Caution Note.
• “Physician” was coded where the law required that the “person performing abortion” deliver notice and the state has a physician requirement for abortion procedures.
• “Physician” was coded where either the physician performing the abortion or the referring physician must deliver the notice.

Question 3.5: “How must notice be delivered?”
• Where the law gave multiple methods for the delivery of notice, all included answer choices were coded.
• Where the law gives a primary method for the delivery of notice, and alternative methods if the primary method fails, only the primary method was coded and the alternative methods were noted in a Caution Note.
• “In person” was coded where the law required that the individual was “personally notified.”

Question 3.6: “What are the exceptions to the parental notice requirement?”
• Successfully acquiring parental notice was not coded as an exception.
• The existence of a judicial bypass procedure was not coded as an exception.
• Affirmative defenses to the parental notification requirement were coded as exceptions.
• “Serious health risk” was coded where the law included either a general serious health risk or limited the health risk to physical health. If the law limited the health risk to physical health it was noted in a Caution Note.
• When the law included an exception for a “medical emergency,” both “serious health risk” and “life endangerment” were coded.
• “Incest” was coded where the law included an exception for victims of sexual abuse by a parent or family member.
• “Health” was coded where there was an exception for “health” broadly.
• “Rape” was coded where the law included an exception for victims of “sexual abuse.”
• “Parent unavailable” was coded where the law stated “whereabouts unknown after reasonable inquiry, who is a fugitive from justice, who is habitually in an intoxicated or drugged condition, or who has been declared mentally incompetent or incapacitated by a court of competent jurisdiction.” (MO)
• “Sex offender” was coded where the law included convictions related to sexual offenses, prostitution, pornography, offenses against the family, or offenses against the person.
• Mental incompetence or incapacitation of parent was out of scope.

Question 4: “Does the law require parental consent prior to a minor’s abortion?”
• “Yes” was coded where the law required that “legal guardians” provide notice prior to a minor’s abortion.
• When the law gives an option for either parental notice or consent, the less restrictive option was coded. A Caution Note was then included for both the notice and consent parent questions.

**Question 4.4:** “Must the parent receive the same informed consent information as the minor before the parent makes a consent decision?”
• “Yes” was coded where a parent must accompany a minor when the minor receives the informed consent information.

**Question 4.7:** “What are the exceptions to the parental consent requirement?”
• Successfully acquiring parental consent was not coded as an exception.
• The existence of a judicial bypass procedure was not coded as an exception.
• Affirmative defenses to the parental consent requirement were coded as exceptions.
• “Serious health risk” was coded where the law included either a general serious health risk or limited the health risk to physical health. If the law limited the health risk to physical health it was noted in a Caution Note.
• When the law included an exception for a “medical emergency,” both “serious health risk” and “life endangerment” were coded.
• “Incest” was coded where the law included sexual abuse by a parent or family member.
• “Health” was coded where there was an exception for “health” broadly.
• “Rape” was coded where the law included an exception for victims of “sexual abuse.”

**Question 5.1:** “What venue is available to the pregnant minor?”
• Answer choices for this question were coded based on general terms for courts, independent on specific court name in a state.
• When the minor has the option to file in a “similar court” or “court of equal standing” in the county where the minor resides to one of the answer choices, such as “juvenile court” or “district court,” then all responses were coded.

**Question 5.2:** “Under what circumstances can the judge waive the parental involvement requirements?”
• “Abortion without consent is in the minor’s best interest” was coded where the standard in the law was that the “abortion without consent is in the minor’s best interest.”

**Question 5.4:** “Must the waiver be heard within a specified time frame?”
• This question was also coded based on the time frame in which a petition for waiver must be ruled upon if the law did not include a specified time frame for hearing the waiver.

**Question 5.5.1:** “What is the time frame in which a court must rule on an appeal?”
• This question was not coded based on the time frame in which a court must hear an appeal.
Question 5.6: “Does the state require the court to report information on judicial bypass?”

- This question was coded based on statistical reports related judicial bypass required to be reported by the courts in the law.

V. Quality Control

a. Quality Control – Background Research: All 51 jurisdictions were 100% redundantly researched to confirm that all relevant laws were being collected by the Researchers. The Researchers independently recorded the relevant citations on a Master Sheet for each jurisdiction that had abortion requirements for minors. The Master Sheet includes the most recent legislative history for the statute, regulation, case and/or attorney general opinion as well as its effective date. The Supervisor reviewed the original Master Sheet against the redundant Master Sheet, and the Team resolved all divergences (differences between research findings) prior to collecting the legal text.

   i. The research showed that 44 of 51 jurisdictions [AK, AL, AR, AZ, CA, CO, DE, FL, GA, IA, ID, IL, IN, KS, KY, LA, MA, MD, ME, MI, MN, MO, MS, MT, NC, ND, NE, NH, NJ, NM, NV, OH, OK, PA, RI, SC, SD, TN, TX, UT, VA, WI, WV, WY] have an abortion restriction for minors.

b. Quality Control – Original Coding: Quality control consisted of the Supervisor exporting the data into a Microsoft Excel document as the Researchers completed coding to examine the data for any missing responses, citations, and caution notes.

c. Quality Control – Redundant Coding: Quality control consisted of the Supervisor exporting the data into a Microsoft Excel document after the Researchers coded and redundantly coded to examine the data for divergences (differences between the coded responses).

   - **Redundant Coding for Batch One**
     The Supervisor assigned Batch One [AL, AZ, FL, KS, MO, OK, SD, TX, WV, WI] for redundant coding and the rate of divergence was 5.63% on May 21, 2018.

   - **Redundant Coding for Batch Two**
     The Supervisor assigned Batch Two [AK, AR, CA, CO, CT, DE, DC, GA, MT, TN, UT, VA, VT, WA, WY] for redundant coding and the rate of divergence was 7.5% on August 29, 2018.

   - **Redundant Coding for Batch Three**
     The Supervisor assigned Batch Three [NE, NV, NH, NJ, NM, NY, NC, ND, PA, RI, SC, OR, OH, KY, IN] for redundant coding and the rate of divergence was 6.94% on October 18, 2018.

   - **Redundant Coding for Batch Four**
     The Supervisor assigned Batch Four [HI, ID, IL, IA, LA, ME, MD, MA, MI, MN, MS] for redundant coding and the rate of divergence was 2.92% on December 10, 2018.
d. Quality Control – Post-Production Statistical Quality Control (SQC): The Supervisor typically runs a statistical quality control procedure after each dataset is completed. However, since this dataset was redundantly coded at 100% and the Team had a subject matter expert repeatedly checking the validity of the coding, there was no post-production statistical quality control check.

e. Quality Control – Final Data Check: The Team checked the final coding against secondary sources from Guttmacher. Each divergence was discussed as a group and resolved. Prior to publication, the Supervisor downloaded all coding data into Microsoft Excel to do a final review of coding answers, statutory and regulatory citations, and caution notes. All unnecessary caution notes were deleted, and all necessary caution notes were edited for publication.

VII. Quality Control – 2019 Update

a. Quality Control – Background Research: All 51 jurisdictions were researched to collect amendments to existing abortion requirements for minors, changes to case law/AG opinions, or newly enacted legislation relevant to abortion requirements for minors enacted since December 1, 2018. The Researchers consulted a combination of secondary sources (Guttmacher.org, Center of Reproductive Rights, ANSIRH) to verify changes to the law.

b. Quality Control – Original Coding: Quality control consisted of the Supervisor exporting the data into a Microsoft Excel document as the Researchers completed coding to examine the data for any missing responses, citations, and caution notes.

c. Quality Control – Redundant Coding: Quality control consisted of the Supervisor exporting the data into a Microsoft Excel document once the Researchers completed redundant coding to calculated divergence rates. 100% of the records with substantive updates to the law were redundantly coded. The initial assignment of redundant coding, for one jurisdiction (MO), produced a divergence rate of 2%. The additional assignment of redundant coding, for one jurisdiction (NV), which included updates to the records, produced a divergence rate of 2%. The Team discussed and resolved all divergences.

d. Quality Control – Final Data Check: Prior to publication, the Supervisor downloaded all coding data into Microsoft Excel to do a final review of coding answers, statutory and regulatory citations, and caution notes. All unnecessary caution notes were deleted, and all necessary caution notes were edited for publication.