Research Protocol for Abortion Reporting Requirements

Prepared by the Policy Surveillance Program Staff

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I. Date of Protocol Creation: December 2019

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

III. Primary Data Collection


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

   c. Data Collection Methods: The Policy Surveillance Program Staff (“Team”) building this dataset consisted of five legal researchers (“Researchers”) and one supervisor (“Supervisor”). WestlawNext was used to identify which states had abortion reporting laws. 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 reporting requirements:
a. abortion

b. ("terminat!" /s "pregnancy")

f. Inclusion and Exclusion Criteria:
   i. Included laws pertaining to reporting requirements regarding abortions:
      - Laws requiring general reporting of the performance of abortions.
      - Laws requiring the reporting of abortion complications.
      - Laws requiring the reporting of informed consent information.
      - Laws requiring the reporting of medical emergencies necessitating abortions.
      - Laws requiring the reporting of abortions performed on minors.
      - Court decisions and attorney general opinions directly affecting enforceability of state abortion reporting requirements. 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:
       - Tissue/pathologist reporting requirements
       - Requirements related to naturopathic physicians
       - Requirements to report fetal deaths that do not explicitly reference the reporting of abortions or termination procedures.

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:
      - “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 reporting requirements. 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” or forms incorporated by reference into policies are 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 Reporting Requirements 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 1:** “Is there a law imposing reporting requirements related to abortions?”
- States were coded as “yes” if they required abortion providers to report information related to the performance of abortions.

**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 not coded if the parent question (“Has the law been limited in whole or in part?”) was coded as “no.”
- 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 not coded if the parent question (“Has the law been limited in whole or in part?”) was coded as “no.”
- 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:** “Is there a law requiring general reporting of an abortion procedure?”
• “Yes” was coded where the law required that a report be submitted regarding the performance of any abortion.

Question 3.1: “Who must report the performance of the abortion in the general report?”
• This question was not coded if the parent question (“Does the state require general reporting of an abortion procedure?”) was coded as “no.”
• “Facility” was coded where the law required the person in charge of the facility to submit the report.
• “Facility” was coded, and a caution note included, where the law requires that the report be submitted by the person in charge of the institution where the abortion was performed, but if the abortion was performed outside an institution, the attending physician or his designee must prepare and file the report.
• “Physician” was coded where the law stated “health care provider.”

Question 3.2: “When must the general report be submitted?”
• This question was not coded if the parent question (“Does the state require general reporting of an abortion procedure?”) was coded as “no.”
• “Monthly” was coded where the law required a report to be submitted within a certain number of days after the end of the month in which an abortion was performed.
• Reporting deadline deferrals were captured in a caution note.

Question 3.3: “What information is required to appear in the general report?”
• This question was not coded if the parent question (“Does the state require general reporting of an abortion procedure?”) was coded as “no.”
• “Patient’s reason for abortion” was not coded if the patient’s reason for abortion had to be reported only in the case of an abortion performed because of a medical emergency.
• “Complications” was coded where the law required reporting of medical issues occurring during or after the abortion. This response was coded only if an explanation of complications is required to appear in a general abortion report, rather than in a separate document.
• “Medical emergency” was coded where the law required information regarding medical issues necessitating an abortion to appear in a general abortion report, rather than in a separate document. This response was coded when the law required the reporting, in a general abortion report, of the basis for the determination that a medical emergency existed necessitating an abortion.
• “Fetal heartbeat detection” was coded where the law stated that if an ultrasound was performed prior to the induced termination of pregnancy, the report shall also indicate whether or not a heartbeat was detected.

Question 3.4: “What is the penalty for failure to submit the general report?”
• This question was not coded if the parent question (“Does the state require general reporting of an abortion procedure?”) was coded as “no.”
• Penalties for this question were coded if they were authorized for any of the following: failure to submit a report; submitting a late report; submitting an incomplete report; or for the falsification of a required report.

**Question 3.5:** “What confidentiality protections does the law provide in submitting the general report, if any?”
• This question was not coded if the parent question (“Does the state require general reporting of an abortion procedure?”) was coded as “no.”
• Confidentiality protections were coded for this question if they were specific to the general abortion report(s) from providers.
• “Report must not include patient’s name” was coded where the law explicitly required that the patient’s name be redacted or not included on the report.
• “Report must not include patient’s identifying information” was coded where any specific identifying information other than the patient’s name (e.g. address) must not be included on the report.
• “Exempt from public record” was coded where the law included an exemption from state open record law, or where the law indicated that reports shall not be incorporated into the permanent official records of the system of vital statistics.

**Question 3.6:** “Are the general reports required to be published or disseminated by the state?”
• This question was not coded if the parent question (“Does the state require general reporting of an abortion procedure?”) was coded as “no.”
• “Yes” was coded where the law explicitly required the publication or dissemination of reports.

**Question 3.6.1:** “What confidentiality protections does the law provide regarding the public reports?”
• This question was not coded if the parent question (“Are the reports required to be published or disseminated by the state?”) was coded as “no.”
• Confidentiality protections were coded for this question if they were specific to the public report(s) regarding abortions.
• “Exempt from public record” was coded where the law included an exemption from state open record law, or where the law indicated that reports shall not be incorporated into the permanent official records of the system of vital statistics.

**Question 4:** “Is there a law requiring reporting of abortion complications?”
• “Yes” was coded where the law required the reporting of medical issues, which occurred during or after the abortion, in a separate report, rather than in a general abortion report.
• “Yes” was coded where the law required the reporting of abortion complications only for medication abortion and the reporting limitation to medication abortions was caution noted.

**Question 4.1:** “When must the abortion complications report be submitted?”
- This question was not coded if the parent question (“Does the state require reporting of abortion complications?”) was coded as “no.”
- Where the law required a separate complications report with varying reporting deadlines, we captured each deadline in a caution note.

**Question 4.2:** “What is the penalty for failing to report abortion complications?”
- This question was not coded if the parent question (“Does the state require reporting of abortion complications?”) was coded as “no.”
- Penalties for this question were coded if they were authorized for any of the following: failure to submit a report; submitting a late report; submitting an incomplete report; or for the falsification of a required report.

**Question 5:** “Is there a law requiring an informed consent report?”
- “Yes” was coded where the law required the reporting of compliance with an informed consent requirement regarding abortion in a separate report, rather than in a general abortion report.

**Question 6:** “Is there a law requiring a medical emergency report?”
- “Yes” was coded where the law required the reporting of medical emergencies, which necessitated an abortion, in a separate report, rather than in a general abortion report.
- “Yes” was coded where the law required the submission of a medical emergency report for certain gestational periods which were also captured in a caution note.

**Question 7:** “Is there a law requiring reporting related to a minor’s abortion?”
- “Yes” was coded where the law required a separate report for information related to a minor’s abortion, or where there is a section on the general report that must be completed regarding abortions performed on minors.

**Question 7.1:** “Who must report the performance of an abortion upon a minor?”
- This question was not coded if the parent question (“Does the state require reporting related to a minor’s abortion?”) was coded as “no.”

**Question 7.2:** “When must the report related to a minor’s abortion be submitted?”
- This question was not coded if the parent question (“Does the state require reporting related to a minor’s abortion?”) was coded as “no.”
- “Not specified” was coded when the report related to a minor’s abortion was required “immediately.”
Question 7.3: “What information is required to appear in the report related to a minor’s abortion?”
- This question was not coded if the parent question (“Does the state require reporting related to a minor’s abortion?”) was coded as “no.”
- For this question, information that must appear in an abortion provider’s report regarding an abortion performed on a minor was coded.
- Requirements for courts to report judicial waiver information were not coded in this dataset, but were coded in the Abortion Requirements for Minors dataset.
- “Evidence of parental consent” was coded only when the law requires specific evidence, such as documentation, to be submitted with the report.

Question 7.4: “What is the penalty for failure to report an abortion performed upon a minor?”
- This question was not coded if the parent question (“Does the state require reporting related to a minor’s abortion?”) was coded as “no.”
- Penalties for this question were only coded if explicitly authorized for failure to report regarding a minor’s abortion. Penalties for failure to comply with the general reporting requirements were not coded for this question.
- Penalties for this question were coded if they were authorized for any of the following: failure to submit a report; submitting a late report; submitting an incomplete report; or for the falsification of a required report.
- Penalties for this question were coded only for first violations.

V. Quality Control - 2018

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 reporting laws. 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 47 of 51 jurisdictions [AL, AK, AZ, AR, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MA, MI, MN, MS, MO, MT, NE, NV, NH, NM, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY] have a law imposing abortion reporting requirements.

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). The Team discussed and resolved all divergences for each Batch of states detailed below.

- **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 20.6% 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 increased to 25.08% on August 27, 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 decreased to 12.75% 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 5.54% 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.

VI. Quality Control – 2019 Update

a. **Quality Control – Background Research:** All 51 jurisdictions were researched to collect amendments to existing laws relevant to abortion reporting requirements, changes to case law/AG opinions, or newly enacted legislation relevant to abortion reporting requirements enacted since December 1, 2018. The Researchers consulted a combination of secondary sources (Guttmacher.org, Center for 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 once 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 calculate divergence rates. 100% of the records with substantive updates to the law were redundantly coded. The initial assignment of redundant coding, for eleven jurisdictions (DC, HI, ID, IL, IA, KS, LA, MS, MO, PA, TX), produced a divergence rate of 13%. The additional assignment of redundant coding, for ten jurisdictions (AR, CO, IL, KY, OH, SD, TN, UT, VA, WY), which included updates to the new iterations of the law, produced a divergence rate of 11%. The Team discussed and resolved all divergences.

d. **Post-Production Statistical Quality Control:** To ensure reliability of the data, a statistical quality control procedure (SQC) was run once all of the original and redundant coding was finalized on February 3, 2020. To conduct SQC, the Supervisor took a random sample of variables from the dataset for the Researchers to independently code. At that time, the divergence rate was 3.7%. Each divergence was then reviewed and resolved.

e. **Quality Control – Final Data Check:** The Team checked the final coding against secondary sources from Guttmacher. 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.