Research Protocol for Abortion Bans

Prepared by the Policy Surveillance Program Staff

December 2019
I. Date of Protocol Creation: December 2019

II. Scope: Compile state laws, regulations, case law, and attorney general opinions that regulate and ban the performance of certain abortions. 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 bans 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 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 bans. 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 banning the performance of certain abortions:
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a. ("abortion" “ban”)
b. ("abortion" “viability”)
c. ("abortion" “reason”)
d. ("abortion" “partial-birth”)

f. Initial Returns and Additional Inclusion or Exclusion Criteria:
i. Included laws pertaining to abortion bans:
   • Laws prohibiting or restricting later-term abortions.
   • Laws prohibiting specific methods of abortion.
   • Laws prohibiting abortions based on the individual’s reason for seeking an abortion.
   • Court decisions and attorney general opinions directly affecting enforceability of state bans on certain abortion bans.

   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 restricting monetary payments for abortions or fetal tissue.

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 laws prohibiting certain abortions. 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 Bans 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.
- When a law (passed, but not yet effective) was held unconstitutional before it became effective, a Caution Note stating the court’s decision was included and the law was added and coded upon the date it became effective.

**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 3.1:** “At what point does the state prohibit abortion?”
- When a state’s law had more than one gestational limit, the earliest specific gestational limit was coded. All other gestational limits, including a state’s total ban on abortion, were captured in a Caution Note.
- When an effective date of a specific gestational limit other than a total ban on abortion was contingent on a court ruling, the gestational limit was included in a Caution Note.
- If “viability” was not defined in terms of gestational age, it was assumed that viability is considered to occur later than the 3rd trimester in the law.
- “Fetal heartbeat” was coded where the law prohibited abortions after a fetal heartbeat was present, but no time frame was related to that event.
• If the law banned abortion upon the reversal of Roe v. Wade, the ban was noted in a Caution Note.
• If the law completely banned abortion, “Any point in pregnancy” was coded.
• If the law did not specify whether the gestational limit was measured from the moment of fertilization or from the last menstrual period (LMP), the gestational limit was coded as measured from the time of fertilization.

**Question 3.2:** “What exceptions, if any, does the law include?”
• When a state had more than one gestational limit, and different gestational limits included different exceptions, the exceptions for the earliest gestational limit (excluding total bans on abortion at conception) were coded.
• If the law included the ability to raise an affirmative defense, such defenses were coded as exceptions.
• “Serious health risk” was coded if the law limited the health risk to physical or mental health. Such limitations were noted in a Caution Note.

**Question 3.2.1:** “What does the state require when an abortion is provided under one of the exceptions?”
• When a state had multiple exceptions to the earliest gestational limit, and different requirements for different exceptions, the requirements for all of the exceptions were coded. The relationships between the different exceptions and their requirements were explained in a Caution Note.
• “Must be performed in a hospital” was coded if there was a hospital requirement specific to the exception, not if there was a general hospital requirement for abortions in the law.
• “Must be performed in a hospital” was not coded if there was an allowance for abortions to be performed in ambulatory surgical centers.
• Requirements related to the reporting of crimes to law enforcement were not captured.

**Question 4.1:** “What reasons are prohibited?”
• “Fetal anomaly” was coded where the law either included the possibility of a fetal anomaly or actually required a fetal anomaly to be present.

**Question 5.2:** “What exceptions, if any, does the law include?”
• When a state had multiple prohibited abortion procedures in their law, and different abortion procedures included different exceptions, the exceptions for all of the different abortion procedures were coded. The relationships between the different abortion procedures and their exceptions were explained in a Caution Note.
• If the law included the ability to raise an affirmative defense, such defenses were coded as exceptions.
• “Serious health risk” was coded if the law limited the health risk to physical or mental health. Such limitations were noted in a Caution Note.

**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 bans. 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 45 of 51 jurisdictions [AK, AL, AR, AZ, CA, CT, DE, FL, GA, IA, ID, IL, IN, KS, KY, LA, MA, ME, MI, MN, MO, MS, MT, NC, ND, NE, NH, NJ, NM, NV, NY, OH, OK, PA, RI, SC, SD, TN, TX, UT, VA, WA, WI, WV, WY] have a law banning certain abortions.

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 11.59% on May 17, 2018.

- **Redundant Coding for Batch Two**
  The Supervisor assigned Batch Two [AK, AR, CA, CO, CT, DE, DG, GA, MT, TN, UT, VA, VT, WA, WY] for redundant coding and the rate of divergence was 6.9% on August 23, 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 5% 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 4.68% on December 6, 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 abortion bans, new case law/AG opinions, or new abortion bans 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 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 calculate divergence rates. 100% of the records with substantive updates to the law were redundantly coded. The Researchers coded one state for the initial assignment of redundant coding and produced no divergences. The Supervisor assigned 15 iterations for redundant coding to check the updated record and the divergence rate was 14%. The Team discussed and resolved all divergences.

d. **Quality Control – Post-Production Statistical Quality Control (SQC):** 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 1, 2020. To conduct SQC, the Supervisor took a random sample of variables from the Abortion Bans dataset for the Researchers to independently code. At that time, the divergence rate was 2.2%. Each divergence was then reviewed and resolved.

e. **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.