

# 2012 MID-YEAR LEGISLATIVE WRAP-UP

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# 2012 AT THE MIDPOINT

Each year, anti-abortion legislators and activists seek to enact state laws restricting access to abortion. While over the last few years there has been an increasing hostility to women's access to a broad range of reproductive health care, the 2011 state legislative sessions were marked by unbridled animosity toward abortion and contraception. Since that time, citizens, advocates, and many stalwart legislators throughout the country have fought back, standing up for women and their access to reproductive health care. In addition, CRR and others have taken some of the most invasive and unconstitutional restrictions to the courts, where many of them have been enjoined or struck down entirely.

At the mid-point of 2012, anti-choice legislators continue to push an extremist agenda, proposing a host of new bills. So far, at least 15 states have enacted around 40 harmful laws. It will be crucial in the weeks and months ahead for advocates and legislators who believe in protecting women's reproductive rights and health continue to work against the hostile, anti-abortion, anti-family planning proposals currently under consideration.

The following report summarizes some of the trends we have observed thus far in 2012 and highlights some of the most damaging proposals that have become law this year.

# MAJOR TRENDS IN 2012

## INSURANCE RESTRICTIONS

For the third year in a row, state legislatures considered a number of proposals to limit or eliminate women's access to insurance coverage for abortion. Some legislatures focused on the state health exchanges that will be created as a result of the federal Patient Protection and Affordable Care Act. That Act includes a controversial provision, called the "Nelson Amendment," that explicitly allows states to ban abortion coverage from state exchanges altogether. In 2012, a range of anti-abortion insurance bills were proposed or considered in fifteen states, from bans on all insurance coverage for abortion to bans on insurance coverage in the health care exchanges. By June, Alabama, South Carolina, South Dakota, and Wisconsin had enacted exchange bans with limited exceptions, with similar bills pending in at least four states.

## TELEMEDICINE RESTRICTIONS

Anti-abortion legislators sought to limit women's access to medication abortion in 2012, with at least nine states considering proposals to prohibit health care providers from providing medication abortion through telemedicine. For rural and low-income individuals, telemedicine has become a critical delivery method for health care, enhancing the quality of care for many people in the United States. In the context of medication abortion, a rural patient may visit a local health clinic and be examined by local health care professionals, then talk with a physician working remotely who can review her health records, answer her questions, and provide the medication abortion while an on-site health care professional remains in the room to provide additional care. As of June, Wisconsin had banned the use of telemedicine for medication abortion, Oklahoma had added further restrictions to its existing telemedicine ban, and another such bill is still pending in Michigan. On a positive note, while the Minnesota legislature passed a similar proposal, Minnesota Governor Mark Dayton vetoed that bill in May. Read CRR's [veto letter](#) to Governor Dayton.

## TARGETED RESTRICTIONS OF ABORTION PROVIDERS (TRAP)

Anti-abortion legislators in 17 states this year proposed a number of bills that would regulate the provision of abortion services by imposing burdensome requirements that are different and more stringent than regulations applied to comparable medical practices. Thus far in 2012, Mississippi and Tennessee have passed TRAP legislation requiring any physician who provides abortion services to have admitting privileges at a local hospital. As always, the purpose of TRAP legislation is to make it harder for women to exercise their constitutional right to choose abortion. In fact, the legislators and supporters of the Mississippi legislation proclaimed far and wide that their intention with this bill was to close down the only abortion provider in the state. CRR has challenged this bill in federal court and as of July 11th, it has been temporarily enjoined. See the section on Mississippi below for more information. Finally, while a very harmful TRAP bill was passed by the Minnesota legislature, Governor Dayton vetoed it. Read CRR's [veto letter](#) to Governor Dayton. Although most legislatures have adjourned for the time being, Michigan legislators currently are considering several harmful TRAP bills.



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## REFUSALS

This year politicians on both the federal and state level have hidden behind the mantle of religion and moral belief to take steps to reduce access to health care for women. At least 14 states considered legislation to create or expand “refusal clauses”— bills that allow individuals and institutions to assert religious or moral objections to deny patients health care. By the midpoint of the year, Arizona and Kansas had enacted new “conscience provisions,” expanding the types of entities that can refuse to provide care or insurance to patients or employees. Missouri’s legislature passed a similar bill, but it was vetoed by Governor Jay Nixon.

## BANS ON LATER ABORTION

In the last three years, a small but growing number of states have banned abortions at 20 weeks post-fertilization age without regard for an individual woman’s circumstances. These laws endanger the health of pregnant women, who have a constitutional right to access this essential reproductive health care, and prevent physicians from exercising their best medical judgment in caring for their patients. While most of these proposals seek to ban abortion at 20 weeks post-fertilization age (i.e. 22 weeks from the woman’s last menstrual period (Imp), the commonly used method for computing the length of a pregnancy), Arizona passed a law in 2012 that bans abortion even earlier, at 20 weeks Imp. On July 12th, CRR along with the ACLU filed a lawsuit to block this law. Our motion for a temporary restraining order is pending before a federal judge.

In total in 2012, in addition to the even earlier and more restrictive Arizona bill, eight states considered bans on abortion at 20 weeks post-fertilization and Georgia and Louisiana passed them. Read CRR’s veto letters to Governor [Nathan Deal](#) and Governor [Brewer](#).

## UPCOMING BALLOT INITIATIVES

In November 2012, at least two states will have proposals on their ballots aimed at restricting women’s access to abortion and other reproductive health care. In Florida, the legislature has placed a proposed constitutional amendment on the ballot that, if approved by the voters, would roll back the explicit and protective right to privacy found in the Florida constitution and would also enshrine in the state constitution a discriminatory provision prohibiting the state from ever allowing funding for abortion except where necessary to save a woman’s life or in cases of rape or incest. In Montana, voters will be asked whether to approve a restriction on minor’s access to abortion that was initially passed by the legislature but vetoed by Governor Brian Schweitzer in part because it is unconstitutional under both the federal and Montana constitutions. At this point in the year, anti-abortion groups are still attempting to gather sufficient signatures to put anti-abortion proposals such as personhood on the ballot in other states, but thus far, no effort has been successful.

# STATE BY STATE: MAJOR RESTRICTIONS ON WOMEN'S ACCESS TO REPRODUCTIVE HEALTH CARE

## ALABAMA

Alabama passed a bill, SB 10, banning coverage of abortions under health plans offered in the state exchanges, except when the life of the woman is at risk and for victims of rape or incest.

## ARIZONA

Arizona enacted several anti-choice bills this session, including HB 2036, the most extreme abortion law in recent memory. This bill contains several restrictions on abortion that are clearly unconstitutional and discriminatory. HB 2036 prohibits abortions after 20 weeks from the woman's last menstrual period (Imp)—the earliest gestational age limit in the nation. The bill lacks even the most basic protections for women's lives and health, allowing abortions after 20 weeks Imp only in dire medical emergencies where the woman's life or physical health is in *immediate* danger. In addition, the bill unconstitutionally restricts women's access to medication abortion and includes a number of other burdensome regulations on both providers and patients. Read CRR's veto [letter](#) to Governor Jan Brewer. On behalf of physicians who perform abortions and serve women with high-risk pregnancies, CRR and the ACLU have filed a lawsuit in federal court challenging this dangerous and unconstitutional legislation. The suit was filed on July 12, 2012, and our motion for a preliminary injunction of the law is pending.

Another bill, HB 2625, weakens the state's contraceptive equity statute, which currently requires insurance plans to cover contraceptive drugs and devices in the same manner as other prescription drugs. The older law exempts only "religious employers" from this requirement, but HB 2625 expands the exemption to any employer that identifies itself as "religiously motivated." In addition, this bill eliminates an existing, explicit protection against discrimination toward employees who choose to obtain contraceptive coverage elsewhere due to their religious employer's refusal to cover it.

In addition, Arizona enacted HB 2800, a law that seeks to prohibit Planned Parenthood from receiving state funding. The bill prohibits the state and local governments from entering into a contract with or making a grant to any entity that provides abortions or that maintains or operates a facility where abortions are provided, other than those performed to save the woman's life or in cases of rape or incest. This bill is targeted at Planned Parenthood, which provides a full range of reproductive health care including abortion. This bill will limit women's access to a range of reproductive health services, such as birth control, Pap smears, and cancer screenings, and disproportionately harm low-income and uninsured women, for whom Planned Parenthood is often the only available provider.



## GEORGIA

By a narrow margin, Georgia enacted extreme and draconian legislation, HB 954, which bans abortion at 20 weeks post-fertilization (i.e., before viability). The bill provides only limited exceptions: for situations in which an abortion would be necessary to either save a woman's life, to prevent the risk of substantial and irreversible physical impairment of a major bodily function, or in cases of medically futile pregnancies. The law excludes mental health from its narrow health exception and contains a special clause prohibiting physicians from performing an abortion even if the physician believes there is a risk the woman may commit suicide.

## KANSAS

In 2012, Kansas sought to further narrow the availability of abortion and health services for women by passing SB 62, which broadly permits health care providers and institutions to refuse to provide critical health care. Kansas law already protects individuals and hospitals from participating in an abortion procedure if they object to doing so, but SB 62 now allows all health care facilities and their employees to refuse to participate in or refer for an abortion, reaching a broader group of individuals, entities and activities than the previous law. The bill also allows those individuals and entities to refuse to provide or refer for "any device or drug...an effect of which the person reasonably believes may result in the termination of a pregnancy," which some individuals may interpret as allowing them to refuse to provide or refer for certain forms of contraception.

Kansas also passed a provision (SB 294) within their budget that prohibits any state funding for abortion, unless the life of the woman is at risk.

## LOUISIANA

Louisiana, continuing its long track record of enacting harmful restrictions on abortion, this year enacted two significant anti-abortion laws. First, SB 708 changes existing law to require women seeking an abortion in Louisiana to view an ultrasound image, listen to a description of that image, and hear the fetal heartbeat a full 24 hours before the woman is permitted to have an abortion. The bill contains a narrow exception for women who are victims of sexual assault, and allows women who live 100 miles or more from the closest abortion provider to wait two hours as opposed to 24. Second, with SB 766, Louisiana also joined the group of states that bans abortion at 20 weeks post-fertilization, with only limited exceptions for situations in which an abortion would be necessary to either save a woman's life, to prevent the risk of substantial and irreversible physical impairment of a major bodily function, or in cases of medically futile pregnancies.

## MISSISSIPPI

In November 2011, voters in Mississippi resoundingly rejected a "personhood" proposal that could have banned abortion, as well as common forms of contraception and some fertility treatments. This year, politicians in Mississippi tried to accomplish through TRAP legislation what they could not accomplish with the **personhood initiative** last year. The legislature passed, and the governor eagerly signed, HB 1390, which requires all physicians "associated with" an abortion facility to have admitting privileges at a local hospital and "staff privileges to replace local hospital on-staff physicians." This bill was touted far and wide by its sponsors and supporters as being intended to close the only abortion clinic in the state and, therefore, end women's access to abortion in Mississippi. Indeed, there is no medical reason to require such privileges; no other physician who provides office-based surgery is required to have them. Requiring admitting privileges in

the context of abortion is clearly intended as a TRAP. There are many reasons why some physicians, including some abortion providers, do not have such privileges, including the fact that many hospitals are reluctant or unwilling to grant privileges to physicians who do not regularly admit patients to their hospital.

On June 27, CRR filed a lawsuit in federal court in Mississippi challenging this bill, which amounts to a ban on abortion. Soon thereafter, the judge temporarily **blocked** enforcement of the law and our motion is still pending asking the court to block the law through the duration of CRR's lawsuit.

## **NEW HAMPSHIRE**

In 2011, the New Hampshire legislature enacted a law, over the governor's veto, requiring parental notification when a minor seeks an abortion, unless there is a medical emergency or the minor seeks a waiver from a judge. The law required judges to rule on waiver petitions within 48 hours. In the 2012 session, the legislature passed HB 1723, lengthening the amount of time a court may take to rule on a waiver petition to two "court days." As a result, a minor could be delayed as many as four days while waiting for the judge to rule on her petition—making it even more difficult and time-consuming for a minor to obtain an abortion if she feels she cannot involve a parent.

The New Hampshire legislature also passed HB 1679, a bill banning so-called "partial birth abortion" that would be more onerous than the federal ban that was upheld by the U.S. Supreme Court in 2007. The federal ban contains a limited exception allowing the banned procedure if it is necessary to save a woman's life. HB 1679 further restricts and delays physicians' ability to provide lifesaving care by requiring two physicians who are neither legally nor financially affiliated with each other to agree on the need for the abortion before the procedure could be performed. Although Governor John Lynch vetoed this bill, citing concerns about its impact on women in emergency medical situations, the New Hampshire legislature overrode his veto.

## **NORTH CAROLINA**

In 2011, North Carolina passed a budget, over the Governor's veto, that prohibited Planned Parenthood from receiving any state funds. Planned Parenthood took the state to court, which blocked that part of the budget from taking effect. This year, the legislature passed another appropriations bill with the goal of defunding Planned Parenthood. HB 950 requires that state funding for family planning and pregnancy prevention services go directly to local health department recipients, rather than permitting the state or local departments to contract with other family planning providers as they have traditionally done. As noted earlier, Planned Parenthood provides a full range of reproductive health care services and is often the only provider of these services for low-income women. Governor Bev Perdue vetoed this legislation, but the North Carolina overrode her veto, enacting into law a budget that will harm the many women who rely on Planned Parenthood for services.

## **OKLAHOMA**

As it has for the last several years, Oklahoma's legislature once again spent a significant portion of its legislative session focused on reducing women's access to health care and restricting women's reproductive rights. Although many proposals were defeated, including



a controversial personhood bill, the legislature ultimately enacted three new anti-abortion laws: First, HB 1274 requires any patient obtaining an abortion after eight weeks to be offered the opportunity to hear the fetal heartbeat. This type of law is similar to other measures that either offer the chance or force women to view images and hear descriptions of ultrasounds, is motivated by legislators' belief that women are incapable of making their own considered decisions without intervention by the state. Second, HB 2561 imposes additional civil liability on abortion providers—but not any other type of health care provider—who have otherwise been found negligent in the provision of medical care. Finally, HB 2381 expands Oklahoma's existing ban on the use of telemedicine for mifepristone to ban telemedicine for any type of medically induced abortion.

**The Oklahoma legislature also debated, but did not pass, a “personhood” bill the impact of which was completely unclear. At the same time, anti-abortion, anti-contraception activists were attempting to place another personhood proposal on the Oklahoma ballot for November 2012 that, if approved by the voters, could have banned birth control and fertility treatments, along with abortion. The law would have had a host of other unintended consequences, affecting every part of Oklahoma law. CRR sued to prevent this proposal from being placed on the ballot, and in May, the Oklahoma Supreme Court unanimously and emphatically agreed with us, finding that the measure was clearly unconstitutional and thus “void on its face.”**

## **SOUTH CAROLINA**

South Carolina joined the states targeting women's access to insurance coverage for abortion by passing SB 102, a ban on abortion coverage in the exchanges except in cases where an abortion is necessary to save the life of a woman threatened by physical illness or in cases of rape or incest.

## **SOUTH DAKOTA**

In 2012, South Dakota continued its ongoing attacks on women's health and rights, passing two different restrictions on abortion. Under HB 1185, insurers in the state health care exchange are prohibited from offering insurance coverage for abortion unless the procedure averts a woman's imminent death or serious health risks.

Second, South Dakota amended a law passed in 2011 that created a complicated, vague and unconstitutional requirement. The 2011 law forces women to make several trips to their abortion provider, wait three days between those visits, *and* go to a crisis pregnancy center for forced counseling before being allowed to obtain an abortion. The law also required the physician providing the abortion to go through a vague set of “risk factors” with each patient, regardless of whether they were relevant to the patient and without adequate guidance as to how to determine which risk factors to cover. The ACLU and Planned Parenthood sued the state, and a federal court enjoined the 2011 law. This year, the legislature passed SB 1274, amending part of the 2011 law associated with the risk factor screening but retaining the same 72 hour waiting period and required visit to a crisis pregnancy center. The ACLU and Planned Parenthood have added claims against these provisions to their ongoing case.

## TENNESSEE

As in Mississippi, the Tennessee legislature enacted a law, HB 3808 restricting access to abortion by requiring any physician who provides abortion services to have admitting privileges at a nearby hospital. See the section above about Mississippi for more on why admitting privileges are a TRAP.

## UTAH

This session, Utah, with HB 461, enacted the longest “waiting period” currently being enforced in the country. The previous law required an abortion patient to receive state-mandated counseling, in-person, at least 24 hours prior to the abortion. HB 461 lengthens that waiting period to 72 hours. By extending the waiting period an extra *two* days, the state is clearly delaying women’s care to send a message that it does not believe women are capable of making their own decisions and to punish women for making decisions the state does not agree with. Read CRR’s veto [letter](#) to Governor Gary R. Herbert. See the section on Virginia for more on why two-trip requirements harm women.

## VIRGINIA

Amid intense controversy, Virginia passed HB 462, which requires any woman seeking an abortion to visit the health care provider at least 24 hours in advance and to be given an ultrasound during that first visit. The woman must be offered an opportunity to view and receive a printed copy of the ultrasound image, and to hear the fetal heartbeat. The law contains narrow exceptions for women in specific situations, such as victims of sexual assault or incest who reported the crimes to law enforcement, and allows women who live 100 miles or more from the closest abortion provider to wait two hours as opposed to 24.

Requiring women to make multiple trips to a health care provider before being allowed to receive an abortion imposes significant burdens, especially on low-income women who need child care or who lack access to transportation. These laws also impose onerous burdens on women who are experiencing domestic violence, as pregnancy is a particularly dangerous time in an abusive relationship. The logistics associated with two trips to a clinic often increase the risk that the abuser will attempt to thwart the woman’s ability to obtain care.

## WISCONSIN

This year, Wisconsin took several steps to limit women’s access to reproductive health care. First, Wisconsin joined the states seeking to limit women’s access to abortion by eliminating insurance coverage. SB 92 prohibits any insurance plan offered through the state health care exchange from covering an abortion, unless the woman has been the victim of sexual assault or incest and has reported to the authorities or if the abortion is necessary to save the woman’s life or to prevent grave, long-lasting physical health damage. Second, SB 306 restricts the provision of medication abortion. The bill bans telemedicine for the provision of medication abortion, but also imposes a variety of other burdensome and in some cases, vague requirements on providers. Due to these vague provisions and the criminal penalties associated with any violation of them, this bill has led to at least a temporary halt to all medication abortion provision in the state.

# A NOTE ABOUT PROACTIVE LEGISLATION

This report is intended to canvass some of the more significant trends in reproductive health legislation and highlight some of the most troubling restrictions passed thus far. While the majority of reproductive health legislation enacted this year was restrictive, there were also some positive advances in the form of policies related to maternal health and rights. For example, several states enacted important new laws that prohibit shackling of prisoners during labor and delivery. For a more complete look at proactive legislation in 2012, please see our year-end review to be published in early January 2013.

# CONCLUSION

In at least 15 states, legislation designed to restrict women's access to reproductive health care and impinge on their constitutional rights has already become law. As the year continues, and more restrictive bills are considered, pro-choice advocates and legislators in several states will have the opportunity to prevent these harmful public health choices from being made in their own states.

Over the next six months, the Center for Reproductive Rights will continue to analyze the impact of this year's legislation and to work with advocates and legislators to oppose similar legislation.

For more information on individual states' new laws and state legislative activity across the country, please contact **Jordan Goldberg**, State Advocacy Counsel, at [jgoldberg@reprorights.org](mailto:jgoldberg@reprorights.org). For press inquiries, please contact **Kate Bernyk**, at [kbernyk@reprorights.org](mailto:kbernyk@reprorights.org).