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State Policy Trends 2020: Reproductive Health and Rights in a Year Like No Other

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This analysis includes legislative action that occurred between the article's initial publication and the end of 2020.

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The year 2020 was nothing if not extraordinary. There was a global pandemic and recession, calls to address racial injustice and police brutality after the racist killings of Black Americans—including George Floyd, Breonna Taylor, Ahmaud Arbery and Rayshard Brooks—and tumultuous elections.

In the first half of the year, responding to the coronavirus pandemic was the most important issue for state policymakers. The pandemic spurred governors and state legislatures across the country to focus on supporting their residents' health care access and providing expanded safety-net programs. At the same time, many governors pursued one of two diametrically opposed courses of action: either protecting access to reproductive health care or attempting to ban abortion.

In June, the U.S. Supreme Court struck down an abortion restriction, but the opinion left the door open for states to adopt other similar restrictions. Indeed, lower courts are already incorporating this ruling into their decisions. For example, appellate courts have upheld abortion restrictions in Arkansas and Kentucky related to clinic regulations, and upheld a law that would allow the Louisiana and Texas Medicaid programs to exclude abortion providers.

In the midst of the pressing issues of the past year, state legislatures also addressed reproductive health, but not as much as in recent years. This year, 27 abortion restrictions were enacted, as were 21 provisions that protect and expand access to abortion services (including two identical sets of provisions in Virginia), and another 68 provisions that expand access to reproductive health services and education. However, there were about half as many provisions enacted as there were in 2019. (Counts of this year's provisions, highlighting the three main categories, follow this analysis.)

Coronavirus Crisis

As state governors responded to the COVID-19 pandemic, they affected reproductive care in countless ways. Governors issued orders to protect access to health care, preserve supplies of protective equipment, and reduce exposure to and transmission of the coronavirus. In some states, these orders protected reproductive health care; in others, governors used the pandemic as an excuse to restrict this care. The orders expired over the summer, as the pandemic eased in many states.

Executive orders in 23 states protected access to reproductive health care during the initial stages of the pandemic. Some of these state orders ensured access to obstetric and gynecologic care, or reproductive care generally, while

others specifically included access to abortion, family planning and pregnancy-related care. The governors in these states recognized that this care is essential and timely, and has a profound impact on a patient's life and well-being.

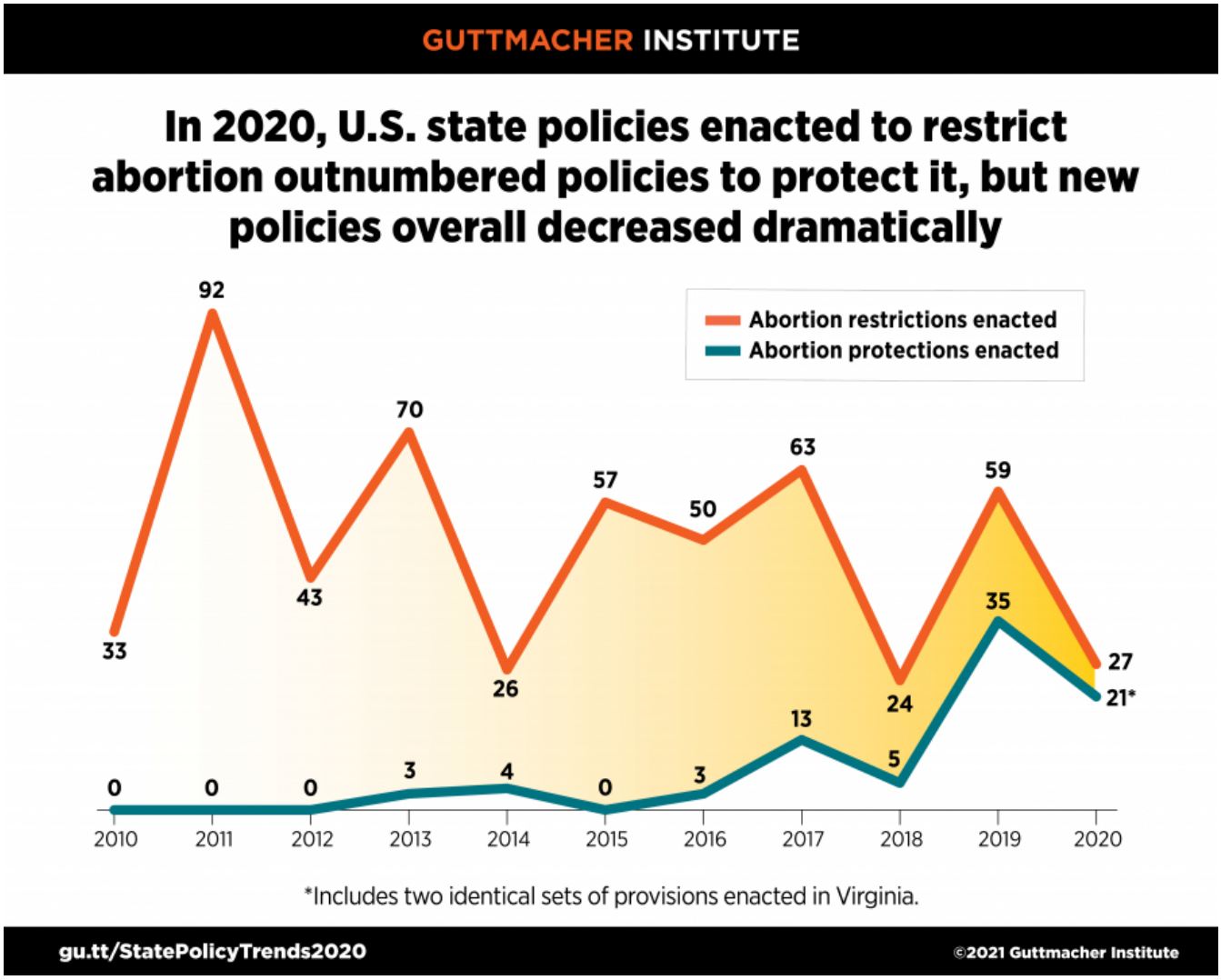
Governors in 11 states, mostly in the South, used the pandemic to restrict access to abortion care by issuing orders that prohibited abortion in the name of preserving protective equipment. However, because abortion care requires little or no protective equipment and is essential to individuals' health, courts prohibited the orders from taking effect in most of these states. Some orders were temporarily allowed to take partial or full effect; as a result, abortion care was disrupted in Arkansas, Ohio, Tennessee and Texas during the spring.

Abortion

In 2020, abortion restrictions were not as much a focus of state legislatures as they had been in recent years, but more legislation was passed last year than in the period from the mid-1980s through the early 2000s. Tennessee enacted the most comprehensive legislation: The state banned abortion as early as six weeks of pregnancy, banned abortion for sex or race selection or Down syndrome, required an ultrasound before the abortion and counseling that a medication abortion can be reversed, and imposed more barriers on minors seeking abortion and additional limits on postviability abortion. (The provisions related to the six-week abortion ban and the medication "abortion reversal" counseling requirement are not in effect as a result of legal challenges.)

Ten other states also enacted new restrictions:

- Mississippi banned abortion for sex or race selection or genetic anomaly
- North Dakota banned the standard method of abortion used after 15 weeks of pregnancy
- Idaho and Utah banned abortion if *Roe v. Wade* is overturned
- Ohio, Oklahoma and Utah amended their clinic regulations
- Indiana and Utah added to their counseling requirements
- Iowa required patients to make two visits (one for counseling and the second for the abortion) but the restriction is not in effect due to court action
- Florida mandated notarized parental consent
- Mississippi amended its abortion reporting requirements
- West Virginia required physicians to preserve the life of a fetus delivered alive after an abortion



Efforts to protect and expand abortion access had some success in 2020, although the legislation was not as extensive as it was in 2019. Virginia repealed its burdensome and unnecessary regulations on abortion clinics, allowed nurse practitioners to provide first-trimester abortions, and rescinded mandatory ultrasound, abortion counseling and waiting period requirements.

Over the governor's objections, the Massachusetts legislature affirmed in the last week of 2020 the right to prevent, continue or terminate a pregnancy; authorized abortion provision by advanced practice clinicians; and exempted 16- and 17-year-olds from the parental consent requirement for abortion. In the District of Columbia, a new law codified the right to reproductive health services and prohibited prosecution for self-managed abortion.

In November, voters in Colorado and Louisiana made opposing choices on abortion ballot initiatives. In Colorado, voters defeated an effort to ban abortion at 22 weeks of pregnancy; this protected access to abortion care later in pregnancy in that state, where the one-way driving distance for an abortion at and after 22 weeks would have increased by nearly 30 times had the ban been approved. The defeat also protected care for those across the nation, as availability of abortion later in pregnancy is very limited. Colorado's latest statistics show that people from at least 30 states came to the state for abortion care. In Louisiana, however, voters approved a constitutional amendment that explicitly says the state constitution does not protect abortion, a move that would preclude the option of challenging any state abortion ban or restriction should the U.S. Supreme Court overturn abortion rights at the federal level.

Pregnancy Care and Maternal Mortality

Fully 40% of the enacted provisions on reproductive health and rights in 2020 seek to improve the quality of and access to pregnancy-related care, including enhancing state committees that examine maternal mortality and providing reproductive health care for incarcerated individuals.

California, Georgia, Maryland, Missouri, New York and Virginia adopted provisions related to maternal care. Notably, Georgia will expand Medicaid coverage for postpartum care to six months from 60 days and cover lactation services. Virginia directed its board of health to develop certification for doulas (a step toward getting Medicaid reimbursement) and required providers to screen patients for prenatal or postnatal depression if they were pregnant in the last five years. And a new law in Maryland requires ongoing state-developed implicit bias training for anyone who provides pregnancy, labor and delivery, postpartum or neonatal care.

California, Florida, Louisiana, New Jersey, South Carolina, Tennessee and Virginia adopted laws to improve reproductive health care for those who are incarcerated, primarily by expanding pregnancy-related health care. For example, the new California and Tennessee laws require expanded access to prenatal and postpartum care for incarcerated individuals (including abortion care in California). Florida, Louisiana, New Jersey and South Carolina prohibited the use of solitary confinement for those who are pregnant, and New Jersey and South Carolina restricted the use of shackles during pregnancy.

Delaware, Maine, Maryland, Tennessee, Vermont, West Virginia and DC all amended laws governing their maternal mortality review committees, which investigate pregnancy-associated deaths and identify ways to reduce maternal mortality. For example, the Maryland legislation expands the scope of the state's program to include reviewing and reporting on severe maternal morbidity. Another Maryland law expands the types of participants in stakeholder meetings to include those who reflect the racial and ethnic diversity of women most affected by maternal mortality in the state, as well as families and women who have been directly affected by maternal mortality or near-death, high-risk or difficult pregnancies. Delaware established a perinatal quality collaborative that seeks to improve pregnancy outcomes through improved treatment for pregnancy-related hemorrhaging and substance use, as well as by adopting other best practices.

Bolstering legislative efforts, three states took other actions to improve maternal health care. The governors of Michigan and Nevada have declared racism, including in pregnancy-related care, as a public health crisis. The Michigan order, among other things, requires all health care providers and anyone employed by Michigan Department of Health and Human Services to receive implicit bias training to reduce racial disparities in care, including in maternal health services. In Arizona, funding for health services, including the maternal mortality review program, was included in a ballot initiative approved by voters on recreational cannabis.

Other Reproductive Health Services

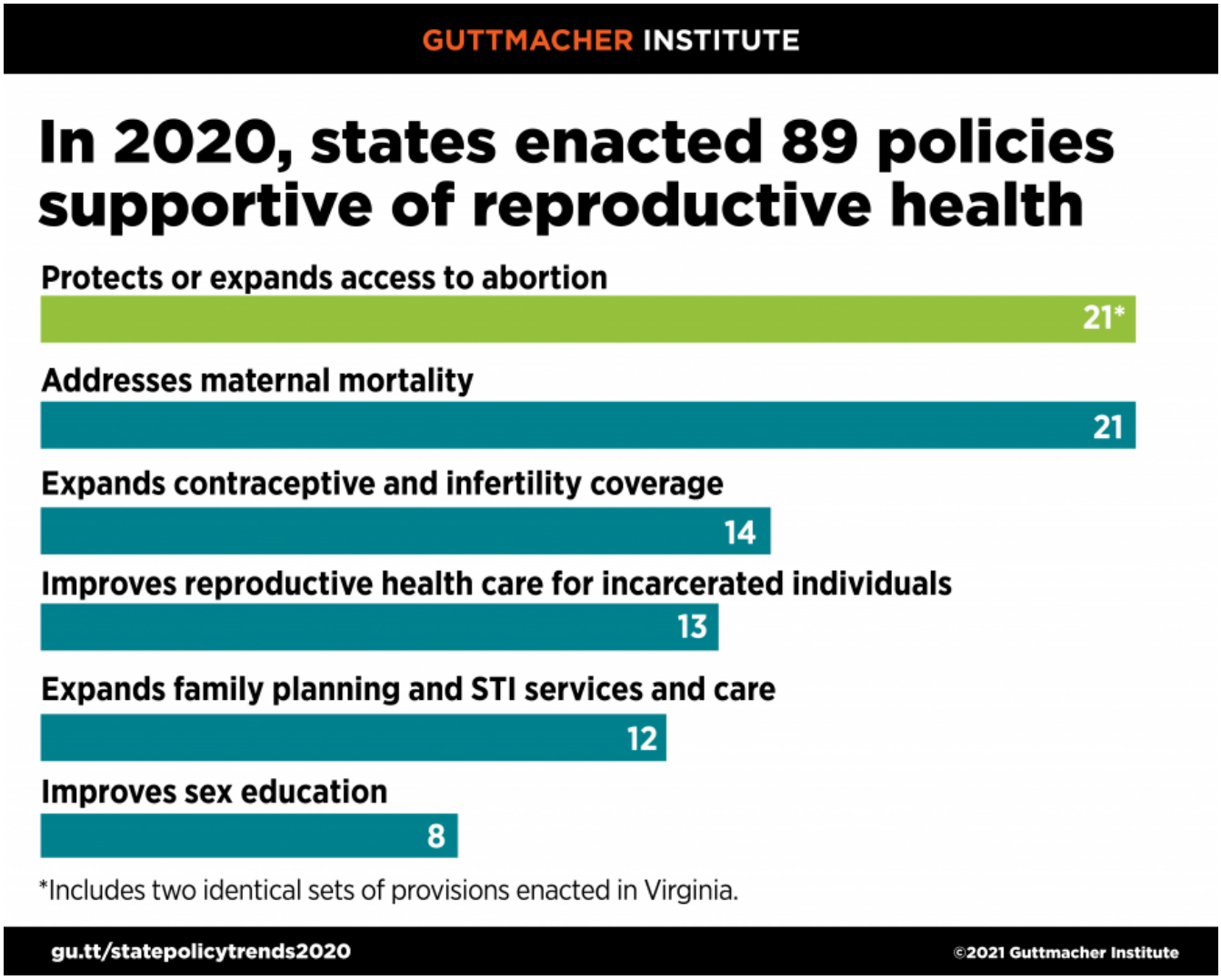
This year, Colorado, New Jersey, Vermont, Virginia and West Virginia enacted legislation that expands access to contraceptive, HIV prevention services or infertility care. For example, Vermont now allows pharmacists to prescribe self-administered hormonal contraceptives (including the pill, patch and ring) and requires insurance to cover these services. Colorado now allows pharmacists to prescribe and dispense preexposure prophylaxis and postexposure prophylaxis for HIV prevention, and requires health plans to cover these medications.

Colorado and New Jersey passed laws to require private health insurance coverage for infertility services, and Maryland amended its existing requirements to include unmarried and same-sex couples. The Colorado legislation was broadest, applying to infertility treatment as well as preservation of sperm, eggs and embryos, and prohibiting plans from imposing coverage limitations or copayments that are different from those imposed on other covered medical care.

In the past four years, nearly a quarter of states have implemented or amended laws on insurance coverage of contraceptives. This year, a new Virginia law required private health plans to cover recommended preventive services, such as STI screenings and contraceptive care, without cost sharing. Since 1997, Virginia had only required health plans to offer coverage for contraceptives. New Jersey and West Virginia also improved their existing contraceptive coverage requirements.

And in Washington state, voters, through the ballot initiative process, ensured that comprehensive sex education will be mandatory in public schools.

In 2021, state legislatures will face an unprecedented situation, as they attempt to mitigate the effects of the pandemic; contend with reduced tax revenue and budgets; and begin to address systems based on racial discrimination, including housing, employment, policing, education and health care. It remains to be seen whether reproductive health will receive as much attention as it did in 2020 or in previous years.



Counts of state legislation in 2020 (as of January 1, 2020):

Reproductive Health and Rights Overall

- 1,360 provisions introduced in state legislatures on all reproductive health and rights topics
    - 121 provisions enacted
    - 533 provisions introduced that would protect reproductive rights or expand access to reproductive health
        - 97 provisions enacted
    - 289 provisions introduced that would restrict access to reproductive health or curtail rights
        - 30 provisions enacted

Abortion

- 143 provisions introduced that would protect or expand access to abortion care
    - 21 provisions enacted
- 236 provisions introduced that would restrict access to abortion care
    - 27 provisions enacted
- 483 provisions restricting access to abortion care have been enacted since the beginning of 2011

Contraception

- 160 provisions introduced that would protect or expand access to contraceptive services
    - 19 provisions enacted

Maternal Health

- 160 provisions introduced that would expand access to or improve the quality of maternal health care
    - 34 provisions enacted

Information on legislation and enactments on specific topics can be found in our State Policy Update, which is updated twice a month.

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