

BEYOND BORDERS

Bringing Abortion Law & Policy Experiences from Around the World to the United States

Policy Considerations

The following are cross-cutting considerations that decision-makers and advocates may want to account for when integrating the arguments and approaches in this resource into state and local law and policy reform efforts.

Federal Law:

In some cases, federal law may restrict or preempt the extent to which states are able to fully adopt the policy proposals referenced in this resource. Moreover, certain aspects of federal law relevant to the topics covered by these reports are currently in flux due to actions by the current administration. We recommend that lawmakers consult with U.S. lawyers with expertise around how federal law interacts with state law for each of the topics when selecting or adapting a specific policy proposal to their state's context.

Role of Courts:

Litigation in both federal and state courts continues to shape access to abortion throughout the United States. Ongoing federal litigation may affect the applicability of various federal laws and policies that are relevant to the topics covered by the reports. In the current political climate, legal challenges to any newly adopted state laws and policies are also likely. Where feasible, we recommend collaborating with U.S. experts when drafting legislation to minimize the risk of a potential legal challenge (e.g., through inclusion of legislative findings, strong statutory language, and evidence-based justifications).

Political and Cultural Context:

The policy proposals included in this resource range from sweeping to incremental, acknowledging that “progress” in abortion law and policy may look very different depending on the context. What is feasible and strategic may differ by state, and not all policy proposals included in this resource will be appropriate for a given political and cultural context. Specific policy proposals should be adapted to meet the needs of state contexts in alignment with state based-advocates, providers, and directly affected communities.

Implementation and Enforcement:

Adopting laws and policies that successfully integrate progressive human rights standards or principles does not guarantee their effective and equitable implementation or enforcement. Advocates and decision-makers should consider the administrative capacity, funding mechanisms, and oversight structures necessary to translate legal and policy reforms into tangible changes for communities. This includes ensuring access to abortion for historically marginalized populations, including through the removal of potential barriers to care that disproportionately affect these communities.

International Standards, Principles, and Obligations:

International human rights treaties provide the normative foundation for the majority of the legal standards and principles highlighted in this resource. Various international human rights mechanisms exist to monitor a country's implementation of its obligations under these treaties, as well as hold it accountable for failures to do so. Explicit references to these legal obligations, in addition to specific recommendations by human rights bodies and experts, have proven an effective strategy for persuading decision-makers around the world to liberalize abortion laws.

In order for the U.S. courts to enforce human rights obligations, the United States would need to take additional steps for the treaties it has ratified, as well as ratify additional treaties. However, the United States is bound under international law to implement these treaty obligations, and some U.S. courts have relied on international human rights law as persuasive authority for the interpretation of domestic laws – indicating that these standards and principles may nonetheless serve to strengthen calls for abortion law and policy reform in the country as well.

The guidance of other international organizations, such as the WHO, has also been highly influential in countries worldwide, prompting or informing many of the positive law and policy reforms discussed throughout this resource.

Data and Evidence:

Global, comparative, and national data inform and influence not only the recommendations issued by international organizations and experts, but also the laws and policies adopted by decision-makers in other countries referenced throughout this resource. In many parts of the United States, strengthening local and state-level data collection and monitoring systems may be necessary to establish baselines, measure progress, and hold institutions accountable.

Collaboration Across Issues and Causes:

The topics covered by this resource are relevant for legislative and policymaking efforts involving other issues (e.g., gender-affirming care), and specific policy proposals presented here have the potential to effect broader change across various progressive causes (e.g., health care access, gender equity, racial justice, and economic security). We recommend that lawmakers identify opportunities to build cross-sector support for specific policy proposals referenced in this resource, as well as engage with affected communities and other relevant stakeholders.

Messaging:

While this resource focuses primarily on normative standards — whether those established by international organizations or adopted by various countries — it also highlights narrative framings that have proven useful to advocates and decision-makers during the law reform process.



STATE INNOVATION EXCHANGE



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