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# Enforcement Module for State Abortion Laws

*Model Legislation & Policy Guide*



*Advancing the Human Right to Life  
in Culture, Law, and Policy*

# INTRODUCTION

One of the most important lessons learned from the criminal case against Kermit Gosnell and from the substandard and dangerous practices at his West Philadelphia abortion “house of horrors” is the need to appropriately and consistently enforce state abortion laws. Protective laws do no good if they are simply on the books, but are not properly enforced.

During its exhaustive review of the evidence against Kermit Gosnell, a grand jury found fault with repeated failures “to enforce laws that should afford patients at abortion clinics the same safeguards and assurances of quality health care as patients of other medical service providers,” specifically noting that even nail salons “are monitored more closely” than abortion clinics. As the Gosnell grand jury concluded, to prevent future abortion tragedies, we “must find the fortitude to enact and enforce the necessary regulations. Rules must be more than words on paper.”<sup>1</sup>

In *Planned Parenthood v. Casey*, the U.S. Supreme Court validated abortion regulations that advanced a state’s “legitimate interest” in maternal health.<sup>2</sup> Such maternal health laws can take a variety of forms and include mandating that abortion clinics meet medically appropriate health and safety standards, requiring informed consent and parental involvement, demanding that abortion clinic personnel report suspected child sexual abuse, ensuring that abortion-inducing drugs are administered safely, and prohibiting dangerous late-term abortions. Further, following the Supreme Court’s 2016 ruling in *Whole Women’s Health v. Hellerstedt* (striking down Texas’ health and safety standards for abortion facilities), states are still not barred from enacting health regulations that further a “legitimate interest in protecting women’s health.”<sup>3</sup>

These and other abortion-related requirements vary widely from state to state, and the enforcement and potential penalties for violations of these laws also differ. Some states have no statutory penalties for violation of maternal health laws, some have penalties but no reliable methods of enforcement, and others have statutory or administrative penalties but decline to consistently enforce them. How each state protects women from the negative impact of abortion and simultaneously ensures that abortion laws are properly enforced remains an important issue for state officials and the public.

AUL’s *Enforcement Module* provides state legislators with a number of options for the enforcement of current or future abortion laws. These options embody a preference for state

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<sup>1</sup> See Report of the Grand Jury, MISC. NO. 0009901-2008 (Jan. 11, 2011).

<sup>2</sup> *Planned Parenthood v. Casey*, 505 U.S. 833, 846 (1992).

<sup>3</sup> *Whole Woman’s Health v. Hellerstedt*, 136 S. Ct. 2292, 2311 (2016).

officials to conscientiously and consistently enforce abortion laws through investigations, criminal complaints, fines and other administrative penalties, and injunctions against continuing and future violations of protective laws.

Specifically, the *Enforcement Module* includes model language for these enforcement options:

- Criminal penalties
- Two civil enforcement options:
  - Civil penalty or fine of a specified amount or range administered by state officials
  - Possibility of a civil lawsuit brought by the party harmed by the violation (*e.g.*, the woman hurt in the abortion clinic)
- Administrative action against an abortion facility's license (*e.g.*, suspension or revocation) initiated by state officials
- Action for injunctions (to prevent continuing and future violations) initiated by state officials (*i.e.*, the Attorney General's Office or the local district attorney)
- Professional/disciplinary actions (*e.g.*, malpractice actions, complaints against an individual abortion provider's medical license, or complaint against an abortion facility's license)

Appendices to the *Enforcement Module* provide sample complaint forms that can be adapted by state officials and used to receive, document, and catalog complaints against abortion providers.

The *Enforcement Module* also includes a section on comprehensive inspections and investigations of licensed abortion facilities. This model language permits authorized state officials to enter and inspect or investigate any licensed abortion clinic when there is "reasonable cause to believe" that any abortion-related laws, administrative rules, or regulations have been violated. Such inspections and investigations are critical to safeguarding maternal health and to providing needed accountability and oversight to the abortion industry.

For more information and drafting assistance, please contact AUL at [Legislation@AUL.org](mailto:Legislation@AUL.org).

# ENFORCEMENT MODULE FOR STATE ABORTION LAWS

**[Drafter's Note:** *AUL should be consulted for drafting assistance with regard to these enforcement options. For example, AUL can assist in the drafting of specific findings of fact that should be adopted in support of the enforcement options legislators propose. These model provisions may be enacted in whole or in part, as stand-alone legislation or as an amendment to existing abortion laws.*]

## GENERAL CRIMINAL LIABILITY

(a) A [person] who intentionally, knowingly, or recklessly violates any provision of [this [Act or Section] or any rules and regulations adopted under this [Act or Section]; OR insert specific reference(s) to state abortion-related statute(s), regulations(s), or rule(s)] is guilty of a [Insert appropriate penalty/offense classification].

In this Section, “**intentionally**” is defined by [Section] [Insert appropriate section number] of the [Criminal/Penal Code].

(b) No criminal penalty may be assessed against the pregnant woman upon whom the abortion is performed for a violation of any provision of [this [Act or Section] or any rules and regulations adopted under this [Act or Section]; OR insert specific reference(s) to state abortion-related statute(s), regulation(s), or rule(s)].

## GENERAL CIVIL LIABILITY

### Option 1: Civil Penalties Administered by State Authorities

(a) Any violation of [this [Act or Section] or any rules and regulations adopted under this [Act or Section]; OR insert specific reference(s) to state abortion-related statute(s), regulation(s), or rule(s)] may be subject to a civil penalty or fine up to [Insert appropriate amount] imposed by [Insert name of appropriate state official(s), department(s), and/or agency/agencies].

(b) No civil penalty may be assessed against the pregnant woman upon whom the abortion is performed for a violation of any provision of [this [Act or Section] or any rules

*and regulations adopted under this [Act or Section]; OR insert specific reference(s) to state abortion-related statute(s), regulation(s), or rule(s)].*

(c) Each day of violation constitutes a separate violation for purposes of assessing civil penalties or fines.

(d) In deciding whether and to what extent to impose fines, the [*Insert name of appropriate state official(s), department(s), or agency/agencies*] shall consider the following factors:

- (1) Gravity of the violation(s) including the probability that death or serious physical harm to a patient or individual will result or has resulted;
- (2) Size of the population at risk as a consequence of the violation(s);
- (3) Severity and scope of the actual or potential harm(s);
- (4) Extent to which the provisions of the applicable statute(s) and regulation(s) were violated;
- (5) Any indications of good faith exercised by [*abortion facility, physician, licensee, and/or other appropriate term*];
- (6) Duration, frequency, and relevance of any previous violations committed by the [*abortion facility, physician, licensee, and/or other appropriate term*]; and
- (7) Financial benefit to the [*abortion facility, physician, licensee, and or other appropriate term*] of committing or continuing the violation(s).

(e) Both the Office of the Attorney General and the Office of the District Attorney [*or other appropriate authority*] for the county in which the violation(s) occurred may institute a legal action to enforce collection of civil penalties or fines.

## **Option 2: Statutory Cause of Action for Harmed Party**

Any [*person*] who violates [*this [Act or Section] or any rules and regulations adopted under this [Act or Section]; OR insert specific reference(s) to state abortion-related statute(s), regulation(s), or rule(s)*] shall be civilly liable to the person or persons adversely affected by

the violation(s). A court may award damages to the person or persons adversely affected by any violation(s) of *[this [Act or Section] or any rules and regulations adopted under this [Act or Section]; OR insert specific reference(s) to state abortion-related statute(s), regulation(s), or rule(s)]* including compensation for emotional, physical, and psychological harm; attorneys' fees, litigation costs, and punitive damages.

## ADMINISTRATIVE ACTION AGAINST A FACILITY'S LICENSE

The *[Insert reference(s) to appropriate state official(s), department(s), and/or agency/agencies]* may deny, suspend, revoke, or refuse to renew *[a license]* in any case in which it finds that there has been a substantial failure by any *[person, physician, licensee, applicant, abortion facility, and/or other appropriate term(s)]* to comply with the requirements of *[this [Act or Section] or any rules and regulations adopted under this [Act or Section]; OR insert specific reference(s) to state abortion-related statute(s), regulation(s), or rule(s)]*. In such case, the *[Insert reference(s) to appropriate state official(s), department(s), and/or agency/agencies]* shall furnish the *[person, physician, licensee, applicant, abortion facility, and/or other appropriate term(s)]* thirty (30) days' notice specifying reasons for the action(s).

Any *[person, physician, licensee, applicant, abortion facility, and/or other appropriate term(s)]* who *[that]* feels aggrieved by the action of the *[Insert reference(s) to appropriate state official(s), department(s), and/or agency/agencies]* in denying, suspending, revoking, or refusing to renew a license may appeal the action in accordance with the *[delay, notice, and other]* procedures established *[Insert reference(s) to applicable agency or administrative appeal procedure(s)]*.

## INJUNCTIVE REMEDY

In addition to any other penalty provided by law, whenever in the judgment of the *[Insert reference(s) to appropriate state official(s), department(s), and/or agency/agencies]*, any *[person, physician, licensee, abortion facility, and/or other appropriate term(s)]* has engaged, or is about to engage, in any acts or practices which constitute or will constitute a violation of *[this [Act or Section] or any rules and regulations adopted under this [Act or Section]; OR insert specific reference(s) to state abortion-related statute(s), regulation(s), or rule(s)]*, the *[Insert reference(s) to appropriate state official(s), department(s), and/or agency/agencies]* shall make application to any court of competent jurisdiction for an order enjoining such acts and practices, and upon a showing by the *[Insert reference(s) to appropriate state official(s), department(s), and/or agency/agencies]* that such *[person, physician, licensee,*

*abortion clinic, and/or other appropriate term(s)] has engaged or is about to engage in any such acts or practices, an injunction, restraining order, or such other order as may be appropriate shall be granted by such court without bond.*

## **PROFESSIONAL AND DISCIPLINARY REMEDIES**

In addition to whatever remedies are available under the common or statutory law of this State, failure to comply with the requirements of *[this [Act or Section] or any rules and regulations adopted under this [Act or Section]; OR insert specific reference(s) to state abortion-related statute(s), regulation(s), or rule(s)]* shall:

- (a) Provide a basis for a civil malpractice action for actual and punitive damages.
- (b) Provide a basis for a professional disciplinary action under *[state Medical Malpractice Act or other appropriate statutory and/or administrative authority]*.

## **INSPECTIONS AND INVESTIGATIONS OF LICENSED ABORTION FACILITIES**

**[Drafter's Note:** *A critical element of ensuring the protection of maternal health and the adequate enforcement of laws, regulations, and administrative rules related to abortion is regular inspections of abortion providers and, when appropriate, administrative and criminal investigations. The model provisions provided below may be used to supplement existing state rules and protocols for the inspection and investigation of abortion providers.]*

- (a) The *[Department]* shall establish policies and procedures for conducting pre-licensure and re-licensure inspections of abortion clinics. Prior to issuing or reissuing a license, the *[Department]* shall conduct an on-site inspection to ensure compliance with this Act, with the *[minimum standards, applicable regulations, or administrative rules]* promulgated by the *[Department]* under this Act, and with *[Insert citation(s) or reference(s) to other standards, regulations, and administrative rules related to the provision of abortion]*.
- (b) The *[Department]* shall also establish policies and procedures for conducting inspections and investigations pursuant to complaints received by the *[Department]* and made against any abortion clinic. The *[Department]* shall receive, record, and dispose of complaints in accordance with established policies and procedures.
- (c) If the *[Director]* determines that there is reasonable cause to believe a licensee, licensed abortion clinic, or abortion clinic that is required to be licensed pursuant to this



Act is not adhering to the requirements of this Act, [*the minimum standards, regulations, or administrative rules*] promulgated by the [*Department*] under the authority of this Act, or with [*Insert citation(s) or reference(s) to other standards, regulations, and administrative rules related to the provision of abortion*], the [*Director*] and any duly-designated employee or agent of the [*Director*], including [*county health representatives*] and county or municipal fire inspectors, consistent with standard medical practices, may enter on and into the premises of the licensee, licensed abortion clinic, or abortion clinic that is required to be licensed, during regular business hours of the licensee or abortion clinic to determine compliance with this Act, with the [*minimum standards, applicable regulations, or administrative rules*] promulgated by the [*Department*] under this Act, and with [*Insert citation(s) or reference(s) to other standards, regulations, and administrative rules related to the provision of abortion*]; local fire ordinances or rules; and [*Insert reference(s) to any other applicable requirements*].

(d) An application for a license pursuant to this Act and [*the minimum standards, regulations, or administrative rules*] promulgated by the [*Department*] under the authority of this Act constitutes consent to an entry or inspection of the premises during the pendency of the application and, if licensed, during the term of the license.

(e) If an inspection or investigation conducted pursuant to this Section 5(a), 5(b), or 5(c) reveals that a licensee or licensed abortion clinic is not adhering to the requirements of this Act, with the [*minimum standards, applicable regulations, or administrative rules*] promulgated by the [*Department*] under this Act, and with [*Insert citation(s) or reference(s) to other standards, regulations, and administrative rules related to the provision of abortion*]; local fire ordinances or rules; and [*Insert reference(s) to any other applicable requirements*], the [*Director*] may take action to deny, suspend, revoke, or refuse to renew a license to operate an abortion clinic.

## **SAMPLE COMPLAINT FORMS IN APPENDICES**

Appendix A: Professional Complaint Form

Appendix B: Abortion Facility Complaint Form

Appendix C: Administrative Enforcement Complaint Form



## APPENDIX A: PROFESSIONAL COMPLAINT FORM

**[Drafter's Note:** *Many state medical boards and other professional licensing bodies have complaint forms that can be submitted online directly through the entities' websites. This form can be adapted for online submission or used as a downloadable mail-in form.*]

### Sample Professional Complaint Form<sup>4</sup>

***This form is to be used by anyone alleging a violation of [Insert reference(s) to appropriate statutory or regulatory provision(s)]. Please provide as much specific detail as possible, including full names of the clinic staff and/or other parties involved, date(s) of the incident(s), the type(s) of violation(s), and whether or not the incident was reported to clinic staff or another agency.***

***Please fill out this form completely and return to [Insert name and address of state medical board or other professional licensing board].***

| PERSONAL INFORMATION (OPTIONAL) |         |            |
|---------------------------------|---------|------------|
| Name: (Last)                    | (First) | (M.I.)     |
| Address: (No. and Street)       |         | City:      |
| State:                          | Zip:    | Telephone: |
| Email Address:                  |         |            |

<sup>4</sup> Sample form is modeled after from Florida Health Care Facility Complaint Form, <http://apps.ahca.myflorida.com/hcfc/> (last visited August 9, 2016); Florida Healthcare Practitioner Complaint Form, [http://doh.state.fl.us/mqa/enforcement/frm\\_general-medUCF.pdf](http://doh.state.fl.us/mqa/enforcement/frm_general-medUCF.pdf) (last visited August 23, 2017); Oregon Medical Board Complaint Form, <http://www.oregon.gov/omb/pdfforms/complaintform.pdf> (last visited August 23, 2017); and Arizona Election Grievance Complaint Form, [http://www.azsos.gov/election/grievance/Grievance\\_Form.pdf](http://www.azsos.gov/election/grievance/Grievance_Form.pdf) (last visited August 23, 2017).

| PHYSICIAN INFORMATION              |      |            |
|------------------------------------|------|------------|
| Name:                              |      |            |
| Practice Address: (No. and Street) |      | City:      |
| State:                             | Zip: | Telephone: |
| License Number:                    |      |            |

| ALLEGED VIOLATION(S)   |                     |
|--|---------------------|
| Date of Incident(s):   | Person(s) involved: |
| Nature of Incident:<br>(mark all that apply) <ul style="list-style-type: none"> <li><input type="checkbox"/> Quality of care</li> <li><input type="checkbox"/> Misdiagnosis of condition</li> <li><input type="checkbox"/> Patient abandonment/neglect</li> <li><input type="checkbox"/> Failure to release patient records</li> <li><input type="checkbox"/> Impairment/incompetence</li> <li><input type="checkbox"/> Sexual contact with patient</li> <li><input type="checkbox"/> Substance abuse</li> <li><input type="checkbox"/> Unlicensed provider or aiding/abetting unlicensed practice</li> <li><input type="checkbox"/> Misfilled prescription</li> <li><input type="checkbox"/> Insurance fraud</li> <li><input type="checkbox"/> Other</li> </ul> |                     |
| Description of Incident:   |                     |

## APPENDIX B: ABORTION FACILITY COMPLAINT FORM

**[Drafter's Note:** *Many state agencies maintain complaint forms that can be submitted online directly through the agencies' websites. This form can be adapted for online submission or used as a downloadable mail-in form.*]

### Sample Abortion Facility Complaint Form<sup>5</sup>

***This form is to be used by anyone alleging a violation of [Insert reference(s) to appropriate state statutory or regulatory provision(s)]. Please provide as much specific detail as possible, including full names of the clinic staff and/or other parties involved, date(s) of the incident(s), the type(s) of violation(s), and whether or not the incident was reported to clinic staff or another agency.***

***Please fill out this form completely and return to [Insert name and address of appropriate state department or agency].***

| PERSONAL INFORMATION (OPTIONAL) |         |            |
|---------------------------------|---------|------------|
| Name: (Last)                    | (First) | (M.I.)     |
| Address: (No. and Street)       |         | City:      |
| State:                          | Zip:    | Telephone: |
| Email Address:                  |         |            |

| FACILITY INFORMATION      |      |            |
|---------------------------|------|------------|
| Name:                     |      |            |
| Address: (No. and Street) |      | City:      |
| State:                    | Zip: | Telephone: |

<sup>5</sup> Sample form is modeled after Florida Health Care Facility Complaint Form, <http://apps.ahca.myflorida.com/hcfc/> (last visited August 23, 2017); and Arizona Election Grievance Complaint Form, [http://www.azsos.gov/election/grievance/Grievance\\_Form.pdf](http://www.azsos.gov/election/grievance/Grievance_Form.pdf) (last visited August 23, 2017).

|  |  |  |
|--|--|--|
|  |  |  |
|--|--|--|

| ALLEGED VIOLATION(S)    |                     |
|-------------------------|---------------------|
| Date of Incident(s):    | Person(s) involved: |
| Describe incident here: |                     |

## APPENDIX C: ADMINISTRATIVE ENFORCEMENT COMPLAINT FORM

**[Drafter's Note:** *Many state agencies maintain complaint forms that can be submitted online directly through the agencies' websites. This form can be adapted for online submission or used as a downloadable mail-in form and can be used for a variety of administrative violations.*]

### Sample Administrative Enforcement Complaint Form<sup>6</sup>

***This form is to be used by anyone alleging a violation of [Insert reference(s) to appropriate state statutory and/or regulatory provision(s)]. Please provide as much specific detail as possible, including full names of the clinic staff and/or other parties involved, date(s) of the incident(s), the type(s) of violation(s), and whether or not the incident was reported to clinic staff or another agency.***

***Please fill out this form completely and return to [Insert name and address of appropriate state department or agency].***

| PERSONAL INFORMATION (OPTIONAL) |         |            |
|---------------------------------|---------|------------|
| Name: (Last)                    | (First) | (M.I.)     |
| Address: (No. and Street)       |         | City:      |
| State:                          | Zip:    | Telephone: |
| Email Address:                  |         |            |

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<sup>6</sup> Sample form is modeled after Florida Health Care Facility Complaint Form, <http://apps.ahca.myflorida.com/hcfc/> (last visited August 23, 2017); Arizona Election Grievance Complaint Form, [http://www.azsos.gov/election/grievance/Grievance\\_Form.pdf](http://www.azsos.gov/election/grievance/Grievance_Form.pdf) (last visited August 23, 2017); and New York Public Integrity Unit Complaint Form, [http://www.ag.ny.gov/sites/default/files/pdfs/complaints/piu001\\_complaint\\_form.pdf](http://www.ag.ny.gov/sites/default/files/pdfs/complaints/piu001_complaint_form.pdf) (last visited August 23, 2017).

| FACILITY INFORMATION      |      |            |
|---------------------------|------|------------|
| Name:                     |      |            |
| Address: (No. and Street) |      | City:      |
| State:                    | Zip: | Telephone: |

| ALLEGED VIOLATION(S)    |                     |
|-------------------------|---------------------|
| Date of Incident(s):    | Person(s) involved: |
| Describe incident here: |                     |

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