

Defining the Scope of the Project and Conducting Background Research

Learning objectives

- Define “scoping”
- Provide an overview of background research
- Learn the steps in conducting background research:
 1. Identify reliable secondary sources
 2. Draft a background memorandum
 3. Draft a five state memorandum
 4. Search strategy
 5. Compile a sample of laws relevant to your project
 6. Generate preliminary list of constructs (features of the law)

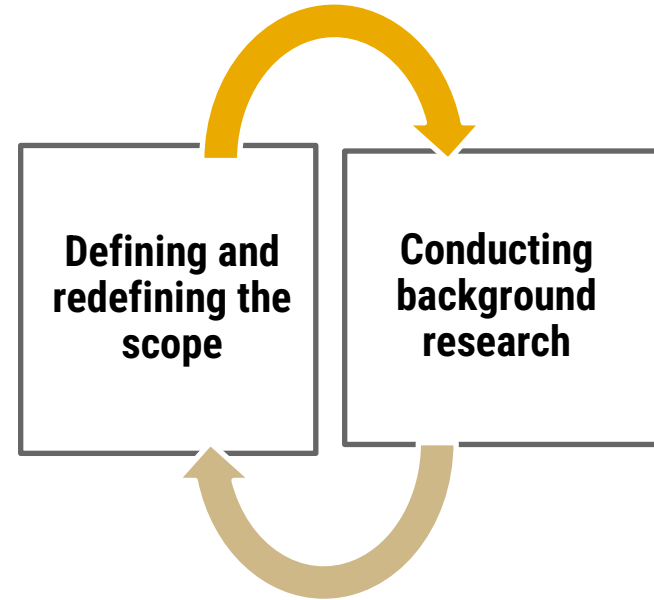
*Refining the scope throughout

Defining “scoping”

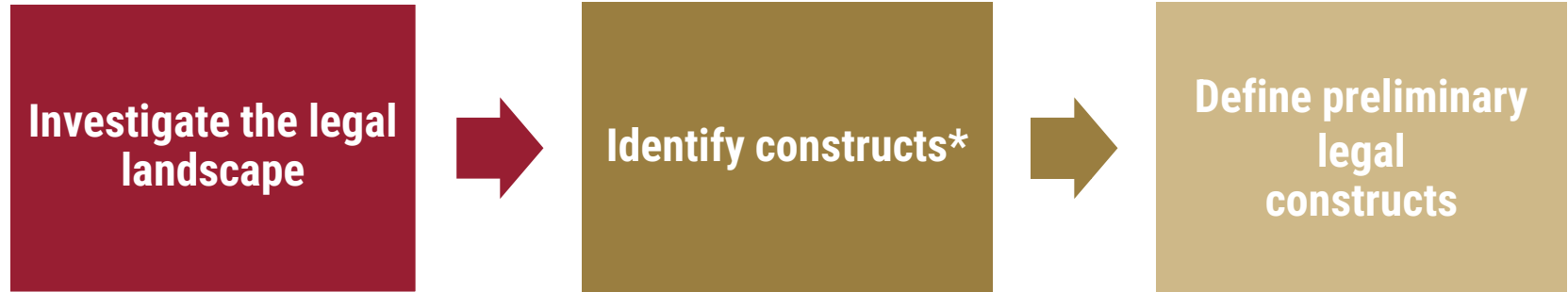
- Identifying the topic and parameters for your project
- Background research helps define and redefine the scope

Defining and redefining the project scope

- The initial scope of the project sets the parameters for what you will study
- The scope of the project may change throughout the policy surveillance process



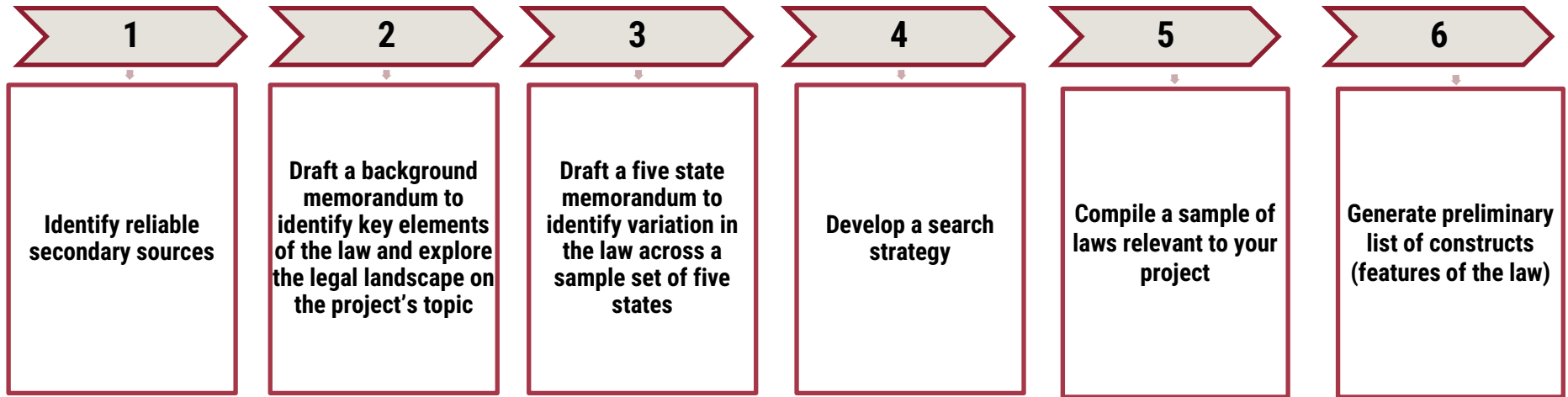
From background research to coding questions



***Legal constructs** are key elements or features of the law that can vary among jurisdictions



Background research



Refining the scope throughout

1. Identifying reliable secondary sources

Secondary sources can include:

- Articles
- Tables
- Books
- Websites
- Legal datasets



2. Draft a background memorandum

- Use the secondary sources you identified to summarize the current state of the law
- Two researchers will each write a background memorandum that will:
 - Explore the legal landscape for your project
 - Identify sources of law (e.g. Statutes, Regulations, Policies) and how they interact
 - Identify key elements of the laws you are studying



3. Draft a five state memorandum

- Two researchers will research five states (or jurisdictions) each for an initial sample of 10 states
- Goals:
 - Identify source and structure of the law
 - Present a sample of laws relevant to your topic
 - Identify variation in the law



4. Search strategy


- Using multiple search strategies ensures reliable and accurate legal research (e.g. using different search terms, table of content searches, multiple databases)
- Adopt measures to minimize errors in search strategy
- Record strategies in a research protocol document



4. Search strategy

Use multiple search strategies to ensure reliable and accurate legal research

- Identify keywords by identifying common terms of art relevant to the project's topic in various jurisdictions
- When multiple relevant laws are located in the same chapter, index or table of content searches can be used to supplement keyword searches
- Multiple databases should be used to ensure accuracy, such as Westlaw, LexisNexis, Bloomberg, or HeinOnline



4. Search strategy

Adopt measures to minimize errors in search strategy

- Some jurisdictions may structure their law differently from others, necessitating different search strategies

OR. Stat. § 98:2-12.5:

Prohibition
Exceptions
Fine

CA. § 921
Prohibition
Exceptions

CA. § 811
Enforcement

CA. § 153.018
Fine

4. Search strategy

Record all search terms and strategies in a research protocol document

- A research protocol describes the methodology for a project, including scoping decisions, search terms and connectors used, and other key information
- Easier to maintain and update the project as laws change
- Supports future replication by other researchers as methodology is detailed in protocol

RESEARCH PROTOCOL

July 2017

Youth Sports Traumatic Brain Injury Laws

I. **Dates of protocol:** April 1, 2012; October 2013; April 2014; November 2014; May 2015; July 2017

II. **Scope:** Compile state laws designed to impact the incidence of traumatic brain injuries (TBIs) and/or concussions in youth sports; code their respective features. This is a longitudinal dataset, and captures laws in effect from January 1, 2009 through July 1, 2017. The jurisdictions selected for measurement are the 50 states and the District of Columbia.

III. Primary data collection

a. **Project timeline:** First published on April 1, 2012. Updated in October 2013, April 2014, November 2014, May 2015, and July 2017.

b. **Dates covered in the dataset:** This is a longitudinal dataset covering relevant Youth Sports TBI Laws between January 1, 2009 and July 1, 2017.

c. **Data collection methods:** The initial research team (the "team") building this dataset in April 2012 consisted of Professor Hosea Harvey, JD, the creator and curator of the dataset (the "subject matter expert"), and two law students (the "students").

The students compiled background information about laws that regulate youth sports searching "concussions and sports," "concussion state laws," "concussion sport guidelines," "concussion NFL guidelines," "traumatic brain injury and sports," "concussions sports depression" in both the ABI/Inform Complete and Academic Search Premiere library databases.

The students compiled an initial list of state laws and state-level activity that are identified in these background searches and prepared an initial list of expected state-law findings.

The subject matter expert evaluated the initial list by reviewing the list of "expected states," and identifying through Westlaw searches whether such states indeed have such laws, and noting any discrepancies.

5. Compile a sample of laws

Researchers will collect a sample of laws for each of the five jurisdictions assigned for the five state memorandum



California



Kentucky



Oklahoma



Oregon



Missouri



6. Generate a preliminary list of constructs

“Constructs” are features of the law that are relevant to your project’s topic

- In a distracted driving project, constructs could include what devices are prohibited while driving, what behavior is prohibited while driving, and whether there are exceptions to these prohibitions

Generating constructs

- Compare elements of the law in each state from your Five State memorandum
- Contact subject matter experts
- The constructs you use will be based on apparent features of the legal text, so that coding requires as little interpretation as possible.

REMEMBER: Policy surveillance aims to measure the law, not interpret it.



Generating preliminary constructs list

ORIGINAL TEXT OF THE LAW

Ala. Code § 32-5A-350(b): A person may not operate a motor vehicle on a public road, street, or highway in Alabama while using a wireless telecommunication device to write, send, or read a text-based communication.

Ohio Rev. Code § 4511.204(A): No person shall drive a motor vehicle, trackless trolley, or streetcar on any street, highway, or property open to the public for vehicular traffic while using a handheld electronic wireless communications device to write, send, or read a text-based communication.



PRELIMINARY CONSTRUCT

**Text messaging
prohibited while
driving**

Summary: Defining the scope

- Defining the scope of your project consists of:
 1. Identifying the statement of purpose for your project
 - What is your topic
 - What are your goals
 2. Setting clear parameters for what you will and will not study
 - Defining what law will have to be collected
 3. Scoping is an iterative process that can expand and contract throughout the life of your project

Summary: Background research

- Background research consists of:
 1. Identifying secondary sources
 2. Using the secondary sources you identified to draft a background memorandum to explore the legal landscape for your project
 3. Drafting a five state memorandum, presenting a sample of laws relevant to your topic to identify structure and variation in the law
 4. Developing a search strategy
 - Multiple search strategies should be used
 - Searches should be recorded in a research protocol
 5. Compile a sample of laws
 6. Identifying preliminary constructs (features of the law)
 7. Background research helps to develop and refine the scope of your project

