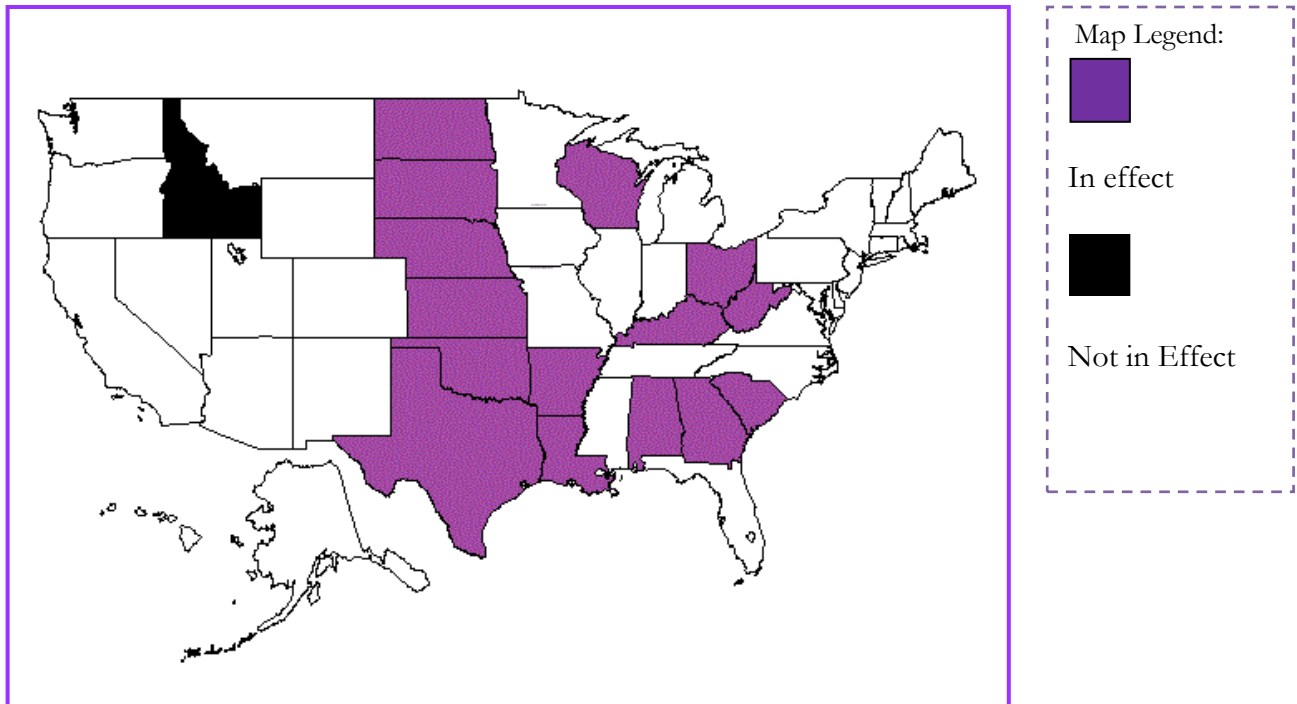


# Pain-Capable Unborn Child Protection Act

January 9, 2017

The Pain-Capable Unborn Child Protection Act is legislation which protects from abortion unborn children who are capable of feeling pain. Substantial medical evidence demonstrates that unborn children are capable of experiencing pain certainly by 20 weeks after fertilization.



## States that Protect Pain-Capable Unborn Children

NE, KS, ID\*, OK, AL, GA\*, LA, AR, ND, TX, WV, WI, SD, SC, OH, KY

\*These laws were challenged. Idaho is enjoined.

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The Pain-Capable Unborn Child Protection Act protects from abortion unborn children who are capable of feeling pain. Substantial medical evidence demonstrates that unborn children are capable of experiencing pain certainly by 20 weeks after fertilization.

**Key Points**

- By 20 weeks after fertilization, all the physical structures necessary to experience pain have developed.
- Unborn children react to painful stimuli, and their hormonal reactions consistent with pain can be measured.
- For the purposes of surgery on unborn children, fetal anesthesia is routinely administered and is associated with a decrease in stress hormones compared to their level when painful stimuli are applied without such anesthesia.
- Abortion methods used on these babies are painful!

**16 STATES WITH PAIN-CAPABLE UNBORN CHILD PROTECTION ACT LAWS:**

<b>State</b>	<b>Year Enacted</b>	<b>Elements of Law</b>	<b>Court Action</b>
Alabama Code of Ala. §§ 26-23B-1 to 26-23B-9 (2013) See also reporting: Code of Ala. § 22-9A-13 (2013)	2011	Unborn pain findings, objective medical emergency, determination of age, protection clause, criminal & civil penalties, reporting.	None.
Arkansas <sup>1</sup> A.C.A. § 20-16-1401 to 20-16-1410 (2013)	2013	Unborn pain findings, objective medical emergency with exceptions for rape and incest, determination of age, protection clause, criminal & civil penalties, reporting.	None.

<sup>1</sup> Subdivision (a)(1) of this section does not apply if the pregnancy results from rape under § 5-14-103 or incest under § 5-26-202.

State	Year Enacted	Elements of Law	Court Action
Georgia O.C.G.A. §§ 16-12-140 to 16-12-141 (2013) and O.C.G.A. TITLE 31 Chapter 9B; 31-9B-1 to 31-9B-3 (2012)	2012	Unborn pain findings, objective medical emergency with expanded health exception to include pregnancies that are “medically futile,” determination of age, protection clause, civil & professional penalties, reporting.	In effect. Previously this law was partially in effect as it applies only to viable unborn children. Preliminary injunction issued <i>Lathrop, et al. v. Deal, et al.</i> No. CV224423, (Sup. Ct. of Fulton Cnty., Ga., Dec. 21, 2012). This case was dismissed on grounds of sovereign immunity. Plaintiff appealed this decision. Appeal pending.
Idaho Idaho Code Ann. §§18-501 to 18-510 (2011)	2011	Unborn pain findings, objective medical emergency, determination of age, protection clause, criminal & civil penalties, reporting, litigation defense fund.	Declared unconstitutional in <i>McCormack v. Herzog</i> , 2015 U.S. App. LEXIS 8936 (9th Cir. Idaho May 29, 2015).
Kansas K.S.A. §§ 65-6722 to 65-6725 (2012) Reporting: K.S.A. § 65-445	2011	Unborn pain findings, objective medical emergency, determination of age, protection clause, criminal & civil penalties, reporting.	None.
Kentucky To be codified as: KRS §§ 311.710 to 311.830 (2017)	2017	Unborn pain findings, subjective medical emergency, determination of age, protection clause, criminal & civil penalties, reporting, litigation defense fund.	None.
Louisiana La. R.S. 40:1299.30.1 (2013)	2012	Unborn pain findings, objective medical emergency, determination of age, protection clause, criminal & civil penalties.	None.
Nebraska R.R.S. Neb. §§ 28-3,102 to 28-3,111 (2011)	2010	Unborn pain findings, objective medical emergency, determination of age, protection clause, criminal & civil penalties, reporting.	None.

<b>State</b>	<b>Year Enacted</b>	<b>Elements of Law</b>	<b>Court Action</b>
North Dakota N.D. Cent. Code, §§ 14-02.1-02, 14-02.1-05.3, 14-02.1-07 (2013)  Penalties: N.D. Cent. Code, § 14-02.1-11 (2013)	2013	Unborn pain findings, objective medical emergency, determination of age, protection clause, criminal penalties, reporting.	None.
Ohio To be codified as: ORC Ann. 2307.54; 2919.20 to 2919.20; 2919.201 to 2919.205 (2016)	2016	Subjective medical emergency, determination of age, protection clause, criminal penalties, reporting.	Effective March 13, 2017.
Oklahoma 63 Okl. St. § 1-745.1 to 1-745.11 (2013)	2011	Unborn pain findings, objective medical emergency, determination of age, protection clause, criminal & civil penalties, reporting.	None.
South Carolina	In effect	Unborn pain findings, objective medical emergency expanded to include unborn children with "fetal anomalies," determination of age, protection clause, reporting, criminal penalties.	None.
South Dakota  2016 S.D. SB 72	In effect July 1, 2016	Unborn pain findings, subjective medical emergency, determination of age, protection clause, reporting, criminal penalties.	None.
Texas Tex. Health & Safety Code §§ 171.041 to 171.048 (2013).	2013	Unborn pain findings, objective medical emergency expanded to include unborn children with "severe fetal abnormality," determination of age, protection clause, limited reporting, administrative penalty.	None.
West Virginia W. Va. Code §§ 16-2M-1 to 16-2M-7 (2015).	Effective June 6, 2015	Unborn pain findings, objective medical emergency expanded to include unborn children with "lethal fetal anomalies," determination of age, protection clause, and reporting, administrative and civil penalties.	None.

State	Year Enacted	Elements of Law	Court Action
Wisconsin To be codified as: Wis. Stat. §§ 253.10 (3) (c) 1. b., (3) (d) 1.; (2) (dr); (3) (c) 2. em. and 253.107. Reporting: 69.186 (1) (hf), (1) (k) and (L) (2015).	Effective February 21, 2016	Unborn pain findings, objective medical emergency (this definition was previously upheld <i>in Karlin v.            Foust, 188 F.3d 446 (7th Cir.            1999)</i> , determination of age, protection clause, and reporting, civil and criminal penalties.	None.