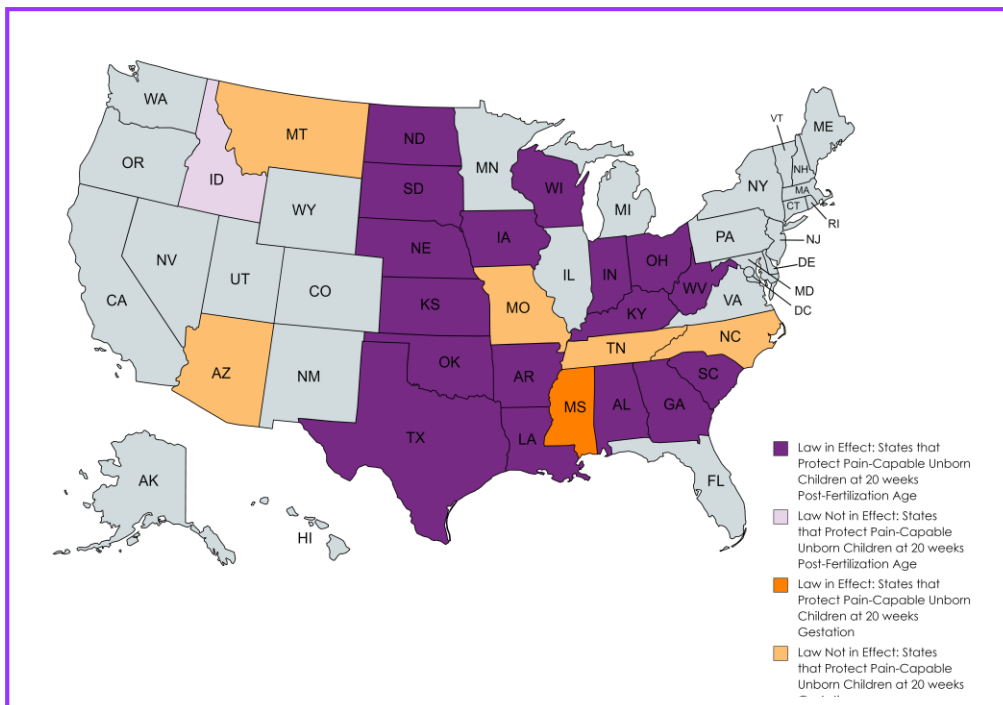


Pain-Capable Unborn Child Protection Act

January 25, 2022

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 at 20 weeks post-fertilization age:

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

*These laws were challenged. Idaho is enjoined.

States that Protect Unborn Children at 20 weeks gestation (18 weeks post-fertilization age):

AZ**, MS, MO**, MT**, NC**, TN**

** These laws were challenged and are enjoined/not in effect. MS is the only law in effect.

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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. Post-fertilization age is the actual fetal age, and this is used by embryologists, like the ones who wrote the studies that babies at 20 weeks experience pain.

There are states that have passed a modified version of the NRLC model which decreases the preborn baby's age from 20 weeks post-fertilization age (22 weeks gestation) to 18 weeks post-fertilization age (20 weeks gestation). Most of these laws have been struck down, and an 18 week post-fertilization law is only in effect in one state, Mississippi.

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!

18 STATES WITH PAIN-CAPABLE UNBORN CHILD PROTECTION ACT LAWS:

18 states have passed pain-capable laws protecting babies at 20 weeks post-fertilization age; 1 law is not in effect.

State	Year Enacted	Elements of Law	Court Action
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 ¹ 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.

¹ 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 applied 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.	Not in effect. Declared unconstitutional in <i>McCormack v. Herzog</i> , 2015 U.S. App. LEXIS 8936 (9th Cir. Idaho May 29, 2015).
Indiana Ind. Code Ann. § 16-34-2-1 (2011).	2011	Unborn pain findings, subjective medical emergency, determination of age, protection clause, reporting.	None.
Iowa Iowa Code §§ 146B.1 to 146B.3.	2017	Objective medical emergency, determination of age, protection clause, reporting, administrative and civil penalties.	None.
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.

State	Year Enacted	Elements of Law	Court Action
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.
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.	None.
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 S.C. Code Ann. §§ 44-41-410 to 44-41-480 (2016).	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.

State	Year Enacted	Elements of Law	Court Action
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.
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 in <i>Karlin v. Foust</i> , 188 F.3d 446 (7th Cir. 1999), determination of age, protection clause, and reporting, civil and criminal penalties.	None.

Time-Based Gestational Bans:

These laws protect unborn children at 20 weeks gestational age (18 weeks post-fertilization age) and some have limited pain findings. Some findings are based on a legal theory that abortions later in pregnancy are a health risk for women. Most of these laws are enjoined except for Mississippi.

6 states have enacted a 20 week gestation pain-capable law; 4 are not in effect; 1 is in effect; 1 will be in effect later in 2021.

These laws are for informational purposes only:

State	Year Enacted	Elements of Law	Court Action
Arizona A.R.S. § 36-2159 (2013).	2012	Prohibits abortion after twenty (20) weeks gestation unless there is a medical emergency.	Not in effect. The District Court upheld the law and the appellate court reversed the lower court's decision and declared the law unconstitutional in <i>Isaacson v. Horne</i> , 716 F.3d 1213 (9th Cir. 2013); denied cert in <i>Horne v. Isaacson</i> , 571 U.S. 1127, 134 S. Ct. 905 (2014).

State	Year Enacted	Elements of Law	Court Action
Mississippi (18 weeks post-fertilization age) Miss. Code Ann. §§ 41-41-131 to 41-41-149 (2014).	2014	Findings on health risk of abortions late in pregnancy and NRLC pain findings, objective medical emergency expanded to include “severe fetal abnormality,” determination of age, protection clause, administrative penalty.	None. In effect.
Missouri §§ 188.026; 188.056; 188.057; 188.058; R.S.Mo.	2019	Cascading bans. These prohibit abortion at different gestational stages starting at 8, 14, 18, and 20 weeks, except in the case of a medical emergency.	Not in effect. Preliminary injunction issued in <i>Reprod. Health Servs. of Planned Parenthood of the St. Louis Region, Inc. v. Parson</i> , 389 F. Supp. 3d 631 (W.D. Mo. 2019); modified in <i>Reprod. Health Servs. of Planned Parenthood of the St. Louis Region, Inc. v. Parson</i> , 408 F. Supp. 3d 1049 (W.D. Mo. 2019). Stay denied for State’s motion to enforce the 20 week ban in <i>Reprod. Health Servs. of Planned Parenthood of the St. Louis Region, Inc. v. Parson</i> , No. 2:19-cv-4155-HFS, 2019 U.S. Dist. LEXIS 158870 (W.D. Mo. Sep. 18, 2019).
Montana Mont. Code Ann. §§ 50-20-601 – 50-20-606	2021	Inaccurate pain findings. Objective medical emergency, determination of age, protection clause, criminal & civil penalties, reporting.	A preliminary injunction was issued in <i>Planned Parenthood of Montana v. State</i> , No. DV-21-00999, (13th Jud. Dist., Yellowstone Cty., Mont. Oct. 7, 2021).

State	Year Enacted	Elements of Law	Court Action
North Carolina N.C. Gen. Stat. § 14-45.1	2015	Prohibits abortion after twenty (20) weeks gestation, except in the case of a medical emergency.	Not in effect. Temporarily blocked by federal court in <i>Bryant v. Woodall</i> , 363 F. Supp. 3d 611 (M.D.N.C. 2019).
Tennessee Tenn. Code Ann. § 39-15-216	2020	Cascading bans. . These prohibit abortion at different gestational stages starting at 6, 8, 10, 12, 15, 18, 20 through 24 weeks, except in the case of a medical emergency.	Not in effect. Preliminary injunction issued in <i>Memphis Ctr. for Reprod. Health v. Slatery</i> , No. 20-5969, 2020 U.S. App. LEXIS 36780 (6th Cir. Nov. 20, 2020).