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STATE POLICIES IN BRIEF As of DECEMBER 1, 2013

State Policies on Later Abortions

BACKGROUND: In its landmark 1973 abortion cases, the U.S. Supreme Court held that a woman's right to an abortion is not absolute and that states may restrict or ban abortions after fetal viability, provided that their policies meet certain requirements. In these and subsequent decisions, the Court has held that

- even after fetal viability, states may not prohibit abortions "necessary to preserve the life or health" of the woman;
- "health" in this context includes physical and mental health;
- only the physician, in the course of evaluating the specific circumstances of an individual case, can define what constitutes "health" and when a fetus is viable; and
- states may not require additional physicians to confirm the attending physician's judgment that the woman's life or health is at risk in cases of medical emergency.

Although the vast majority of states restrict later-term abortions, many of these restrictions have been struck down. Most often, courts have voided the limitations because they do not contain a health exception; contain an unacceptably narrow health exception; or do not permit a physician to determine viability in each individual case, but rather rely on a rigid construct based on specific weeks of gestation or trimester.

Nonetheless, statutes conflicting with the Supreme Court's requirements remain on the books in some states. For example, the law in Michigan permits a postviability abortion only if the woman's life is endangered and laws in several other states ban abortion at a specific point in gestation. Most recently, several states have enacted laws that ban abortion at 20 weeks' post-fertilization—well before viability—based on the spurious assertion that a fetus can feel pain at that point. Dating a pregnancy from fertilization goes against convention. When discussing pregnancy, medical professionals customarily date a pregnancy from the first day of the woman's last menstrual period, because that is the date most women can pinpoint. Fertilization commonly takes place two weeks after the first day of a woman's last menstrual period. Accordingly, a pregnancy of normal gestational length is considered to last approximately 40 weeks from the beginning of a woman's last menstrual period—or 38 weeks' post-fertilization.

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HIGHLIGHTS:

- 41 states prohibit some abortions after a certain point in pregnancy.
  - 21 states impose prohibitions at fetal viability.
  - 3 states impose prohibitions in the third trimester.
  - 17 states impose prohibitions after a certain number of weeks; 9 of these states ban abortion at 20 weeks post-fertilization or its equivalent of 22 weeks after the woman's last menstrual period on the grounds that the fetus can feel pain at that point in gestation.
- The circumstances under which later abortions are permitted vary from state to state.
  - 26 states permit later abortions to preserve the life or health of the woman.
  - 11 states unconstitutionally ban later abortions, except those performed to save the life or physical health of the woman.
  - 4 states unconstitutionally limit later abortions to those performed to save the life of the woman.
- Some states require the involvement of a second physician when a later-term abortion is performed.
  - 12 states require that a second physician attend the procedure to treat a fetus if it is born alive in all or some circumstances.
  - 9 states unconstitutionally require that a second physician certify that the abortion is medically necessary in all or some circumstances.

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LATER ABORTION POLICIES

STATE	STATE RESTRICTIONS ON LATER ABORTION		EXCEPTIONS			WHEN A LATER ABORTION IS PERFORMED A SECOND PHYSICIAN MUST:	
	Constitutional Limit on Abortion After Viability	Unconstitutional Limit on Abortion at a Specific Gestational Age	Life and Health	Life and Physical Health	Life	Attend	Approve
Alabama		20 weeks postfertilization*		X		Postviability	Postviability
Arizona	X	†	X			Postviability	
Arkansas		20 weeks postfertilization*		X‡		Postviability	
California	X		X				
Connecticut	X		X				
Delaware	X		X				▼
Florida		24 weeks LMP	X				X
Georgia	X	†		Xξ			
Hawaii	X		X				
Idaho	X	†			X		Postviability
Illinois	X		X			X	
Indiana		20 weeks postfertilization*		X		X	
Iowa		3rd trimester LMP	X				
Kansas		22 weeks LMP*		X			Postviability
Kentucky	X		X				
Louisiana		20 weeks postfertilization*		Xξ		Postviability	
Maine	X		X				
Maryland	X		Xξ				
Massachusetts		24 weeks post-implantation	X				
Michigan	X				X		
Minnesota	X		X			X	
Missouri	X			X		X	
Montana	X		XΨ				X
Nebraska		20 weeks postfertilization*		X			
Nevada		24 weeks postfertilization	X				
New York		24 weeks LMP			X	X	
North Carolina		20 weeks LMP	X				
North Dakota		20 weeks postfertilization*		X			
Ohio	X		X			X	X
Oklahoma		20 weeks postfertilization*		X		Postviability	
Pennsylvania		24 weeks LMP	XΨ			X	X
Rhode Island		24 weeks LMP			X		
South Carolina		3rd trimester postfertilization	XΩ				X
South Dakota		24 weeks LMP	X				
Tennessee	X		X				
Texas		20 weeks postfertilization*		Xξ			
Utah	X		X‡,ξ,Ψ				
Virginia		3rd trimester LMP	X				X
Washington	X		X				
Wisconsin	X		X				
Wyoming	X		X				
TOTAL	**21**	**20**	**26**	**11**	**4**	**12**	**9**

LMP- Calculates the beginning of pregnancy from the woman's last menstrual period. States that do not explicitly enumerate the manner in which gestational age should be determined are labeled as 'LMP' in keeping with standard medical practice.
Postfertilization- Calculates the beginning of pregnancy from the date of conception; 20 weeks postfertilization is equivalent to 22 weeks LMP.
Post-implantation- Calculates the beginning of pregnancy from the date of implantation; 24 weeks implantation is equivalent to 27 weeks LMP.

▼ Enforcement permanently enjoined by a court order; policy not in effect

* Based on the assertion that the fetus can feel pain at 18 or 20 weeks postfertilization.
† A law in Arizona (that would ban abortion at 18 weeks postfertilization) is not effect due to court rulings. A new Georgia law that would ban abortion at 20 weeks postfertilization is only being enforced against postviability abortions. An Idaho law that bans abortion at 20 weeks postfertilization is enjoined pending the outcome of litigation.
‡ Also permitted in case of rape or incest.
ξ Also permitted in case of fetal abnormality; in Georgia, Louisiana, Texas and Utah, the law applies to a lethal abnormality.
Ψ The exception permits abortions when the woman suffers from a "substantial and irreversible impairment of a major bodily function."
Ω If done for mental health reasons, must have the certification of an independent psychiatrist.

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FOR MORE INFORMATION:

For information on state legislative and policy activity, click on Guttmacher's Monthly State Update, for state-level policy information, see Guttmacher's State Policies in Brief series, and for information and data on reproductive health issues, go to Guttmacher's State Center. To see state-specific reproductive health information, go to Guttmacher's Data Center, and for abortion-specific information, click on State Facts About Abortion. To keep up with new state relevant data and analysis, sign up for the State News Quarterly Listserv.

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