

State Policies on Later-Term 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 could restrict or ban abortions after fetal viability, provided 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 mother;”
- “health” in this context includes both 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 cannot require additional physicians to confirm the physician's judgment that the woman's life or health is at risk.

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 (1) do not contain a health exception, (2) contain an unacceptably narrow health exception or (3) do not permit a physician to determine viability in each individual case but rather rely on a rigid construct based on either specific weeks of gestation or trimester. Nonetheless, statutes conflicting with the Supreme Court's requirements remain on the books in some states.

HIGHLIGHTS:

- 38 states prohibit some abortions after a certain point in pregnancy.
 - 24 states initiate prohibitions at fetal viability.
 - 5 states initiate prohibitions in the third trimester.
 - 9 states initiate prohibitions after a certain number of weeks, generally 24.
- The circumstances under which procedures are permitted after that point vary from state to state.
 - 30 states permit abortions to preserve the life or health of the woman.
 - 4 states permit abortions to save the life or health of the woman, but use a narrow definition of health.
 - 4 states permit abortions only to save the life of the woman.
- Some states require the involvement of a second physician when a later-term abortion is performed.
 - 10 states require that a second physician attend in order to treat a fetus if it is born alive.
 - 10 states require that a second physician certify that the abortion is medically necessary.



Advancing sexual and reproductive health worldwide through research, policy analysis and public education.

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LATER-TERM ABORTION POLICIES

STATE	THRESHOLD FOR LATER-TERM ABORTIONS	LATER-TERM ABORTION PERMITTED WHEN THREAT TO WOMAN'S:			WHEN A LATER-TERM ABORTION IS PERFORMED A SECOND PHYSICIANS MUST:	
		Life and Health	Life and Physical Health	Life	Attend	Approve
Alabama	Viability		X			X
Arizona	Viability	X			X	
Arkansas	Viability	X*			X	
California	Viability	X				
Connecticut	Viability	X				
Delaware	▼			▼		
Florida	24 weeks	X				X
Georgia	3rd trimester	X				X
Idaho	Viability			X		X
Illinois	Viability	X			X	
Indiana	Viability		X		X	
Iowa	3rd trimester	X				
Kansas	Viability	X				X
Kentucky	Viability	X				
Louisiana	Viability	X			X	
Maine	Viability	X				
Maryland	Viability	X**				
Massachusetts	24 weeks	X				
Michigan	Viability			X		
Minnesota	24 weeks	X			X	
Missouri	Viability	X			X	
Montana	Viability		X			X
Nebraska	Viability	X				
Nevada	24 weeks	X				
New York	24 weeks			X	X	
North Carolina	20 weeks	X				
North Dakota	Viability	X				X
Ohio	▼		▼		▼	▼
Oklahoma	Viability	X			X	
Pennsylvania	24 weeks		X		X	X
Rhode Island	24 weeks			X		
South Carolina	3rd trimester	X†				X
South Dakota	24 weeks	X				
Tennessee	Viability	X				
Texas	3rd trimester	X				
Utah	Viability	X***				
Virginia	3rd trimester	X				X
Washington	Viability	X				
Wisconsin	Viability	X				
Wyoming	Viability	X				
TOTAL	38	30	4	4	10	10

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

* Also permitted in case of rape or incest.

** Also permitted in case of fetal abnormality, in Utah the law applies to a lethal abnormality.

† If done for mental health reasons, must have the certification of an independent psychiatrist.

FOR MORE INFORMATION:

For information on state legislative and policy activity click on Guttmacher's [Monthly State Update](#) and for state level information and data on reproductive health issues, click on Guttmacher's [State Center](#). To see state specific abortion information click on [State Facts About Abortion](#).

Cohen SA and Saul R, [The campaign against 'partial-birth' abortion: status and fallout](#), *The Guttmacher Report on Public Policy*, 1998, 1(6):6-10.

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