

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.

In 2010, Nebraska enacted a law banning abortions at 20 weeks' gestation based on the spurious assertion that a fetus can feel pain at that point. This law has inspired the passage of nearly identical measures in other states. These laws conflict with Supreme Court rulings barring states from placing an undue burden on women seeking an abortion prior to viability, a point that occurs well past 20 weeks.

HIGHLIGHTS:

- 39 states prohibit some abortions after a certain point in pregnancy.
 - 20 states impose prohibitions at fetal viability.
 - 5 states impose prohibitions in the third trimester.
 - 14 states impose prohibitions after a certain number of weeks, generally 24; 6 of these states ban abortion at 20 weeks 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.
 - 29 states permit abortions to preserve the life or health of the woman.
 - 7 states unconstitutionally ban abortions, except those performed to save the life or physical health of the woman.
 - 3 states unconstitutionally limit 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; 2 of these states require attendance of a second physician only for postviability abortions.
 - 10 states unconstitutionally require that a second physician certify that the abortion is medically necessary; 3 of these states require approval of a second physician only for postviability abortions.



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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*		X		POSTVIABILITY	POSTVIABILITY
Arizona	X*	♦	X*			X*	
Arkansas	X		X†			X	
California	X		X				
Connecticut	X		X				
Delaware	X		X				▼
Florida		24 weeks	X				X
Georgia		3rd trimester	X				X
Idaho		20 weeks*		X			POSTVIABILITY
Illinois	X		X			X	
Indiana		20 weeks*		X		X	
Iowa		3rd trimester	X				
Kansas		20 weeks*		X			POSTVIABILITY
Kentucky	X		X				
Louisiana	X		X			X	
Maine	X		X				
Maryland	X		X‡				
Massachusetts		24 weeks	X				
Michigan	X				X		
Minnesota	X		X			X	
Missouri	X			X		X	
Montana	X		X ^ψ				X
Nebraska		20 weeks*		X			
Nevada		24 weeks	X				
New York		24 weeks			X	X	
North Carolina		20 weeks	X				
North Dakota	X		X			X	X
Ohio		▼		▼		▼	▼
Oklahoma		20 weeks*		X		POSTVIABILITY	
Pennsylvania		24 weeks	X ^ψ			X	X
Rhode Island		24 weeks			X		
South Carolina		3rd trimester	X ^Ω				X
South Dakota		24 weeks	X				
Tennessee	X		X				
Texas		3rd trimester	X‡				
Utah	X		X ^{ψ,†,‡}				
Virginia		3rd trimester	X				X
Washington	X		X				
Wisconsin	X		X				
Wyoming	X		X				
TOTAL	20	19	29	7	3	12	10

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

♦ New Arizona law goes into effect later in 2012.

* Based on the assertion that the fetus can feel pain at 20 weeks.

† Also permitted in case of rape or incest.

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

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

ψ The exception permits abortions when the woman suffers from a "substantial and irreversible impairment of a major bodily function."

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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