



# The Pain-Capable Unborn Child Protection Act

January 1, 2019 – December 31, 2019

## **The Pain-Capable Unborn Child Protection Act Report January 1, 2019 to December 31, 2019**

### **BACKGROUND**

During the 2015 regular session, the West Virginia Legislature enacted House Bill 2568, “The Pain-Capable Unborn Child Protection Act.” The bill became effective for all induced terminations of pregnancy performed in West Virginia after May 25, 2015.

The Act prohibits health care providers, except in the case of a medical emergency or a non-medically viable fetus, from performing or inducing an abortion if the probable gestational age of the fetus has reached the pain-capable gestational age -- 22 weeks since the first day of the woman's last menstrual period, which is generally consistent with 20 weeks after fertilization.

The Act mandates that physicians who perform or induce an abortion file a report with the West Virginia Department of Health and Human Resources (DHHR), Bureau for Public Health, and requires DHHR to publish a public report of information reported by physicians.

To comply with the new reporting requirements, the West Virginia Health Statistics Center modified the “Report of Induced Termination of Pregnancy (ITOP)” form to conform to the Act's requirements. The new ITOP form and instructions were distributed to all hospitals and free-standing facilities beginning in mid-May 2015. The ITOP forms and instructions were distributed to all physicians licensed to practice in West Virginia in late 2015, and each year thereafter, by the Bureau for Public Health, Office of Maternal, Child and Family Health (OMCFH).

### **ANALYSIS**

Calendar year 2019 is the fourth full year of available data for several items specific to the Act. However, the data has not been fully validated and is subject to minor correction. It is anticipated that the data from 2019 will be fully validated in the late fall/early winter of 2020. As such, further analysis could vary slightly.

In 2019, a total of 1,183 induced terminations of pregnancy were reported as being performed in West Virginia. This is a 21.5% reduction from the number reported in 2018 (1,507). For all 1,183 procedures, a probable age of gestation was determined and reported. Ultrasound was employed in 1,182 of the patient cases to assist in the determination of probable gestational age.

In terms of the frequency distribution for the 2019 induced terminations by probable gestational age, 700 of the 1,183 procedures (59.2%) occurred at eight weeks or less gestation. Seven of the pregnancies were terminated at 20 probable weeks of gestation or greater (the “pain-capable” gestational age). See Table 1.

**Table 1**  
**Induced Terminations of Pregnancy**  
**West Virginia Occurrences, 2015 (partial year), 2016-2019**  
**By Probable Gestational Age**

Year		Probable Gestational Age (Weeks)						Total WV Occurrences
		<=8	9-10	11-12	13-15	16-19	20+	
5/26/2015-12/31/2015	Procedures (#)	545	138	105	49	23	4	864
	Percent Distribution	63.1%	16.0%	12.2%	5.7%	2.7%	0.5%	100.0%
2016	Procedures (#)	871	276	138	103	36	4	1,428
	Percent Distribution	61.0%	19.3%	9.7%	7.2%	2.5%	0.3%	100.0%
2017	Procedures (#)	759	331	137	155	51	6	1,436
	Percent Distribution	52.6%	23.1%	9.5%	10.8%	3.6%	0.4%	100.0%
2018	Procedures (#)	872	279	132	184	38	2	1,507
	Percent Distribution	57.9%	18.5%	8.8%	12.2%	2.5%	0.1%	100.0%
2019	Procedures (#)	700	244	111	99	22	7	1,183
	Percent Distribution	59.2%	20.6%	9.4%	8.4%	1.9%	0.6%	100.0%

The primary termination methods utilized in 2019 were surgical in nature, comprising approximately 58.6% of all procedures performed. Medical (non-surgical) procedures made up the balance of the procedures, or approximately 41.3%. See Table 2.

**Table 2**  
**Induced Terminations of Pregnancy**  
**West Virginia Occurrences, 2015 (partial year), 2016-2019**  
**By Method of Termination**

Year		Method of Termination				Total WV Occurrences
		Surgical			Medical (Non-Surgical)	
		Dilation and Curettage (D&C)	Dilation and Evacuation (D&E)	Total Surgical		
5/26/2015-12/31/2015	Procedures (#)	558	176	734	130	864
	Percent Distribution	64.6%	20.4%	85.0%	15.0%	100.0%
2016	Procedures (#)	1,062	100	1,162	266	1,428
	Percent Distribution	74.4%	7.0%	81.4%	18.6%	100.0%
2017	Procedures (#)	1,000	4	1,004	432	1,436
	Percent Distribution	69.6%	0.3%	69.9%	30.1%	100.0%

2018	<b>Procedures (#)</b>	1,006	7	1,013	494	1,507
	<b>Percent Distribution</b>	66.8%	0.5%	67.2%	32.8%	100.0%
2019	<b>Procedures (#)</b>	684	10	694	489	1,183
	<b>Percent Distribution</b>	57.8%	0.8%	58.6%	41.3%	100.0%

Of the seven pregnancies that were terminated at 20 or more weeks probable gestation, all were terminated on the basis of the fetus being non-medically viable. The seven fetuses all had one or more congenital anomalies including Anencephaly, Fetal Acrania, and Renal Agenesis. Additionally, one pregnancy had preterm, premature rupture of the membranes (PPROM) and one pregnancy was a partial molar pregnancy. Of the seven pregnancies that were terminated at 20 or more weeks probable gestation, three ITOP reports indicated that the method of termination used was one that provided the best opportunity for the fetus to survive, while two ITOP reports indicated that the method used to terminate was not chosen to provide the best opportunity for survival of the fetus due to another termination method posing either a greater risk of the death of the pregnant woman or the substantial and irreversible physical impairment of a major bodily function (with two unknown).

### **CONTACT INFORMATION**

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