

# The Pain-Capable Unborn Child Protection Act

## Report for 1/1/2017 to 12/31/2017

July 2018

### 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 as *W.Va. Code §§ 16-2M-1 et seq.* (hereinafter referred to as “Code”) and applies to all induced terminations of pregnancy performed in West Virginia after May 25, 2015.

Section four of the Code 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.” According to the definition in Code, ““Pain capable gestational age” means twenty-two weeks since the first day of the woman's last menstrual period. The pain capable gestational age defined herein is generally consistent with the time that is twenty weeks after fertilization.”

Section five of the Code 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 the information reported by physicians. Some of the information to be provided is identical to information being collected under the reporting required by *W.Va. Code §16-5-22*.

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 forms and instructions were distributed to all hospitals and free-standing facilities beginning in mid-May of 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’s Office of Maternal, Child and Family Health.

### ANALYSIS

Calendar year 2017 is the second 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 2017 will be fully validated in the late fall/early winter of 2018. As such, future analysis could vary slightly.

In 2017, a total of 1,436 induced terminations of pregnancy were reported as being performed in West Virginia. For all 1,436 procedures, a probable age of gestation was determined and reported. Ultrasound was employed in all 1,436 of the patient cases to assist in the determination of probable gestational age.

**ANALYSIS continued**

In terms of the frequency distribution for the 2017 induced terminations by probable gestational age, 756 of the 1,436 procedures (52.6%) occurred at eight weeks or less gestation. Six of the pregnancies, less than one-half of one percent, 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), 2016-2017**  
**By Selected Probable Gestational Ages**

Probable Gestational Ages (Weeks)	5/26/2015 – 12/31/2015		2016		2017	
	Procedures (#)	Percent Distribution	Procedures (#)	Percent Distribution	Procedures (#)	Percent Distribution
<=8	545	63.1%	871	61.0%	756	52.6%
9-10	138	16.0%	276	19.3%	331	23.1%
11-12	105	12.2%	138	9.7%	137	9.5%
13-15	49	5.7%	103	7.2%	155	10.8%
16-19	23	2.7%	36	2.5%	51	3.6%
20+	4	0.5%	4	0.3%	6	0.4%
<b>Total WV Occurrences</b>	864	100.0%	1,428	100.0%	1,436	100.0%

The primary termination methods utilized in 2017 were surgical in nature, comprising almost 70% of all procedures performed. See Table 2.

**Table 2**  
**Induced Terminations of Pregnancy**  
**West Virginia Occurrences, 2015 (partial year), 2016-2017**  
**By Method of Termination**

Method of Termination	5/26/2015 – 12/31/2015		2016		2017	
	Proc. (#)	% Dist.	Proc. (#)	% Dist.	Proc. (#)	% Dist.
<b>Surgical – Total</b>	734	85.0%	1,162	81.4%	1,004	69.9%
-- Dilation and Curettage (D&C)	558	64.6%	1,061	74.3%	1,000	69.6%
-- Dilation and Evacuation (D&E)	176	20.4%	101	7.1%	4	0.3%
<b>Medical (Non-Surgical)</b>	130	15.0%	266	18.6%	432	30.1%
<b>Total WV Occurrences</b>	864	100.0%	1,428	100.0%	1,436	100.0%

## **ANALYSIS continued**

Of the six pregnancies that were terminated at 20 or more weeks probable gestation, all were terminated on the basis that the mother had a condition that complicated her medical condition which necessitated the termination of her pregnancy to avert her death or substantial and irreversible impairment of a major bodily function or that the fetus was considered non-viable. Specific conditions mentioned included: severe pre-eclampsia/eclampsia, severe/life-threatening chorioamnionitis/sepsis, acrania, lethal anomalies, cervical incompetence and multiple defects. Of the six pregnancies that were terminated, four of the 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.

## **CONTACT INFORMATION**

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