

# The Pain-Capable Unborn Child Protection Act Report for 1/1/2016 to 12/31/2016

June 2017

## **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 the 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 of 2015. The ITOP form and instructions were distributed to all physicians licensed to practice in West Virginia in late 2015 by the Bureau for Public Health’s Office of Maternal, Child and Family Health.

## **ANALYSIS**

2016 is the initial full year of available data for several items specific to the Act. However, the data has not been fully validated and is subject to correction. It is anticipated that the data from the new ITOP form will be fully validated in the late fall/early winter of 2017. As such, further analysis could vary slightly.

In 2016, a total of 1,428 induced terminations of pregnancy was reported as being performed in West Virginia. For all 1,428 procedures, a probable age of gestation was determined and reported. Ultrasound was employed in 1,427 of the patient cases to assist in the determination of probable gestational age.

**ANALYSIS continued**

In terms of the frequency distribution of terminations by probable gestational age, 871 of the 1,428 procedures (61.0%) occurred at eight weeks or less gestation. Four of the pregnancies, less than one-third of a percent, were terminated at 20 probable weeks of gestation or greater (the “pain-capable” gestational age).

**Table 1**  
**Induced Terminations of Pregnancy**  
**West Virginia Occurrences, 2016**  
**By Selected Probably Gestational Ages**

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

The primary termination methods were surgical in nature, comprising approximately 81% of all procedures performed. Medical (non-surgical) procedures made up the balance of the procedures.

**Table 2**  
**Induced Terminations of Pregnancy**  
**West Virginia Occurrences, 2016**  
**By Method of Termination**

Method of Termination	5/26/2015 – 12/31/2015		2016	
	Procedures (#)	Percent Distribution	Procedures (#)	Percent Distribution
<b>Surgical – Total</b>	734	85.0%	1,162	81.4%
-- Dilation and Curettage (D&C)	558	64.6%	1,061	74.3%
-- Dilation and Evacuation (D&E)	176	20.4%	101	7.1%
<b>Medical (Non-Surgical)</b>	130	15.0%	266	18.6%
<b>Total WV Occurrences</b>	864	100.0%	1,428	100.0%

## **ANALYSIS continued**

Of the four pregnancies that were terminated at 20 or more weeks probable gestation, all were terminated on the basis of the mother having a condition that complicated her medical condition so as to necessitate the termination of her pregnancy to avert her death or substantial and irreversible impairment of a major bodily function and/or the fetus was considered to be non-viable. Specific conditions mentioned included: severe/life-threatening multiple anomalies, Trisomy 18, fetal encephalocele/anencephaly and chromosomal abnormalities. Of the four pregnancies that were terminated, all four of the ITOP reports indicate 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**

Questions regarding the content of this report should be directed to the West Virginia Health Statistics Center through:

Gary L. Thompson  
State Registrar of Vital Statistics  
Vital Registration Office  
350 Capitol Street, Room 165  
Charleston, WV 25301-2701

(304) 558-2931

[Gary.L.Thompson@wv.gov](mailto:Gary.L.Thompson@wv.gov)