



The Pain-Capable Unborn Child Protection Act

CY2018

(January 1, 2018 – December 31, 2018)

May 2019

The Pain-Capable Unborn Child Protection Act Report January 1, 2018 to December 31, 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 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 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 2018 is the third 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 2018 will be fully validated in the late fall/early winter of 2019. As such, further analysis could vary slightly.

In 2018, a total of 1,507 induced terminations of pregnancy were reported as being performed in West Virginia. For all 1,507 procedures, a probable age of gestation was determined and reported. Ultrasound was employed in 1,505 of the patient cases to assist in the determination of probable gestational age.

In terms of the frequency distribution for the 2018 induced terminations by probable gestational age, 872 of the 1,507 procedures (57.9%) occurred at eight weeks or less gestation. Two of the pregnancies, less than one-fifth of a 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), 2016-2018
By Probable Gestational Ages

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%

The primary termination methods utilized in 2018 were surgical in nature, comprising approximately 67% of all procedures performed. Medical (non-surgical) procedures made up the balance of the procedures or approximately 33%. See Table 2.

Table 2
Induced Terminations of Pregnancy
West Virginia Occurrences, 2015 (partial year), 2016-2018
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	Procedures (#)	1,006	7	1,013	494	1,507
	Percent Distribution	66.8%	0.5%	67.2%	32.8%	100.0%

Of the two 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, specifically severe pre-eclampsia/eclampsia. Of the two pregnancies that were terminated at 20 or more weeks probable gestation, one ITOP report indicated that the method of termination used was one that provided the best opportunity for the fetus to survive, while the other ITOP report 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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