

The Pain-Capable Unborn Child Protection Act

January 1, 2021 – December 31, 2021

The Pain-Capable Unborn Child Protection Act Report January 1, 2021 to December 31, 2021

BACKGROUND

During the 2015 Regular Legislative 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, codified at W. Va. Code §16-2M-1 *et seq.*, 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. The pain-capable gestational age is defined as 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 (BPH), 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 BPH's Office of Maternal, Child, and Family Health (OMCFH).

ANALYSIS

Calendar year 2021 is the sixth 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.

In 2021, a total of 1,374 ITOPs were reported as being performed in West Virginia. This is a 37.3% increase from the number reported in 2020 (1,001). For the 1,374 procedures, a probable age of gestation was determined and reported. Ultrasound was employed in 1,371 (99.8%) of the patient cases to assist in the determination of probable gestational age.

In terms of the frequency distribution for the 2021 induced terminations by probable gestational age, 911 of the 1,374 procedures (66.3%) occurred at eight weeks or less gestation. Six 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), 2016-2021
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% |
| 2020 | Procedures (#) | 593 | 215 | 90 | 80 | 20 | 3 | 1,001 |
| | Percent Distribution | 59.2% | 21.5% | 9.0% | 8.0% | 2.0% | 0.3% | 100.0% |
| 2021 | Procedures (#) | 911 | 251 | 101 | 82 | 23 | 6 | 1,374 |
| | Percent Distribution | 66.3% | 18.3% | 7.4% | 6.0% | 1.7% | 0.4% | 100.0% |

The primary termination methods utilized in 2021 were nearly equally split between surgical and medical methods. Approximately 44.9% of all procedures were surgical with most being dilation and curettage. Medical (non-surgical) procedures made up the balance of the procedures, or approximately 55.1%. See Table 2.

Table 2
Induced Terminations of Pregnancy
West Virginia Occurrences, 2015 (partial year), 2016-2021
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% |
| 2019 | Procedures (#) | 684 | 10 | 694 | 489 | 1,183 |
| | Percent Distribution | 57.8% | 0.8% | 58.6% | 41.3% | 100.0% |
| 2020 | Procedures (#) | 478 | 9 | 487 | 514 | 1,001 |
| | Percent Distribution | 47.8% | 0.9% | 48.7% | 51.3% | 100.0% |
| 2021 | Procedures (#) | 609 | 8 | 617 | 757 | 1,374 |
| | Percent Distribution | 44.3% | 0.6% | 44.9% | 55.1% | 100.0% |

Of the six pregnancies that were terminated at 20 or more weeks of probable gestation, all were terminated on the basis of the fetus being non-medically viable. The six fetuses all had one or more congenital anomalies including anencephaly, Trisomy 18, fetal skeletal dysplasia, renal agenesis, severe Dandy-Walker malformation, and single ventricle. Of the six pregnancies that were terminated at 20 or more weeks of probable gestation, one ITOP report indicated the method of termination used was one that provided the best opportunity for the fetus to survive. Five ITOP reports indicated the method used to terminate was not chosen to provide the best opportunity for survival of the fetus due to the underlying medical condition of the fetus.

CONTACT INFORMATION

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

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