

**Testimony of Heather G. Hacker, J.D.**  
**Hearing Before the U.S. Senate Committee on Finance**  
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**“Chaos and Control: How Trump Criminalized Women’s Health Care”**

Chairman Wyden, Ranking Member Crapo, and Members of the Committee,

Thank you for the opportunity to present testimony on this topic based on my expertise as an attorney and practicing litigator. There is a lot of misinformation and confusion surrounding the law regarding the medical treatment of pregnant women and abortion restrictions. But the confusion is not because of the law, which is clear. It is critical that policymakers, public advocates, and the legal profession correct this misinformation about the law that is being spread through the media to ensure that pregnant women are not hindered from receiving timely medical care. That is a goal that all Americans should agree on, regardless of their views on the topic of abortion. I am grateful to the Committee for providing me the opportunity to explain what the law says about this important issue, which is so critical to women’s health.

It is first important to understand that the Supreme Court’s 2022 decision in the *Dobbs*<sup>1</sup> case did not “criminalize” abortion. The decision rejected *Roe*’s concept of a federal constitutional right to abortion, which allowed Americans, through their elected representatives, to address that issue at the state level. Some states, such as California and New York, responded by broadening abortion rights. Other states, such as Texas and Tennessee, generally prohibited abortion. Other states, such as Georgia and Iowa, limited abortion to before the fetus has a detectable heartbeat. Other states like North Carolina and Nebraska, limited abortion after a certain gestation. And still other states have not passed new legislation and instead left existing regulations in place, such as laws requiring informed consent, waiting periods, and prohibiting late-term abortions (which would have passed muster under the Court’s pre-*Dobbs* jurisprudence).

Regardless of the state, laws restricting abortion do not prevent physicians from treating ectopic pregnancies, miscarriages, or women suffering life-threatening complications, including complications from abortion. To the extent that this has been reported by the media, it is incorrect. To the extent that doctors have claimed that their hands are tied in treating patients in these circumstances, they are mistaken. And to the extent that women believe that any law will prevent them from receiving lifesaving care, they are sadly misinformed. The evidence demonstrating the truth of the above statements is not partisan—it comes from the text of the laws themselves.

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<sup>1</sup> *Dobbs v. Jackson Women’s Health Org.*, 597 U.S. 215 (2022).

The text of the laws makes clear that:

1. No state in America prohibits the prompt medical treatment of a woman suffering from an ectopic pregnancy, a miscarriage, or abortion complications.
2. No state in America prohibits access to contraceptives.
3. No state in America prohibits abortion in all circumstances. Every single state that prohibits abortion or that limits it based on fetal heartbeat or gestational age permits doctors to perform an abortion where the mother's life is threatened and does not require them to wait until the threat is imminent.

### **The Legal Definition of Abortion Does Not Include Treatment for Miscarriages, Ectopic Pregnancies, or Contraception**

From a *legal* perspective, what is “abortion”? The precise definition varies slightly from state to state, but in general, **“abortion” is the purposeful termination of a pregnancy with the intent to cause the death of the unborn child.**<sup>2</sup> Under that definition, procedures to treat ectopic pregnancy (a life-threatening condition in which a fertilized embryo implants outside the uterus) or miscarriage (sometimes referred to by physicians as a “spontaneous abortion,” meaning the sudden loss of a pregnancy) would not fall under the definition of abortion because they are not procedures performed with the intent to cause the death of the unborn child. In the case of a miscarriage, the unborn child has already passed away. In the case of an ectopic pregnancy, the pregnancy cannot grow normally outside the uterus and permitting it to continue will cause serious injury to the mother. Treating a woman in either scenario is not “abortion” because the procedure’s intent is not to cause the death of the unborn child. The unborn child has either already died or will soon. For the same reason, prohibitions on abortion do not prevent a physician from caring for a patient suffering from complications from an abortion, such as a woman who still has parts of the fetus inside her uterus after a surgical or drug-induced abortion. And similarly, this definition is also why no state in America prohibits access to contraception. The purpose of contraception is to prevent pregnancy, not to terminate a pregnancy or cause the death of an unborn child. Further, this definition of abortion could not apply to embryos created during the IVF process, as until they are implanted in the uterus, there is no “pregnancy” to terminate.

### **Many States Expressly Clarify That Abortion Restrictions Do Not Apply to Miscarriage, Ectopic Pregnancy, and Contraception**

Even though the legal definition of abortion would not include treatment for miscarriage, ectopic pregnancies, and contraception, many states go even further and expressly clarify this in their laws. To be clear, just because a state does not have these express clarifications does not mean there is a question as to whether these things could be “abortion”—as explained above, the

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<sup>2</sup> See Appendix A, Abortion Definitions in States with Strong Abortion Restrictions or Limitations.

definition of abortion in those states would already clearly exclude these things. These states have just gone above and beyond in attempting to make sure there is no confusion as to when their abortion laws apply:

- Alabama- Abortion does not include treatment for miscarriages or ectopic pregnancies<sup>3</sup>
- Arizona- Abortion does not include contraceptives or treatment for miscarriages or ectopic pregnancies<sup>4</sup>
- Arkansas- Abortion does not include contraceptives or treatment for miscarriages or ectopic pregnancies<sup>5</sup>
- Florida- Abortion does not include treatment for miscarriages<sup>6</sup>
- Georgia- Abortion does not include treatment for miscarriage or ectopic pregnancy<sup>7</sup>
- Idaho- Abortion does not include contraceptives<sup>8</sup>
- Indiana- Abortion does not include treatment for miscarriage<sup>9</sup>
- Iowa- Abortion does not include treatment for miscarriage<sup>10</sup>
- Kentucky- Abortion does not include contraceptives<sup>11</sup>
- Louisiana- Abortion does not include contraceptives<sup>12</sup>
- Mississippi- Abortion does not include treatment for miscarriage<sup>13</sup>
- Missouri- Abortion does not include treatment for miscarriage or ectopic pregnancy<sup>14</sup>
- Nebraska- Abortion does not include treatment for miscarriage or ectopic pregnancy, or IVF<sup>15</sup>
- North Carolina- Abortion does not include treatment for miscarriage or ectopic pregnancy<sup>16</sup>
- North Dakota- Abortion does not include treatment for miscarriage or ectopic pregnancy<sup>17</sup>
- Ohio- Abortion does not include contraceptives or treatment for miscarriage or ectopic pregnancy<sup>18</sup>

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<sup>3</sup> Ala. Code § 26-23H-3.

<sup>4</sup> Ariz. Rev. Stat. § 36-2151(1).

<sup>5</sup> Ark. Code §§ 5-61-303(1), 5-61-304(c)(2).

<sup>6</sup> Fla. Stat. § 390.011(1).

<sup>7</sup> Ga. Code § 16-12-141 (a)(1).

<sup>8</sup> Idaho Code § 18-604(1).

<sup>9</sup> Ind. Code § 16-18-2-1.

<sup>10</sup> Iowa Code § 146C.1(1).

<sup>11</sup> Ky. Rev. Stat. §§ 311.772(3), (6).

<sup>12</sup> La. Rev. Stat. §§ 40:1061(C), (E).

<sup>13</sup> Miss. Code § 41-41-45(1).

<sup>14</sup> Mo. Ann. Stat. § 188.015(1).

<sup>15</sup> Neb. Rev. Stat. § 71-6901(1); Nebraska L.B. 574, 108<sup>th</sup> Leg., 1<sup>st</sup> Reg. Sess. (Neb. 2023), *available at* <https://nebraskalegislature.gov/FloorDocs/108/PDF/Slip/LB574.pdf>.

<sup>16</sup> N.C. Gen. Stat. § 90-21.81(4e), (9b); *see also* North Carolina S.B.A 20, 2023 Leg., Reg. Sess. (N.C. 2023).

<sup>17</sup> N.D. Cent. Code § 14-02.1-02(1).

<sup>18</sup> Ohio Rev. Code §§ 2919.191, 2919.192(A), 2919.193(D); 2919.197.

- Oklahoma- Abortion does not include contraceptives or treatment for miscarriage or ectopic pregnancy<sup>19</sup>
- South Carolina- Abortion does not include treatment for miscarriage<sup>20</sup>
- South Dakota- Abortion does not include treatment for ectopic pregnancy<sup>21</sup>
- Tennessee- Abortion does not include treatment for miscarriage or ectopic pregnancy<sup>22</sup>
- Texas- Abortion does not include contraceptives or treatment for miscarriage or ectopic pregnancy<sup>23</sup>
- Utah- Abortion does not include miscarriage or ectopic pregnancy<sup>24</sup>
- West Virginia- Abortion does not include contraception, treatment for miscarriage or ectopic pregnancy, or IVF.<sup>25</sup>

### Two Recent Reported Deaths Are Not Attributable to Abortion Laws

Despite these express clarifications in the law, the media continues to irresponsibly report that State laws prevent women from receiving these treatments. And in two recent cases, this misinformation may have cost two women their lives. ProPublica recently reported that two women suffering from abortion complications in Georgia died because of Georgia’s abortion laws, but these articles are further examples of inaccurate reporting that could lead to confusion about the law.

ProPublica claimed the first woman, Amber Thurman, died because she needed a D&C<sup>26</sup> and the state “had made performing the procedure a felony.”<sup>27</sup> **As a legal matter, that is absolutely false.** There is no Georgia law prohibiting a D&C, which is a medical procedure that is not exclusively performed in the context of abortion.<sup>28</sup> According to the report, Ms. Thurman was pregnant with twins, had taken abortion pills, and suffered a complication—an infection caused by parts of the fetuses remaining inside the uterus.<sup>29</sup> But the fetuses had already died. There was no pregnancy. And Georgia’s definition of abortion—by its plain terms—does not apply where a

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<sup>19</sup> Okla. Stat. tit. 63, § 1-745.51(1).

<sup>20</sup> S.C. Code § 44-41-610(1).

<sup>21</sup> S.D. Codified Laws § 34-23A-1(1).

<sup>22</sup> Tenn. Code § 39-15-213 (a)(1).

<sup>23</sup> Tex. Health & Safety Code § 245.002(1).

<sup>24</sup> Utah Code § 76-7a-101(1)(b).

<sup>25</sup> W. Va. Code §§ 16-2R-2, 16-2R-3, 16-2R-4.

<sup>26</sup> D&C stands for “dilation and curettage,” which is a procedure used by physicians to empty the uterus. It is not particular to abortion. It can be used for abortion if the fetus is alive. But it can also be used to remove the dead fetus if a miscarriage has occurred or if the woman has suffered an incomplete abortion and retained parts of the fetus. The procedure is also performed for reasons unrelated to pregnancy. *See* Mayo Clinic, “Dilation and curettage (D&C),” <https://www.mayoclinic.org/tests-procedures/dilation-and-curettage/about/pac-20384910>.

<sup>27</sup> Kavitha Surana, “Abortion bans Have Delayed Emergency Medical Care. In Georgia, Experts Say This Mother’s Death Was Preventable,” *ProPublica* (Sept. 16, 2024), <https://www.propublica.org/article/georgia-abortion-ban-amber-thurman-death>.

<sup>28</sup> *See* n. 26 *supra*.

<sup>29</sup> *Id.*

procedure is not done with the intent terminate a pregnancy and to cause the death of the fetus.<sup>30</sup> The intent of a D&C was to treat the mother, not to end a pregnancy (because it had already ended) nor to cause the death of the fetuses (because they had already died). Because the procedure at issue would not even fit the definition of abortion, it is unnecessary to try to fit the treatment within the law’s exceptions.<sup>31</sup>

According to the information in the article, Ms. Thurman died after doctors failed to timely perform the procedure necessary to remove the remaining fetal tissue.<sup>32</sup> But despite the article’s headline and claim that her death was due to the law, the article later admits that “it is not clear from the records available why doctors waited to provide a D&C to Thurman, though the summary report shows they discussed the procedure at least twice in the hours before they finally did.”<sup>33</sup> In other words, one would have to read through many paragraphs to discover that, based on reported information, there was actually no evidence that the delay in care was caused by the physicians treating Ms. Thurman being confused about the law. But even if they were, the law clearly did not prohibit the procedure they needed to perform to save Ms. Thurman’s life.

In the second case, Candi Miller also took abortion pills (which she ordered online), and like Ms. Thurman, the pills ended her pregnancy but failed to cause expulsion of the fetal tissue, according to the information in the article.<sup>34</sup> Her husband found her dead after days of severe pain.<sup>35</sup> Tragically, Ms. Miller never sought medical care.<sup>36</sup> ProPublica reported that “[h]er family later told a coroner she hadn’t visited a doctor ‘due to the current legislation on pregnancies and abortions.’”<sup>37</sup> As already explained, there was nothing in Georgia law that prevented doctors from treating Ms. Miller. And if Ms. Miller was afraid she could be prosecuted for taking the abortion pills because of false media claims, again, the law is clear that is not the case: “A person commits the offense of criminal abortion when, in violation of Code Section 16-12-141, he or she administers any medicine, drugs, or other substance whatever *to any woman* or when he or she uses any instrument or other means whatever *upon any woman* with intent to produce a miscarriage or abortion.”<sup>38</sup> The plain language of Georgia’s criminal prohibition applies to a person *other than the pregnant woman*.

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<sup>30</sup> “‘Abortion’ means the act of using, prescribing, or administering any instrument, substance, device, or other means with the purpose to terminate a pregnancy with knowledge that termination will, with reasonable likelihood, cause the death of an unborn child. . .” Ga. Code § 16-12-141(a)(1).

<sup>31</sup> Ga. Code §§ 16-12-141(a)(3), (4), (b).

<sup>32</sup> See n. 27 *supra*.

<sup>33</sup> *Id.*

<sup>34</sup> Kavitha Surana, “Afraid to Seek Care Amid Georgia’s Abortion Ban, She Stayed at Home and Died,” *ProPublica*, (Sept. 18, 2024), <https://www.propublica.org/article/candi-miller-abortion-ban-death-georgia>.

<sup>35</sup> *Id.*

<sup>36</sup> *Id.*

<sup>37</sup> *Id.*

<sup>38</sup> Ga. Code § 16-12-140.

If that's not enough, Georgia's feticide law (which applies to causing the death of an unborn child) expressly excludes the pregnant woman from prosecution.<sup>39</sup> And far from authorizing prosecution of the mother, Georgia's Heartbeat Law gives a woman a *civil cause of action* against the person who aborted her child.<sup>40</sup> Instead, Ms. Miller's tragic confusion about Georgia law may have been caused by inaccurate reporting.<sup>41</sup> Political motivations cannot trump accurate legal information—and here, if ProPublica's reporting about the reason she did not seek medical attention is true, legal misinformation may have cost Ms. Miller her life. She deserved better.

### **The *Dobbs* Decision Did Not Change Application of the Familiar “Reasonable Medical Judgment” Standard in Abortion Restriction Exceptions**

While *Dobbs* did change the law in that it permitted States to prohibit abortion or limit it pre-viability if they chose to do so, it did not, itself, “criminalize” anything. Importantly, *Dobbs* also did nothing to change how exceptions to abortion laws apply. Those exceptions were common many years before *Roe*, they were common before *Dobbs*, and they do not apply any differently now post-*Dobbs*. Moreover, the “reasonable medical judgment” standard used by these exceptions has been applied broadly for decades, which makes claims from physicians that such exceptions are now “confusing” a bit perplexing.

As the majority opinion in *Dobbs* noted, as of the late 1950s, at least 46 States prohibited abortion except if necessary to save “the life of the mother,” and when *Roe v. Wade*<sup>42</sup> was decided in 1973, similar statutes were still in effect in 30 States.<sup>43</sup> Even after *Roe*, many States restricted abortion in ways permitted by *Roe* and its progeny, with those laws always containing exceptions to permit the procedure if needed to protect the life of the mother. For example, many states had post-viability gestational limits, waiting periods, and banned certain methods of abortion (such as partial-birth abortion or dismemberment abortion.) All these laws had exceptions that allowed a physician to nonetheless perform the procedure where it was necessary to prevent the death or serious harm to the mother. The same is true now in states that completely ban abortion or restrict

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<sup>39</sup> “Nothing in this Code section shall be construed to permit the prosecution of . . . [a]ny woman with respect to her unborn child.” Ga. Code § 16-5-80(f)(3).

<sup>40</sup> “Any woman upon whom an abortion is performed in violation of this Code section may recover in a civil action from the person who engaged in such violation all damages available to her under Georgia law for any torts.” Ga. Code § 16-12-141(g).

<sup>41</sup> *E.g.*, Mark Joseph Stern, “Georgia Just Criminalized Abortion. Women Who Terminate Their Pregnancies Would Receive Life In Prison,” *Slate* (May 7, 2019), <https://slate.com/news-and-politics/2019/05/hb-481-georgia-law-criminalizes-abortion-subjects-women-to-life-in-prison.html>; Samantha Leach, “Women Who Have an Abortion in Georgia Could Soon Be Sentenced to Life In Prison,” *Glamour* (May 8, 2019), <https://www.glamour.com/story/georgia-six-week-abortion-ban-women-life-in-prison> (repeating Stern's claims); Kathryn Krawczyk, “Georgia's ‘heartbeat’ abortion bill could imprison women for life,” *The Week* (May 9, 2019), <https://theweek.com/speedreads/840436/georgias-heartbeat-abortion-bill-could-imprison-women-life> (repeating Stern's claims).

<sup>42</sup> *Roe v. Wade*, 410 U.S. 113 (1973).

<sup>43</sup> *Dobbs*, 597 U.S. at 260.

it after a detectable heartbeat or certain gestational age.<sup>44</sup> The standard used in these exceptions is similar, if not identical, to what has already been used in abortion statutes (and even outside the context of abortion) for many years. Abortions are allowed if, in the “reasonable medical judgment” of the physician, the situation qualifies under the law’s exception.<sup>45</sup>

“Reasonable medical judgment” is not a new standard, nor is it a new concept for physicians. In the United States, “reasonable medical judgment” was born out of the relevant standard of care for physicians.<sup>46</sup> “[T]his is the same standard by which all . . . medical decisions are judged under traditional theories of tort law.<sup>47</sup> In other words, it is the “reasonable person” standard, but for physicians. It first appeared in situations requiring a physician to certify mental incompetence using “reasonable medical judgment” or in medical malpractice cases, establishing a zone of reasonable actions.<sup>48</sup> Thus, physicians have been familiar with exercising reasonable judgment in treating patients within the parameters of the law for decades in all contexts of medical practice, not just abortion.

In the context of abortion, the pre-*Dobbs* Supreme Court approved very similar language—“necessary, in appropriate medical judgment”—many times since *Roe*, essentially requiring that all abortion laws have an exception with similar wording in order to satisfy the undue burden standard.<sup>49</sup> In 2007, the Supreme Court upheld the federal Partial Birth Abortion Ban Act against a vagueness challenge in *Gonzales v. Carhart*.<sup>50</sup> Under that statute, partial-birth abortion is prohibited unless it “necessary to save the life of a mother whose life is endangered by a physical disorder, physical illness, or physical injury, including a life-endangering physical condition caused by or arising from the pregnancy itself.”<sup>51</sup> Note the difference between that exception and the exception discussed above: Whether the procedure is “necessary” does not reference the physician’s “reasonable medical judgment” according to the text of *that* law.<sup>52</sup> But the Court did

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<sup>44</sup> See Appendix B, Abortion Exceptions in States with Pre-Viability Abortion Restrictions or Limitations.

<sup>45</sup> Arizona, Idaho, and Nebraska instead use a “good faith medical judgment” standard, which is a subjective standard and is therefore more lenient. Ariz. Rev. Stat. § 36-2321; Idaho Code § 18-622(2); Neb. Rev. Stat. § 71-6901(8). Arkansas, Mississippi, and Utah do not specify the “reasonable medical judgment” standard like the federal Partial Birth Abortion Ban. See discussion of *Gonzales v. Carhart*, 550 U.S. 124 (2007) at pp. 7-8 *infra*.

<sup>46</sup> See *Karlin v. Foust*, 188 F.3d 446 (7th Cir. 1999).

<sup>47</sup> *Id.* at 464.

<sup>48</sup> See *Rogers v. U.S.*, 334 F.2d 931, 935 (6th Cir. 1964).

<sup>49</sup> *Ayotte v. Planned Parenthood of N. New England*, 546 U.S. 320, 328 (2006) (quoting *Planned Parenthood of Se. Pa. v. Casey*, 505 U.S. 833, 879 (1992) (quoting *Roe v. Wade*, 410 U.S. 110, 164-65 (1973)), citing *Thornburgh v. Am. Coll. of Obstetricians and Gynecologists*, 476 U.S. 747, 768-69 (1986)); *Planned Parenthood Assn. of Kansas City, Mo., Inc. v. Ashcroft*, 462 U.S. 476, 482-486 (1983) (opinion of Powell, J.); *Planned Parenthood of Cent. Mo. v. Danforth*, 428 U.S. 52, 79 (1976)).

<sup>50</sup> *Gonzales v. Carhart*, 550 U.S. 124 (2007).

<sup>51</sup> 18 U.S.C. § 1531(a).

<sup>52</sup> *Gonzales*, 550 U.S. at 161 (the Act “does not allow use of the barred procedure where necessary, in appropriate medical judgment, for the preservation of the . . . health of the mother.”).

not appear to even question whether the emergency exception is vague.<sup>53</sup> And that exception's standard is even stricter on its face than the standard in most state abortion statutes because it does not explicitly provide allowance for any variance in physician discretion. Overall, the Supreme Court held that the Partial Birth Abortion Ban Act "provides doctors 'of ordinary intelligence a reasonable opportunity to know what is prohibited,'" and "sets forth 'relatively clear guidelines as to prohibited conduct' and provides 'objective criteria' to evaluate whether a doctor has performed a prohibited procedure."<sup>54</sup>

To illustrate the point that the "reasonable medical judgment" standard should not be confusing to physicians, take Texas as an example. Texas currently prohibits abortion unless "in the exercise of reasonable medical judgment, the pregnant female on whom the abortion is performed, induced, or attempted has a life-threatening physical condition aggravated by, caused by, or arising from a pregnancy that places the female at risk of death or poses a serious risk of substantial impairment of a major bodily function unless the abortion is performed or induced."<sup>55</sup> Texas law even specifically defines "reasonable medical judgment," though as explained above, it's already a familiar standard: "a medical judgment made by a reasonably prudent physician, knowledgeable about a case and the treatment possibilities for the medical conditions involved."<sup>56</sup>

Texas law, as is likely true in many other states, also uses the "reasonable medical judgment" standard in contexts outside abortion, including in statutes governing mental-competence determinations, application of medical directives, and end-of-life questions.<sup>57</sup> Texas also used the standard in abortion restrictions it had before *Dobbs*. In the abortion context, "reasonable medical judgment" has applied for over a decade. Since 2013, and well before *Dobbs*, Texas law prohibited abortions after twenty weeks post-fertilization.<sup>58</sup> That law contains a medical exception if, "in the physician's reasonable medical judgment," an abortion is necessary to "avert the woman's death or a serious risk of substantial and irreversible physical impairment of a major bodily function."<sup>59</sup> Those provisions have never been challenged for vagueness. Additionally, Texas also has a partial-birth abortion ban that mirrors the federal ban's objective "necessary" standard. But that law also has never been challenged as vague, even though performing a partial-birth abortion in Texas is a state jail felony.<sup>60</sup>

Furthermore, physicians are not alone in determining whether their "medical judgment" is "reasonable." As the standard originates in tort law, it looks to what the standard of care is. If a

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<sup>53</sup> *Id.* at 147-50.

<sup>54</sup> *Id.* at 149 (citations omitted).

<sup>55</sup> Tex. Health & Safety Code § 170A.002(b).

<sup>56</sup> Tex. Health & Safety Code § 170A.001(4).

<sup>57</sup> *See, e.g.*, Tex. Ins. Code § 1106.004; Tex. Health & Safety Code §§ 166.002, 166.152, 166.162, 166.205, 313.005.

<sup>58</sup> Tex. Health & Safety Code § 171.044.

<sup>59</sup> Tex. Health & Safety Code § 171.046.

<sup>60</sup> Tex. Health & Safety Code § 171.103.



physician’s judgment in a particular situation is consistent with guidelines from medical organizations or from state medical boards, it is certainly “reasonable.” And some state medical boards and other government agencies (including in Texas) have also provided guidance on this front.<sup>61</sup>

Despite media coverage, we also know that physicians *are* exercising their judgment under the exception and have performed abortions in cases of medical need. For instance, between July 2022 and June 2024, at least 113 abortions have been performed in Texas under the exception according to State records.<sup>62</sup> Not every State keeps this data, but it is safe to assume physicians in other states are also doing the same given that other states have very similar legal standards. I have located zero reported cases involving the prosecution of any doctor who has performed an abortion that he determined was necessary to save the life of the mother in his “reasonable medical judgment,” whether pre- or post-*Dobbs*.<sup>63</sup>

### **Exceptions to Abortion Restrictions Do Not Require that Harm to the Woman Be Imminent Before the Physician Can Act**

Additionally, there is nothing in these statutes that requires physicians to wait until harm is imminent to provide treatment. As to Texas’s statute, the Texas Supreme Court affirmed that in 2023:

[T]he statute does not require “imminence”. . . The exception does not hold a doctor to medical certainty, nor does it cover only adverse results that will happen immediately absent an abortion, nor does it ask the doctor to wait until the mother is within an inch of death or her bodily impairment is fully manifest or practically irreversible. The exception does not mandate that a doctor in a true emergency await consultation with other doctors who may not be available. Rather, the exception is predicated on a doctor’s acting within the zone of reasonable medical

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<sup>61</sup> See, e.g., 22 Tex. Admin. Code § 165.8(d); S.D. Codified Laws § .34-23A-94; Fla. Agency for Health Care Admin., “Notice to Health Care Providers Regarding Misinformation About Abortions in Florida,” Sept. 19, 2024, <https://ahca.myflorida.com/content/download/25110/file/9-19-24-Notice-to-Providers.pdf>.

<sup>62</sup> Tex. Dep’t of Health & Human Servs., ITOP Statistics (Induced Terminations of Pregnancy), at 2024 Selected Characteristics of Induced Terminations of Pregnancy YTD, 2023 Selected Characteristics of Induced Terminations of Pregnancy YTD, and 2022 Selected Characteristics of Induced Terminations of Pregnancy, *available at* <https://www.hhs.texas.gov/about/records-statistics/data-statistics/itop-statistics>.

<sup>63</sup> A Westlaw search in the “All States” database for any case containing the word “abortion” and the phrases “reasonable medical judgment,” “reasonable clinical judgment,” “good faith medical judgment,” or “good faith clinical judgment,” yielded only two cases involving prosecutions. One case did not involve abortion at all: it reinstated charges against a man who violently assaulted a woman, causing the death of her baby due to be born in five days under Wisconsin’s feticide statute. *State v. Black*, 526 N.W.2d 132 (Wis. 1994). The other was a case allowing amendment of charges against a physician for performing an abortion past Michigan’s gestational limit. *People v. Higuera*, 625 N.W.2d 444 (Mich. App. 2001). That case did not involve a claim that the abortion was performed for medical need, however. There was a dispute as to whether the physician knew that the pregnancy had progressed beyond the State’s limit. *Id.* at 456.

judgment, which is what doctors do every day. An exercise of reasonable medical judgment does not mean that every doctor would reach the same conclusion. A pregnant woman does not need a court order to have a life-saving abortion in Texas.<sup>64</sup>

The Texas Supreme Court reaffirmed that in May of this year in response to a lawsuit brought by women complaining of delays in treatment, also adding that any physicians who claimed they could not provide an abortion to prevent serious harm to the mother were incorrect:

A physician who tells a patient, ‘Your life is threatened by a complication that has arisen during your pregnancy, and you may die, or there is a serious risk you will suffer substantial physical impairment unless an abortion is performed,’ and in the same breath states ‘but the law won’t allow me to provide an abortion in these circumstances’ is simply wrong in that legal assessment.<sup>65</sup>

The Idaho Supreme Court similarly rejected the argument that its statute, which permits an abortion in cases where it is necessary to prevent the death of the pregnant woman in the “good faith medical judgment” of the physician<sup>66</sup>:

The plain language of the above provision leaves wide room for the physician’s ‘good faith medical judgment’ on whether the abortion was ‘necessary to prevent the death of the pregnant woman’ based on those facts known to the physician at that time. This is clearly a subjective standard, focusing on the particular physician’s judgment. . . . [T]he statute does not require *objective* certainty, or a particular level of immediacy, before the abortion can be ‘necessary’ to save the woman’s life. Instead, the statute uses broad language to allow for the ‘clinical judgment that physicians are routinely called upon to make for proper treatment of their patients.’<sup>67</sup>

## Conclusion

In sum, the law demonstrates that current abortion bans and significant gestational age restrictions:

- Do not prevent physicians from treating women with miscarriages, ectopic pregnancies, or abortion complications;

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<sup>64</sup> *In re State*, 682 S.W.3d 890, 894 (Tex. 2023). Notably, the plaintiff in *In re State* was 20 weeks pregnant and thus would have been subject to the State’s existing 20-week prohibition that used the same “reasonable medical judgment” standard even before *Dobbs*.

<sup>65</sup> *State v. Zurawski*, 690 S.W.3d 644, 653 (Tex. 2024).

<sup>66</sup> Idaho Code § 18-622(2).

<sup>67</sup> *Planned Parenthood Great Nw. v. State*, 522 P.3d 1132, 1203 (Idaho 2023).

- Do not prevent physicians from exercising their medical judgment in performing abortions that are necessary to prevent the death or serious harm to the mother;
- Do not require the physician to wait until the mother is in immediate jeopardy to act; and
- The “reasonable medical judgment” standard is one that physicians are used to and that has been applied (and upheld) in other contexts.

Thus, if there is confusion as to what treatment is available for pregnant women in these states, it is not because of what the laws say.

## APPENDIX A

### Abortion Definitions in States with Pre-Viability Abortion Restrictions or Limitations

#### Alabama

Ala. Code § 26-23H-3:

(1) Abortion. The use or prescription of any instrument, medicine, drug, or any other substance or device with the intent to terminate the pregnancy of a woman known to be pregnant with knowledge that the termination by those means will with reasonable likelihood cause the death of the unborn child. The term does not include these activities if done with the intent to save the life or preserve the health of an unborn child, remove a dead unborn child, to deliver the unborn child prematurely to avoid a serious health risk to the unborn child's mother, or to preserve the health of her unborn child. The term does not include a procedure or act to terminate the pregnancy of a woman with an ectopic pregnancy, nor does it include the procedure or act to terminate the pregnancy of a woman when the unborn child has a lethal anomaly.

#### Arizona

Ariz. Rev. Stat. § 36-2151:

1. "Abortion" means the use of any means to terminate the clinically diagnosable pregnancy of a woman with knowledge that the termination by those means will cause, with reasonable likelihood, the death of the unborn child. Abortion does not include birth control devices, oral contraceptives used to inhibit or prevent ovulation, conception or the implantation of a fertilized ovum in the uterus or the use of any means to save the life or preserve the health of the unborn child, to preserve the life or health of the child after a live birth, to terminate an ectopic pregnancy or to remove a dead fetus.

#### Arkansas

Ark. Code § 5-61-303:

(1)(A) "Abortion" means the act of using, prescribing, administering, procuring, or selling of any instrument, medicine, drug, or any other substance, device, or means with the purpose to terminate the pregnancy of a woman, with knowledge that the termination by any of those means will with reasonable likelihood cause the death of the unborn child.

(B) An act under subdivision (1)(A) of this section is not an abortion if the act is performed with the purpose to:

- (i) Save the life or preserve the health of the unborn child;
- (ii) Remove a dead unborn child caused by spontaneous abortion; or

(iii) Remove an ectopic pregnancy

Ark. Code § 5-61-304:

(c) This section does not:

(1) Authorize the charging or conviction of a woman with any criminal offense in the death of her own unborn child; or

(2) Prohibit the sale, use, prescription, or administration of a contraceptive measure, drug, or chemical if the contraceptive measure, drug, or chemical is administered before the time when a pregnancy could be determined through conventional medical testing and if the contraceptive measure, drug, or chemical is sold, used, prescribed, or administered in accordance with manufacturer instructions.

### **Florida**

Fla. Stat. §390.011:

(1) “Abortion” means the termination of human pregnancy with an intention other than to produce a live birth or to remove a dead fetus.

### **Georgia**

Ga. Code § 16-12-141:

(a) As used in this article, the term:

(1) “Abortion” means the act of using, prescribing, or administering any instrument, substance, device, or other means with the purpose to terminate a pregnancy with knowledge that termination will, with reasonable likelihood, cause the death of an unborn child; provided, however, that any such act shall not be considered an abortion if the act is performed with the purpose of:

(A) Removing a dead unborn child caused by spontaneous abortion; or

(B) Removing an ectopic pregnancy.

### **Idaho**

Idaho Code § 18-604:

As used in this chapter:

(1) “Abortion” means the use of any means to intentionally terminate the clinically diagnosable pregnancy of a woman with knowledge that the termination by those means will, with reasonable

likelihood, cause the death of the unborn child except that, for the purposes of this chapter, abortion shall not mean:

- (a) The use of an intrauterine device or birth control pill to inhibit or prevent ovulations, fertilization, or the implantation of a fertilized ovum within the uterus;
- (b) The removal of a dead unborn child;
- (c) The removal of an ectopic or molar pregnancy; or
- (d) The treatment of a woman who is no longer pregnant.

### **Indiana**

Ind. Code § 16-18-2-1:

Sec. 1. “Abortion” means the termination of human pregnancy with an intention other than to produce a live birth or to remove a dead fetus. The term includes abortions by surgical procedures and by abortion inducing drugs.

### **Iowa**

Iowa Code § 146C.1:

1. “Abortion” means the termination of a human pregnancy with the intent other than to produce a live birth or to remove a dead fetus.

### **Kentucky**

(3) (a) No person may knowingly:

1. Administer to, prescribe for, procure for, or sell to any pregnant woman any medicine, drug, or other substance with the specific intent of causing or abetting the termination of the life of an unborn human being; or

2. Use or employ any instrument or procedure upon a pregnant woman with the specific intent of causing or abetting the termination of the life of an unborn human being.

(5) Nothing in this section may be construed to subject the pregnant mother upon whom any abortion is performed or attempted to any criminal conviction and penalty.

(6) Nothing in this section may be construed to prohibit the sale, use, prescription, or administration of a contraceptive measure, drug, or chemical, if it is administered prior to the time when a pregnancy could be determined through conventional medical testing and if the contraceptive measure is sold, used, prescribed, or administered in accordance with manufacturer instructions.

## **Louisiana**

La. Rev. Stat. § 40:1061:

C. No person may knowingly administer to, prescribe for, or procure for, or sell to any pregnant woman any medicine, drug, or other substance with the specific intent of causing or abetting the termination of the life of an unborn human being. No person may knowingly use or employ any instrument or procedure upon a pregnant woman with the specific intent of causing or abetting the termination of the life of an unborn human being.

E. Nothing in this Section may be construed to prohibit the sale, use, prescription, or administration of a contraceptive measure, drug or chemical, if it is administered prior to the time when a pregnancy could be determined through conventional medical testing and if the contraceptive measure is sold, used, prescribed, or administered in accordance with manufacturer instructions.

## **Mississippi**

Miss. Code § 41-41-45:

(1) As used in this section, the term “abortion” means the use or prescription of any instrument, medicine, drug or any other substance or device to terminate the pregnancy of a woman known to be pregnant with an intention other than to increase the probability of a live birth, to preserve the life or health of the child after live birth or to remove a dead fetus.

## **Missouri**

Mo. Rev. Stat. § 188.015:

(1) “**Abortion**”:

(a) The act of using or prescribing any instrument, device, medicine, drug, or any other means or substance with the intent to destroy the life of an embryo or fetus in his or her mother’s womb; or

(b) The intentional termination of the pregnancy of a mother by using or prescribing any instrument, device, medicine, drug, or other means or substance with an intention other than to increase the probability of a live birth or to remove a dead unborn child;

## **Nebraska**

Neb. Rev. Stat. § 71-6901:

(1) Abortion means the act of using or prescribing any instrument, medicine, drug, or any other substance, device, or means with the intent to terminate the clinically diagnosable pregnancy of a woman with knowledge that the termination by those means will with reasonable likelihood cause

the death of the unborn child. Such use, prescription, or means is not an abortion if done with the intent to:

- (a) Save the life or preserve the health of an unborn child;
- (b) Remove a dead unborn child caused by a spontaneous abortion; or
- (c) Remove an ectopic pregnancy.

Nebraska L.B. 574, 108<sup>th</sup> Leg., 1<sup>st</sup> Reg. Sess. (Neb. 2023):

Sec. 2. The Preborn Child Protection Act only applies to intrauterine pregnancies.

Sec. 3. For purposes of the Preborn Child Protection Act:

(1)(a) Abortion means the prescription or use of any instrument, device, medicine, drug, or substance to or upon a woman known to be pregnant with the specific intent of terminating the life of her preborn child. (b) Abortion shall under no circumstances be interpreted to include:

- (i) Removal of an ectopic pregnancy;
- (ii) Removal of the remains of a preborn child who has already died;
- (iii) An act done with the intention to save the life or preserve the health of the preborn child;
- (iv) The accidental or unintentional termination of the life of a preborn child; or
- (v) During the practice of in vitro fertilization or another assisted reproductive technology, the termination or loss of the life of a preborn child who is not being carried inside a woman's body.

### **North Carolina**

N.C. Gen. Stat. § 90-21.81:

(4e) Medical abortion.--The use of any medicine, drug, or other substance intentionally to terminate the pregnancy of a woman known to be pregnant with an intention other than to do any of the following:

- a. Increase the probability of a live birth.
- b. Preserve the life or health of the child.
- c. Remove a dead, unborn child who died as a result of (i) natural causes in utero, (ii) accidental trauma, or (iii) a criminal assault of the pregnant woman or her unborn child which causes the premature termination of the pregnancy.



d. Remove an ectopic pregnancy.

(9b) Surgical abortion.--The use or prescription of any instrument or device intentionally to terminate the pregnancy of a woman known to be pregnant with an intention other than to do any of the following:

a. Increase the probability of a live birth.

b. Preserve the life or health of the child.

c. Remove a dead, unborn child who died as the result of (i) natural causes in utero, (ii) accidental trauma, or (iii) a criminal assault on the pregnant woman or her unborn child which causes the premature termination of the pregnancy.

d. Remove an ectopic pregnancy.

### **North Dakota**

1. "Abortion" means the act of using or prescribing any instrument, medicine, drug, or any other substance, device, or means with the intent to terminate the clinically diagnosable pregnancy of a woman, including the elimination of one or more unborn children in a multifetal pregnancy, with knowledge that the termination by those means will with reasonable likelihood cause the death of the unborn child. Such use, prescription, or means is not an abortion if done with the intent to:

a. Remove a dead unborn child caused by spontaneous abortion;

b. Treat a woman for an ectopic pregnancy; or

c. Treat a woman for a molar pregnancy.

### **Ohio**

Ohio Rev. Code § 2919.191:

Sections 2919.192 to 2919.195 of the Revised Code apply only to intrauterine pregnancies.

Ohio Rev. Code § 2919.192:

(A) A person who intends to perform or induce an abortion on a pregnant woman shall determine whether there is a detectable fetal heartbeat of the unborn human individual the pregnant woman is carrying.

Ohio Rev. Code § 2919.193:

(D) A person is not in violation of division (A) of this section if the person acts in accordance with division (A) of section 2919.192 of the Revised Code and the method used to determine the presence of a fetal heartbeat does not reveal a fetal heartbeat.

Ohio Rev. Code § 2919.197:

Nothing in sections 2919.19 to 2919.196 of the Revised Code prohibits the sale, use, prescription, or administration of a drug, device, or chemical for contraceptive purposes.

### **Oklahoma**

Okla. Stat. tit. 63, § 1-745.51:

“Abortion” means the act of using, prescribing, administering, procuring, or selling of any instrument, medicine, drug, or any other substance, device, or means with the purpose to terminate the pregnancy of a woman, with knowledge that the termination by any of those means will with reasonable likelihood cause the death of an unborn child. It does not include the use, prescription, administration, procuring, or selling of Plan B, morning-after pills, or any other type of contraception or emergency contraception. An act is not an abortion if the act is performed with the purpose to:

- a. save the life or preserve the health of the unborn child,
- b. remove a dead unborn child caused by spontaneous abortion, or
- c. remove an ectopic pregnancy.

### **South Carolina**

S.C. Code Ann. § 44-41-610:

(1) “Abortion” means the act of using or prescribing any instrument, medicine, drug, or any other substance, device, or means with the intent to terminate the clinically diagnosable pregnancy of a woman with knowledge that the termination by those means will, with reasonable likelihood, cause the death of the unborn child. Such use, prescription, or means is not an abortion if done with the intent to save the life or preserve the health of the unborn child, or to remove a dead unborn child.

### **South Dakota**

S.D. Codified Laws § 34-23A-1:

(1) “Abortion,” the intentional termination of the life of a human being in the uterus.

### **Tennessee**

(1) “Abortion” means the use of any instrument, medicine, drug, or any other substance or device with intent to terminate the pregnancy of a woman known to be pregnant with intent other than to increase the probability of a live birth, to preserve the life or health of the child after live birth, to terminate an ectopic or molar pregnancy, or to remove a dead fetus.

## **Texas**

Tex. Health & Safety Code § 245.002:

(1) “Abortion” means the act of using or prescribing an instrument, a drug, a medicine, or any other substance, device, or means with the intent to cause the death of an unborn child of a woman known to be pregnant. The term does not include birth control devices or oral contraceptives. An act is not an abortion if the act is done with the intent to:

- (A) save the life or preserve the health of an unborn child;
- (B) remove a dead, unborn child whose death was caused by spontaneous abortion; or
- (C) remove an ectopic pregnancy.

## **Utah**

(1)(a) “Abortion” means the act, by a physician, of using an instrument, or prescribing a drug, with the intent to cause the death of an unborn child of a woman known to be pregnant, except as permitted under this chapter.

(b) “Abortion” does not include:

- (i) removal of a dead unborn child;
- (ii) removal of an ectopic pregnancy.

## **West Virginia**

W. Va. Code § 16-2R-2:

“Abortion” means the use of any instrument, medicine, drug, or any other substance or device with intent to terminate the pregnancy of a patient known to be pregnant and with intent to cause the death and expulsion or removal of an embryo or a fetus. This term does not include the terms “intrauterine fetal demise” or “stillbirth” or “miscarriage” as defined in this section.

W. Va. Code § 16-2R-3:

(a) An abortion may not be performed or induced or be attempted to be performed or induced unless in the reasonable medical judgment of a licensed medical professional:

- (1) The embryo or fetus is nonviable;
- (2) The pregnancy is ectopic; or
- (3) A medical emergency exists.

W. Va. Code § 16-2R-4:

(a) Abortion does not include:

(1) A miscarriage;

(2) An intrauterine fetal demise or stillbirth;

(3) The use of existing established cell lines derived from aborted human embryos or fetuses;

(4) Medical treatment provided to a patient by a licensed medical professional that results in the accidental or unintentional injury or death of an embryo or a fetus;

(5) In vitro fertilization;

(6) Human fetal tissue research, when performed in accordance with Sections 498A and 498B of the PHS Act (42 U.S.C. 289g-1 and 289g-2) and 45 C.F.R. 46.204 and 46.206; or

(7) The prescription, sale, transfer, or use of contraceptive devices, instruments, medicines, or drugs.

(b) This article does not prevent the prescription, sale, or transfer of intrauterine contraceptive devices, other contraceptive devices, or other generally medically accepted contraceptive devices, instruments, medicines, or drugs for a patient who is not known to be pregnant and for whom the contraceptive devices, instruments, medicines, or drugs are prescribed, sold, or transferred solely for contraceptive purposes and not for the purpose of inducing or causing the termination of a known pregnancy.

## APPENDIX B

### Abortion Exceptions in States with Pre-Viability Abortion Restrictions or Limitations

#### Alabama

Ala. Code § 26-23H-4:

(a) It shall be unlawful for any person to intentionally perform or attempt to perform an abortion except as provided for by subsection (b).

(b) An abortion shall be permitted if an attending physician licensed in Alabama determines that an abortion is necessary in order to prevent a serious health risk to the unborn child's mother. Except in the case of a medical emergency as defined herein, the physician's determination shall be confirmed in writing by a second physician licensed in Alabama. The confirmation shall occur within 180 days after the abortion is completed and shall be prima facie evidence for a permitted abortion.

Ala. Code § 26-23H-3:

(4) Medical emergency. A condition which, in reasonable medical judgment, so complicates the medical condition of the pregnant woman that her pregnancy must be terminated to avoid a serious health risk as defined in this chapter.

(6) Serious health risk to the unborn child's mother. In reasonable medical judgment, the child's mother has a condition that so complicates her medical condition that it necessitates the termination of her pregnancy to avert her death or to avert serious risk of substantial physical impairment of a major bodily function. This term does not include a condition based on a claim that the woman is suffering from an emotional condition or a mental illness which will cause her to engage in conduct that intends to result in her death or the death of her unborn child. However, the condition may exist if a second physician who is licensed in Alabama as a psychiatrist, with a minimum of three years of clinical experience, examines the woman and documents that the woman has a diagnosed serious mental illness and because of it, there is reasonable medical judgment that she will engage in conduct that could result in her death or the death of her unborn child. If the mental health diagnosis and likelihood of conduct is confirmed as provided in this chapter, and it is determined that a termination of her pregnancy is medically necessary to avoid the conduct, the termination may be performed and shall be only performed by a physician licensed in Alabama in a hospital as defined in the Alabama Administrative Code and to which he or she has admitting privileges.

#### Arizona

Ariz. Rev. Stat. § 36-2322:

A. Except in a medical emergency, a physician may not perform, induce or attempt to perform or induce an abortion unless the physician or the referring physician has first made a determination of the probable gestational age of the unborn human being and documented that gestational age in the maternal patient's chart and, if required, in a report required to be filed with the department as set forth in subsection C of this section. The determination of probable gestational age shall be made according to standard medical practices and techniques used in the medical community.

B. Except in a medical emergency, a physician may not intentionally or knowingly perform, induce or attempt to perform or induce an abortion if the probable gestational age of the unborn human being has been determined to be greater than fifteen weeks.

Ariz. Rev. Stat. § 36-2321:

7. "Medical emergency" means a condition that, on the basis of the physician's good faith clinical judgment, so complicates the medical condition of a pregnant woman as to necessitate the immediate abortion of her pregnancy to avert her death or for which a delay will create serious risk of substantial and irreversible impairment of a major bodily function.

### Arkansas

Ark. Code § 5-61-304:

(a) A person shall not purposely perform or attempt to perform an abortion except to save the life of a pregnant woman in a medical emergency.

Ark. Code § 5-61-303:

(3) "Medical emergency" means a condition in which an abortion is necessary to preserve the life of a pregnant woman whose life is endangered by a physical disorder, physical illness, or physical injury, including a life-endangering physical condition caused by or arising from the pregnancy itself.

### Florida

Fla. Stat. § 390.0111:

**(1) Termination after gestational age of 6 weeks; when allowed.**--A physician may not knowingly perform or induce a termination of pregnancy if the physician determines the gestational age of the fetus is more than 6 weeks unless one of the following conditions is met:

(a) Two physicians certify in writing that, in reasonable medical judgment, the termination of the pregnancy is necessary to save the pregnant woman's life or avert a serious risk of

substantial and irreversible physical impairment of a major bodily function of the pregnant woman other than a psychological condition.

(b) The physician certifies in writing that, in reasonable medical judgment, there is a medical necessity for legitimate emergency medical procedures for termination of the pregnancy to save the pregnant woman's life or avert a serious risk of imminent substantial and irreversible physical impairment of a major bodily function of the pregnant woman other than a psychological condition, and another physician is not available for consultation.

(c) The pregnancy has not progressed to the third trimester and two physicians certify in writing that, in reasonable medical judgment, the fetus has a fatal fetal abnormality.

(d) The pregnancy is the result of rape, incest, or human trafficking and the gestational age of the fetus is not more than 15 weeks as determined by the physician. At the time the woman schedules or arrives for her appointment to obtain the abortion, she must provide a copy of a restraining order, police report, medical record, or other court order or documentation providing evidence that she is obtaining the termination of pregnancy because she is a victim of rape, incest, or human trafficking. If the woman is 18 years of age or older, the physician must report any known or suspected human trafficking to a local law enforcement agency. If the woman is a minor, the physician must report the incident of rape, incest, or human trafficking to the central abuse hotline as required by s. 39.201.

Fla. Stat. § 390.011

(12) "Reasonable medical judgment" means a medical judgment that would be made by a reasonably prudent physician, knowledgeable about the case and the treatment possibilities with respect to the medical conditions involved.

### **Georgia**

Ga. Code § 16-12-141:

(a)(3) "Medical emergency" means a condition in which an abortion is necessary in order to prevent the death of the pregnant woman or the substantial and irreversible physical impairment of a major bodily function of the pregnant woman. No such greater risk shall be deemed to exist if it is based on a diagnosis or claim of a mental or emotional condition of the pregnant woman or that the pregnant woman will purposefully engage in conduct which she intends to result in her death or in substantial and irreversible physical impairment of a major bodily function.

(b) No abortion is authorized or shall be performed if an unborn child has been determined in accordance with Code Section 31-9B-2 to have a detectable human heartbeat except when:

(1) A physician determines, in reasonable medical judgment, that a medical emergency exists;

(2) The probable gestational age of the unborn child is 20 weeks or less and the pregnancy is the result of rape or incest in which an official police report has been filed alleging the offense of rape or incest. As used in this paragraph, the term “probable gestational age of the unborn child” has the meaning provided by Code Section 31-9B-1; or

(3) A physician determines, in reasonable medical judgment, that the pregnancy is medically futile.

### **Idaho**

Idaho Code § 18-622:

(2) The following shall not be considered criminal abortions for purposes of subsection (1) of this section:

(a) The abortion was performed or attempted by a physician as defined in this chapter and:

(i) The physician determined, in his good faith medical judgment and based on the facts known to the physician at the time, that the abortion was necessary to prevent the death of the pregnant woman. No abortion shall be deemed necessary to prevent the death of the pregnant woman because the physician believes that the woman may or will take action to harm herself; and

(ii) The physician performed or attempted to perform the abortion in the manner that, in his good faith medical judgment and based on the facts known to the physician at the time, provided the best opportunity for the unborn child to survive, unless, in his good faith medical judgment, termination of the pregnancy in that manner would have posed a greater risk of the death of the pregnant woman. No such greater risk shall be deemed to exist because the physician believes that the woman may or will take action to harm herself; or

(b) The abortion was performed or attempted by a physician as defined in this chapter during the first trimester of pregnancy and:

(i) If the woman is not a minor or subject to a guardianship, then, prior to the performance of the abortion, the woman has reported to a law enforcement agency that she is the victim of an act of rape or incest and provided a copy of such report to the physician who is to perform the abortion. The copy of the report shall remain a confidential part of the woman’s medical record subject to applicable privacy laws; or

(ii) If the woman is a minor or subject to a guardianship, then, prior to the performance of the abortion, the woman or her parent or guardian has reported to a law enforcement agency or child protective services that she is the victim of an act of rape or incest and a copy of such report has been provided to the physician who is to perform the



abortion. The copy of the report shall remain a confidential part of the woman's medical record subject to applicable privacy laws.

(3) If a report concerning an act of rape or incest is made to a law enforcement agency or child protective services pursuant to subsection (2)(b) of this section, then the person who made the report shall, upon request, be entitled to receive a copy of such report within seventy-two (72) hours of the report being made, provided that the report may be redacted as necessary to avoid interference with an investigation.

(4) Medical treatment provided to a pregnant woman by a health care professional as defined in this chapter that results in the accidental death of, or unintentional injury to, the unborn child shall not be a violation of this section.

(5) Nothing in this section shall be construed to subject a pregnant woman on whom any abortion is performed or attempted to any criminal conviction and penalty.

Idaho Code § 18-604:

(9) "Medical emergency" means a condition that, on the basis of the physician's good faith clinical judgment, so complicates the medical condition of a pregnant woman as to necessitate the immediate abortion of her pregnancy to avert her death or for which a delay will create serious risk of substantial and irreversible impairment of a major bodily function.

## **Indiana**

Ind. Code § 16-34-2-1:

Sec. 1. (a) Abortion shall in all instances be a criminal act, except when performed under the following circumstances:

(1) Except as prohibited in IC 16-34-4, before the earlier of viability of the fetus or twenty (20) weeks of postfertilization age of the fetus, if:

(A) for reasons based upon the professional, medical judgment of the pregnant woman's physician, if either:

(i) the abortion is necessary when reasonable medical judgment dictates that performing the abortion is necessary to prevent any serious health risk to the pregnant woman or to save the pregnant woman's life; or

(ii) the fetus is diagnosed with a lethal fetal anomaly.

Ind. Code § 16-34-2-1.2:

Sec. 1.2. When a medical emergency compels the performance of an abortion, the physician who will perform the abortion shall inform the woman, before the abortion if possible, of the medical indications supporting the physician's judgment that an abortion is necessary to avert:

(1) the woman's death; or

(2) a substantial and irreversible impairment of a major bodily function.

Ind. Code § 16-34-2-0.5:

Sec. 0.5. A medical emergency, for purposes of this chapter, does not include a patient's claim or diagnosis that the patient would engage in conduct that would result in the patient's death or substantial physical impairment. Under the circumstances described in this section and unless the following would pose a great risk of death or substantial physical impairment of the patient, the physician shall terminate the patient's pregnancy in a manner that, in a physician's reasonable medical judgment, would result in the best opportunity for the fetus to survive.

## **Iowa**

Iowa Code § 146C.2:

1. Except in the case of a medical emergency or when the abortion is medically necessary, a physician shall not perform an abortion unless the physician has first complied with the prerequisites of chapter 146A and has tested the pregnant woman as specified in this subsection, to determine if a fetal heartbeat is detectable.

Iowa Code § 146A.1:

a. "Medical emergency" means a situation in which an abortion is performed to preserve the life of the pregnant woman whose life is endangered by a physical disorder, physical illness, or physical injury, including a life-endangering physical condition caused by or arising from the pregnancy, but not including psychological conditions, emotional conditions, familial conditions, or the woman's age; or when continuation of the pregnancy will create a serious risk of substantial and irreversible impairment of a major bodily function of the pregnant woman.

Iowa Code Ann. § 146C.1:

4. "Medically necessary" means any of the following:

a. The pregnancy is the result of a rape which is reported within forty-five days of the incident to a law enforcement agency or to a public or private health agency which may include a family physician.

b. The pregnancy is the result of incest which is reported within one hundred forty days of the incident to a law enforcement agency or to a public or private health agency which may include a family physician.

c. Any spontaneous abortion, commonly known as a miscarriage, if not all of the products of conception are expelled.

d. The attending physician certifies that the fetus has a fetal abnormality that in the physician's reasonable medical judgment is incompatible with life.

6. "Reasonable medical judgment" means a medical judgment made by a reasonably prudent physician who is knowledgeable about the case and the treatment possibilities with respect to the medical conditions involved.

### **Kentucky**

Ky. Rev. Stat. § 311.772:

(4) The following shall not be a violation of subsection (3) of this section:

(a) For a licensed physician to perform a medical procedure necessary in reasonable medical judgment to prevent the death or substantial risk of death due to a physical condition, or to prevent the serious, permanent impairment of a life-sustaining organ of a pregnant woman. However, the physician shall make reasonable medical efforts under the circumstances to preserve both the life of the mother and the life of the unborn human being in a manner consistent with reasonable medical practice; or

(b) Medical treatment provided to the mother by a licensed physician which results in the accidental or unintentional injury or death to the unborn human being.

(5) Nothing in this section may be construed to subject the pregnant mother upon whom any abortion is performed or attempted to any criminal conviction and penalty.

### **Louisiana**

La. Stat. Ann. § 40:1061:

F. It shall not be a violation of Subsection C of this Section for a licensed physician to perform a medical procedure necessary in reasonable medical judgment to prevent the death or substantial risk of death due to a physical condition, or to prevent the serious, permanent impairment of a life-sustaining organ of a pregnant woman. However, the physician shall make reasonable medical efforts under the circumstances to preserve both the life of the mother and the life of her unborn child in a manner consistent with reasonable medical practice.

G. Medical treatment provided to the mother by a licensed physician which results in the accidental or unintentional injury or death to the unborn child is not a violation of Subsection C of this Section.

H. Nothing in this Section may be construed to subject the pregnant mother upon whom any abortion is performed or attempted to any criminal conviction and penalty.

### Mississippi

Miss. Code § 41-41-45:

(2) No abortion shall be performed or induced in the State of Mississippi, except in the case where necessary for the preservation of the mother's life or where the pregnancy was caused by rape.

### Missouri

Mo. Ann. Stat. § 188.017:

2. Notwithstanding any other provision of law to the contrary, no abortion shall be performed or induced upon a woman, except in cases of medical emergency. Any person who knowingly performs or induces an abortion of an unborn child in violation of this subsection shall be guilty of a class B felony, as well as subject to suspension or revocation of his or her professional license by his or her professional licensing board. A woman upon whom an abortion is performed or induced in violation of this subsection shall not be prosecuted for a conspiracy to violate the provisions of this subsection.

3. It shall be an affirmative defense for any person alleged to have violated the provisions of subsection 2 of this section that the person performed or induced an abortion because of a medical emergency. The defendant shall have the burden of persuasion that the defense is more probably true than not.

Mo. Ann. Stat. § 188.015:

(8) “**Medical emergency**”, a condition which, based on reasonable medical judgment, so complicates the medical condition of a pregnant woman as to necessitate the immediate abortion of her pregnancy to avert the death of the pregnant woman or for which a delay will create a serious risk of substantial and irreversible physical impairment of a major bodily function of the pregnant woman;

(10) “**Reasonable medical judgment**”, a medical judgment that would be made by a reasonably prudent physician, knowledgeable about the case and the treatment possibilities with respect to the medical conditions involved;

### Nebraska

Neb. Rev. Stat. Ann. § 71-6902:

Except in the case of a medical emergency or except as provided in sections 71-6902.01, 71-6903, and 71-6906, no person shall perform an abortion upon a pregnant woman unless, in the case of a woman who is less than eighteen years of age, he or she first obtains the notarized written consent of both the pregnant woman and one of her parents or a legal guardian or, in the case of a woman for whom a guardian has been appointed pursuant to sections 30-2617 to 30-2629, he or she first obtains the notarized written consent of her guardian.

Neb. Rev. Stat. § 71-6901:

(8) Medical emergency means a condition that, on the basis of the physician's good faith clinical judgment, so complicates the medical condition of a pregnant woman as to necessitate the immediate abortion of her pregnancy to avert her death or for which a delay will create serious risk of substantial and irreversible impairment of a major bodily function.

### **North Carolina**

N.C. Gen. Stat. § 90-21.81B:

Notwithstanding any of the provisions of G.S. 14-44 and G.S. 14-45, and subject to the provisions of this Article, it shall not be unlawful to procure or cause a miscarriage or an abortion in the State of North Carolina in the following circumstances:

(1) When a qualified physician determines there exists a medical emergency.

(2) During the first 12 weeks of a woman's pregnancy, when the procedure is performed by a qualified physician licensed to practice medicine in this State in a hospital, ambulatory surgical center, or clinic certified by the Department of Health and Human Services to be a suitable facility for the performance of abortions, in accordance with G.S. 90-21.82A or during the first 12 weeks of a woman's pregnancy when a medical abortion is procured.

(3) After the twelfth week and through the twentieth week of a woman's pregnancy, when the procedure is performed by a qualified physician in a suitable facility in accordance with G.S. 90-21.82A when the woman's pregnancy is a result of rape or incest.

(4) During the first 24 weeks of a woman's pregnancy, if a qualified physician determines there exists a life-limiting anomaly in accordance with this Article.

N.C. Gen. Stat. § 90-21.81:

(5) Medical emergency.--A condition which, in reasonable medical judgment, so complicates the medical condition of the pregnant woman as to necessitate the immediate abortion of her pregnancy to avert her death or for which a delay will create serious risk of substantial and irreversible physical impairment of a major bodily function, not including any psychological or

emotional conditions. For purposes of this definition, no condition shall be deemed a medical emergency if based on a claim or diagnosis that the woman will engage in conduct which would result in her death or in substantial and irreversible physical impairment of a major bodily function.

### **North Dakota**

S.B. 2150, 68th Leg. Sess., Reg. Sess. (N.D. 2023), *available at* <https://legiscan.com/ND/text/SB2150/id/2787999>.

Abortion prohibited - Penalty. It is a class C felony for a person, other than the pregnant female upon whom the abortion was performed, to perform an abortion. Exceptions. This chapter does not apply to:

1. An abortion deemed necessary based on reasonable medical judgment which was intended to prevent the death or a serious health risk to the pregnant female.
2. An abortion to terminate a pregnancy that based on reasonable medical judgment resulted from gross sexual imposition, sexual imposition, sexual abuse of a ward, or incest, as those offenses are defined in chapter 12.1 - 20, if the probable gestational age of the unborn child is six weeks or less.
3. An individual assisting in performing an abortion if the individual was acting within the scope of that individual's regulated profession, was under the direction of or at the direction of a physician, and did not know the physician was performing an abortion in violation of this chapter.

“Reasonable medical judgment” means a medical judgment that would be made by a reasonably prudent physician who is knowledgeable about the case and the treatment possibilities with respect to the medical conditions involved.

“Serious health risk” means a condition that, in reasonable medical judgment, complicates the medical condition of the pregnant woman so that it necessitates an abortion to prevent substantial physical impairment of a major bodily function, not including any psychological or emotional condition. The term may not be based on a claim or diagnosis that the woman will engage in conduct that will result in her death or in substantial physical impairment of a major bodily function.

### **Ohio**

Ohio Rev. Code § 2919.195:

(A) Except as provided in division (B) of this section, no person shall knowingly and purposefully perform or induce an abortion on a pregnant woman with the specific intent of causing or abetting the termination of the life of the unborn human individual the pregnant woman is carrying and

whose fetal heartbeat has been detected in accordance with division (A) of section 2919.192 of the Revised Code.

Whoever violates this division is guilty of performing or inducing an abortion after the detection of a fetal heartbeat, a felony of the fifth degree.

(B) Division (A) of this section does not apply to a physician who performs a medical procedure that, in the physician's reasonable medical judgment, is designed or intended to prevent the death of the pregnant woman or to prevent a serious risk of the substantial and irreversible impairment of a major bodily function of the pregnant woman.

A physician who performs a medical procedure as described in this division shall declare, in a written document, that the medical procedure is necessary, to the best of the physician's reasonable medical judgment, to prevent the death of the pregnant woman or to prevent a serious risk of the substantial and irreversible impairment of a major bodily function of the pregnant woman. In the document, the physician shall specify the pregnant woman's medical condition that the medical procedure is asserted to address and the medical rationale for the physician's conclusion that the medical procedure is necessary to prevent the death of the pregnant woman or to prevent a serious risk of the substantial and irreversible impairment of a major bodily function of the pregnant woman.

### **Oklahoma**

Okla. Stat. tit. 63, § 1-745.52:

Except as provided by Section 3 of this act,<sup>1</sup> a person shall not knowingly perform or attempt to perform an abortion unless:

1. The abortion is necessary to save the life of a pregnant woman in a medical emergency; or
2. The pregnancy is the result of rape, sexual assault, or incest that has been reported to law enforcement.

Okla. Stat. Ann. tit. 63, § 1-745.51:

3. "Medical emergency" means a condition in which an abortion is necessary to preserve the life of a pregnant woman whose life is endangered by a physical disorder, physical illness, or physical injury, including a life-endangering physical condition caused by or arising from the pregnancy itself.

### **South Carolina**

S.C. Code § 44-41-640:

(A) It is not a violation of Section 44-41-630 if an abortion is performed or induced on a pregnant woman due to a medical emergency or is performed to prevent the death of the pregnant woman or to prevent the serious risk of a substantial and irreversible impairment of a major bodily function, not including psychological or emotional conditions, of the pregnant woman.

(B)(1) Section 44-41-630 does not apply to a physician who performs or induces an abortion if the physician determines according to standard medical practice that a medical emergency exists or is performed to prevent the death of the pregnant woman or to prevent the serious risk of a substantial or irreversible impairment of a major bodily function, not including psychological or emotional conditions, that prevents compliance with the section.

### **South Dakota**

S.D. Codified Laws § 22-17-5.1:

Any person who administers to any pregnant female or who prescribes or procures for any pregnant female any medicine, drug, or substance or uses or employs any instrument or other means with intent thereby to procure an abortion, unless there is appropriate and reasonable medical judgment that performance of an abortion is necessary to preserve the life of the pregnant female, is guilty of a Class 6 felony.

### **Tennessee**

Tenn. Code § 39-15-213:

(c)(1) Notwithstanding subsection (b), a person who performs or attempts to perform an abortion does not commit the offense of criminal abortion if the abortion is performed or attempted by a licensed physician in a licensed hospital or ambulatory surgical treatment center and the following conditions are met:

(A) The physician determined, using reasonable medical judgment, based upon the facts known to the physician at the time, that the abortion was necessary to prevent the death of the pregnant woman or to prevent serious risk of substantial and irreversible impairment of a major bodily function of the pregnant woman; and

(B) The physician performs or attempts to perform the abortion in the manner which, using reasonable medical judgment, based upon the facts known to the physician at the time, provides the best opportunity for the unborn child to survive, unless using reasonable medical judgment, termination of the pregnancy in that manner would pose a greater risk of death to the pregnant woman or substantial and irreversible impairment of a major bodily function.

### **Texas**

Tex. Health & Safety Code § 170A.002:



- (a) A person may not knowingly perform, induce, or attempt an abortion.
- (b) The prohibition under Subsection (a) does not apply if:
  - (1) the person performing, inducing, or attempting the abortion is a licensed physician;
  - (2) in the exercise of reasonable medical judgment, the pregnant female on whom the abortion is performed, induced, or attempted has a life-threatening physical condition aggravated by, caused by, or arising from a pregnancy that places the female at risk of death or poses a serious risk of substantial impairment of a major bodily function unless the abortion is performed or induced; and
  - (3) the person performs, induces, or attempts the abortion in a manner that, in the exercise of reasonable medical judgment, provides the best opportunity for the unborn child to survive unless, in the reasonable medical judgment, that manner would create:
    - (A) a greater risk of the pregnant female's death; or
    - (B) a serious risk of substantial impairment of a major bodily function of the pregnant female.

## **Utah**

- (1) An abortion may be performed in this state only under the following circumstances:
  - (a) the abortion is necessary to avert:
    - (i) the death of the woman on whom the abortion is performed; or
    - (ii) a serious physical risk of substantial impairment of a major bodily function of the woman on whom the abortion is performed;
  - (b) subject to Subsection (3), two physicians who practice maternal fetal medicine concur, in writing, in the patient's medical record that the fetus has a fetal abnormality that in the physicians' reasonable medical judgment is incompatible with life; or
  - (c) the unborn child has not reached 18 weeks gestational age and:
    - (i)(A) the woman is pregnant as a result of:
      - (I) rape, as described in Section 76-5-402;
      - (II) rape of a child, as described in Section 76-5-402.1; or
      - (III) incest, as described in Subsection 76-5-406(2)(j) or Section 76-7-102; or
    - (B) the pregnant child is under the age of 14; and

(ii) before the abortion is performed, the physician who performs the abortion:

(A) for an abortion authorized under Subsection (1)(c)(i)(A), verifies that the incident described in Subsection (1)(c)(i)(A) has been reported to law enforcement; and

(B) if applicable, complies with requirements related to reporting suspicions of or known child abuse.

Utah Code § 76-7a-101:

(6) “Medical emergency” means a life threatening physical condition aggravated by, caused by, or arising from a pregnancy that places the pregnant woman at risk of death, or poses a serious risk of substantial impairment of a major bodily function, unless the abortion is performed or induced.

### **West Virginia**

W. Va. Code Ann. § 16-2R-3:

(a) An abortion may not be performed or induced or be attempted to be performed or induced unless in the reasonable medical judgment of a licensed medical professional:

(1) The embryo or fetus is nonviable;

(2) The pregnancy is ectopic; or

(3) A medical emergency exists.

W. Va. Code Ann. § 16-2R-2:

“Medical emergency” means a condition or circumstance that so complicates the medical condition of a patient as to necessitate an abortion to avert serious risk of the patient’s death or serious risk of substantial life-threatening physical impairment of a major bodily function, not including psychological or emotional conditions. This term includes a circumstance in which it is necessary to terminate a pregnancy of one or more fetuses to preserve the life of another fetus or fetuses. A condition is not deemed a medical emergency if based on a claim or diagnosis that the patient intends or may engage in conduct which results in the patient’s death or in substantial and irreversible physical impairment of a major bodily function.

“Reasonable medical judgment” means a medical judgment that would be made by a licensed medical professional who is knowledgeable about the case and the treatment possibilities with respect to the medical conditions involved.