
A bill to amend 1931 PA 328, entitled
"The Michigan penal code,"
(MCL 750.1 to 750.568) by adding section 324.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

SEC. 324. (1) THE LEGISLATURE MAKES THE FOLLOWING FINDINGS:

(A) THERE IS SUBSTANTIAL MEDICAL EVIDENCE THAT AN UNBORN CHILD
IS CAPABLE OF EXPERIENCING PAIN BY 20 WEEKS AFTER FERTILIZATION,
INCLUDING ALL OF THE FOLLOWING:

(i) THAT PAIN RECEPTORS (NOCTECTORS) ARE PRESENT THROUGHOUT
THE BODY AND ARE LINKED BY FUNCTIONING NERVES TO THE BRAIN'S
THALAMUS AND SUBCORTICAL PLATE NO LATER THAN 20 WEEKS POST-
FERTILIZATION.

(ii) THAT PAIN PERCEPTION IN ADULTS IS ASSOCIATED WITH
STIMULATION OR ABLATION OF THE THALAMUS, RATHER THAN THE CEREBRAL
CORTEX. THE LEVEL OF FUNCTIONING IN THE CEREBRAL CORTEX OF ADULTS,
HYDRANENCEPHALIC CHILDREN BORN WITH LITTLE OR NO CEREBRAL CORTEX,
OR THE UNBORN CHILD BY 20 WEEKS' DEVELOPMENT IS NOT RECOGNIZED AS
NECESSARY TO EXPERIENCING PAIN.

(iii) THAT AFTER 20 WEEKS' DEVELOPMENT, THE UNBORN CHILD REACTS
TO STIMULI THAT WOULD BE RECOGNIZED AS PAINFUL IF APPLIED TO
ADULTS, AND SUCH STIMULI APPLIED TO AN UNBORN CHILD ARE ASSOCIATED
WITH SIGNIFICANT INCREASES IN STRESS HORMONES.

(iv) FOR PURPOSES OF SURGERY ON UNBORN CHILDREN, FETAL
ANESTHESIA IS ROUTINELY ADMINISTERED AND IS ASSOCIATED WITH A
DECREASE IN STRESS HORMONES COMPARED TO WHEN ANESTHESIA IS NOT
ADMINISTERED. ANESTHESIA IS ALSO REQUIRED TO PREVENT A THRASHING
REACTION BY THE UNBORN CHILD TO ANY INVASIVE PROCEDURE PERFORMED
UPON THE CHILD.

(B) THE POLICIES ENACTED BY THIS STATE HAVE CONSISTENTLY BEEN
ORIENTED TOWARD THE PROTECTION AND NURTURING OF UNBORN CHILDREN,
DESPITE THE IMPOSITION OF A REGIME OF LEGAL ABORTION BY THE UNITED
STATES SUPREME COURT. THOSE POLICIES INCLUDE ALL OF THE FOLLOWING:

(i) A CONTINUOUSLY EXISTING AND ENFORCEABLE, OR PARTIALLY
ENFORCEABLE, CRIMINAL PROHIBITION ON ABORTION, EXCEPT TO PRESERVE
THE LIFE OF THE MOTHER, DATING FROM 1846 TO THE PRESENT.

(ii) A STATUTE IMPOSING HEIGHTENED PENALTIES FOR PERFORMING AN
ABORTION UPON AN UNBORN CHILD IN LATER STAGES OF PREGNANCY WHEN THE
MOTHER HAS BEEN ABLE TO PERCEIVE MOVEMENT OF THE CHILD ("A QUICK
CHILD").

(iii) A STATUTE PROVIDING AN OFFICIAL STATE CERTIFICATE OF
STILLBIRTH TO FAMILIES EXPERIENCING A STILLBIRTH AT 20 OR MORE
WEEKS OF PREGNANCY.
(iv) A statute providing for separate criminal charges applying to injury or death to an unborn child resulting from a criminal assault upon the mother, regardless of the stage of her pregnancy.

(v) A statute allowing for a wrongful death tort against an individual whose criminal or negligent actions result in the death of an unborn child.

(vi) Laws recognizing the inheritance rights of unborn children and securing their legal representation by a guardian ad litem prior to their birth.

(vii) A statute prohibiting lawsuits asserting the "wrongful birth" of a child with disabilities on the basis that the child's parents were denied an opportunity to abort the child due to a failure to diagnose the disabilities before birth.

(C) In addition to numerous criminal statutes prohibiting assaultive actions that result in pain, injury, or death, Michigan policies specifically prohibit actions that involve the purposeful infliction of pain, including all of the following:

(i) A prohibition against cruel or unusual punishment of convicted criminals.

(ii) A specific statutory prohibition against torture.

(iii) A statutory prohibition against cruelty to animals and animal fights and a statutory prescription for humane methods of livestock slaughter for food production.

(D) In light of the current state of scientific and medical knowledge, and in consideration of this state's multitude of policies that protect unborn children and prohibit pain-inflicting activities, this state asserts a compelling state interest in
PROTECTING THE LIVES OF UNBORN CHILDREN CAPABLE OF EXPERIENCING
PAIN IN THE SAME MANNER AS A NEWBORN CHILD OR AN ADULT. THIS
COMPPELLING STATE INTEREST IS INDEPENDENT AND SEPARATE FROM THE
STATE'S INTEREST IN PROTECTING THE LIVES OR OTHER INDIVIDUAL
INTERESTS OF UNBORN CHILDREN AT ANY OTHER STAGE OF PREGNANCY.

(2) AS USED IN THIS SECTION:

(A) "ABORTION" MEANS THAT TERM AS DEFINED IN SECTION 17015 OF

(B) "FERTILIZATION" MEANS THE FUSION OF A HUMAN SPERMATOZOOON
WITH A HUMAN OVUM.

(C) "MEDICAL EMERGENCY" MEANS A CONDITION THAT, ON THE BASIS
OF A PHYSICIAN'S GOOD FAITH CLINICAL JUDGMENT, SO COMPLICATES THE
MEDICAL CONDITION OF A PREGNANT INDIVIDUAL AS TO NECESSITATE THE
IMMEDIATE ABORTION OF HER PREGNANCY TO AVERT HER DEATH OR
NECESSITATES IMMEDIATE TREATMENT OF A PHYSICAL DISORDER, PHYSICAL
ILLNESS, OR PHYSICAL INJURY IN A HOSPITAL OR OTHER EMERGENCY CARE
FACILITY, NOT INCLUDING PSYCHOLOGICAL OR EMOTIONAL CONDITIONS. A
MEDICAL EMERGENCY DOES NOT INCLUDE A CONDITION THAT IS BASED ON A
CLAIM OR DIAGNOSIS THAT THE PREGNANT INDIVIDUAL WILL ENGAGE IN
CONDUCT THAT SHE INTENDS TO RESULT IN HER DEATH.

(D) "PROBABLE POSTFERTILIZATION AGE" MEANS THE EXPECTED
POSTFERTILIZATION AGE OF THE UNBORN CHILD AT THE TIME AN ABORTION
IS PLANNED TO BE PERFORMED AS DETERMINED BY THE GOOD FAITH CLINICAL
JUDGMENT OF THE ATTENDING PHYSICIAN.

(E) "UNBORN CHILD" MEANS AN INDIVIDUAL ORGANISM OF THE SPECIES
HOMO SAPIENS FROM FERTILIZATION UNTIL LIVE BIRTH.

(3) PRIOR TO PERFORMING AN ABORTION, A PHYSICIAN SHALL MAKE A
DETERMINATION OF THE PROBABLE POSTFERTILIZATION AGE OF THE UNBORN
CHILD CONSISTENT WITH THE ACCEPTED STANDARD OF CARE FOR MAKING THAT
DETERMINATION, EXCEPT IN THE CASE OF A MEDICAL EMERGENCY.

(4) A PERSON SHALL NOT PERFORM OR ATTEMPT TO PERFORM AN
ABORTION UPON A PREGNANT INDIVIDUAL IF IT IS DETERMINED THAT THE
UNBORN CHILD HAS A PROBABLE POSTFERTILIZATION AGE OF 20 OR MORE
WEEKS, UNLESS IN THE REASONABLE CLINICAL JUDGMENT OF A PHYSICIAN
THE ABORTION IS NECESSARY TO AVERT THE PREGNANT INDIVIDUAL’S DEATH.

(5) A PERSON WHO VIOLATES THIS SECTION IS GUILTY OF A FELONY
PUNISHABLE BY IMPRISONMENT FOR NOT MORE THAN 15 YEARS OR A FINE OF
NOT MORE THAN $7,500.00, OR BOTH.

(6) THIS SECTION DOES NOT APPLY TO ACTIONS TAKEN BY A PREGNANT
INDIVIDUAL.

(7) THIS SECTION DOES NOT CREATE A RIGHT TO ABORTION.

(8) NOTWITHSTANDING ANY OTHER PROVISION OF THIS SECTION, A
PERSON SHALL NOT PERFORM AN ABORTION THAT IS PROHIBITED BY LAW.

(9) THIS ACT SHALL NOT BE CONSTRUED TO REPEAL BY IMPLICATION
OR OTHERWISE, OR IMPAIR ANY FUTURE ENFORCEMENT OF, SECTION 14, 15,
322, OR 323, OR ANY OTHER PROVISION OF LAW REGULATING OR
RESTRICTING ABORTION.

(10) THIS SECTION SHALL BE KNOWN AND MAY BE CITED AS THE
"PAIN-CAPABLE UNBORN CHILD PROTECTION ACT".