

August 17, 2022

## Who Do Fetal Homicide Laws Protect? An Analysis for a Post-Roe America

This issue brief summarizes laws that authorize homicide charges for causing pregnancy loss (“fetal homicide laws”) currently in effect in 38 states.<sup>1</sup> It outlines the different forms they take, as well as the ways in which statutory language for many of these laws treat zygotes, embryos, and fetuses as human beings—a concept much more threatening to the health and wellbeing of people with the capacity for pregnancy in the wake of the overturning of *Roe v. Wade*.

In the years following *Roe*, anti-abortion groups responded with a strategic plan to reverse the decision and recriminalize abortion through the introduction of criminal laws which seek to codify the belief that life begins at conception.<sup>2</sup> These criminal statutes vary in their approach—some create a new, separate crime for causing the loss of a pregnancy by injury to a pregnant person, while others expand the definitions of “person” or “another” to include a zygote, embryo, and fetus under existing criminal codes for murder, manslaughter, or related charges. The majority of them apply from conception, or a comparably early stage of pregnancy, until birth.

Championed as a way to protect pregnant people from violence, anti-abortion groups have often advocated for the passage of these laws by seizing on a tragic case in which a person experienced pregnancy loss as a result of another’s actions.<sup>3</sup> But in reality, these laws were an insidious attempt at normalizing the concept of “fetal personhood,”<sup>4</sup> and rather than protecting pregnant people, they have been used to subject pregnant people to criminal prosecution for the loss of their own pregnancy.<sup>5</sup> Currently, 38 states have fetal homicide laws in effect, and although 28 of those explicitly preclude bringing charges against the pregnant person, that has not stopped overzealous prosecutors from doing so.<sup>6</sup>

Further, the language of fetal homicide laws normalizes the treatment of zygotes, embryos, and fetuses as separate human beings and embeds the concept of fetal personhood in state criminal laws. By doing so, feticide laws laid the groundwork for increased pregnancy criminalization through the unjustified application of fetal homicide laws to pregnant people and encouraged the expanded

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<sup>1</sup> Although the type of charge for causing the loss of a pregnancy varies from state to state, and many apply not simply to fetuses, but also to zygotes and embryos, this factsheet will refer to these laws collectively as “fetal homicide laws.”

<sup>2</sup> Purvaja Kavattur, *A World Without Roe*, Inquest (March 26, 2022), <https://inquest.org/a-world-without-roe/>; Editorial, *The Feticide Playbook, Explained*, N.Y. Times (Dec. 28, 2018), <https://www.nytimes.com/interactive/2018/12/28/opinion/abortion-murder-charge.html>.

<sup>3</sup> *Id.*; Cynthia Soohoo and Dana Sussman, *The Threat of Murder Charges for Abortion Already Exists*, Jurist (May 14, 2022), <https://www.jurist.org/commentary/2022/05/cynthia-soohoo-dana-sussman-abortion-criminal-charges/>.

<sup>4</sup> This factsheet uses the term “fetal personhood” to reflect the popular term used to describe granting legal personhood pre-birth, but note that many provisions extend to zygotes and embryos in addition to fetuses.

<sup>5</sup> Soohoo and Sussman, *supra* note 3.

<sup>6</sup> See, e.g., *California v. Becker*, Kings County, No. 19CM-5304 (2019) (charging “murder of a human fetus...with malice aforethought” for her own pregnancy loss, despite statutory language that “This section shall not apply to any person who commits an act that results in the death of a fetus if... The act was solicited, aided, abetted, or consented to by the mother of the fetus” as her own action must be) (dismissed after 16 months in jail and 19 months combatting the charge); *California v. Perez*, Kings County (2018) (same; dismissed on appeal after over 4 years in jail and prison), see *After Four Long Years in Prison, Adora Perez’s Murder Charge for Stillbirth Is Dropped*, <https://www.nationaladvocatesforpregnantwomen.org/adora-perez-case-dismissed/>.

application of other criminal laws to pregnancy.<sup>7</sup> Since 1973, there have been more than 1,700 documented instances of women being arrested, prosecuted, convicted, detained, or forced to undergo medical interventions that would not have occurred but for their status as pregnant people. Because they were pregnant, state actors assumed their rights could be subordinated in the interest of “fetal protection.”<sup>8</sup> Those pregnant people most often targeted and charged with pregnancy-related crimes are poor and nonwhite.<sup>9</sup>

State regulation and criminalization of pregnancy is likely to worsen following the Supreme Court’s decision to overturn *Roe*. *Roe* was not just about abortion, but about the full constitutional rights of all pregnant people.<sup>10</sup> The decision explicitly rejected the argument that zygotes, embryos, and fetuses may be treated as separate constitutional persons, holding that fetuses at any stage of development do not have rights competitive with the constitutional rights of pregnant people.<sup>11</sup> In the past, when cases criminalizing pregnancy outcomes were challenged and appealed, the majority of state appellate decisions held the prosecutions were unlawful based on principles articulated in *Roe*, with several explicitly referencing its language.<sup>12</sup> Without *Roe*, there’s no guarantee such prosecutions would be stopped, nor any guarantee anti-abortion groups won’t use fetal homicide laws to regulate contraception, family formation, and parenting next.

## **Overview**

### **Laws in effect in 38 states authorize homicide charges to be brought for causing the loss of a pregnancy.<sup>13</sup>**

- ❖ In **21 of the 38 states**, the criminal code has expanded the definition of a homicide victim, or a charge like homicide, to relate to a zygote, embryo, and fetus.<sup>14</sup> In some states, terms such as “person,” “human being,” or “another” have been redefined to include a zygote, embryo, or fetus.<sup>15</sup> Others states may redefine murder, manslaughter, and/or homicide charges to include causing the “unlawful termination of another’s pregnancy,”<sup>16</sup> or the “unlawful killing of a fetus.”<sup>17</sup>

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<sup>7</sup> Editorial, *supra* note 2.

<sup>8</sup> Brief of National Advocates for Pregnant Women et al. as Amici Curiae Supporting Respondent, *Dobbs v. Jackson Women’s Health Organization*, 597 U.S. \_\_\_\_ (2022) (No. 19-1392).

<sup>9</sup> Editorial, *supra* note 2.

<sup>10</sup> Brief of National Advocates for Pregnant Women et al., 597 U.S. \_\_\_\_.

<sup>11</sup> *Id.*; Lynn M. Paltrow, Opinion, *Life After Roe*, N.Y. Times (Sept. 1, 2018), <https://www.nytimes.com/2018/09/01/opinion/sunday/brett-kavanaugh-roe-abortion.html>.

<sup>12</sup> Kavattur, *supra* note 2.

<sup>13</sup> Alabama, Alaska, Arizona, Arkansas, California, Florida, Georgia, Idaho, Illinois, Indiana, Kansas, Kentucky, Louisiana, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Montana, Nebraska, Nevada, New Hampshire, North Carolina, North Dakota, Ohio, Oklahoma, Pennsylvania, South Carolina, South Dakota, Tennessee, Texas, Utah, Virginia, Washington, West Virginia, Wisconsin, and Wyoming.

<sup>14</sup> Alabama, Arizona, Arkansas, California, Idaho, Indiana, Kansas, Maryland, Mississippi, Montana, New Hampshire, Ohio, Oklahoma, South Dakota, Tennessee, Texas, Utah, Washington, West Virginia, Wisconsin, and Wyoming.

<sup>15</sup> For example, New Hampshire includes a fetus in its definition of “another” in its murder, manslaughter, and negligent criminal homicide statutes. N.H. Rev. Stat. Ann. §§ 630:1-a - 630:3.

<sup>16</sup> Ohio has such a statute. Ohio Rev. Code Ann. §§ 2903.01-2903.08.

<sup>17</sup> California defines murder as “the unlawful killing of a human being, or a fetus, with malice aforethought.” Cal. Penal Code § 187.

- ❖ In **17 of the 38 states** there is a unique statute or chapter in the criminal code for causing the loss of a pregnancy.<sup>18</sup> Some states have called such statutes “feticide,”<sup>19</sup> while others have titled a chapter of the criminal code “offenses against unborn children”<sup>20</sup> or similar.
- ❖ In **3 of the 38 states**, there is a statute that creates a separate, additional crime for causing the loss of a pregnancy while committing another crime.<sup>21</sup>
- ❖ Florida, Indiana, Minnesota, and South Dakota additionally authorize charges to be brought for causing the loss of a pregnancy in more than one way.<sup>22</sup>

**Most, but not all, states explicitly exclude charging pregnant people in relation to their own pregnancies.**

- ❖ **28 of the 38 states with fetal homicide laws include explicit language precluding charging pregnant people in relation to their own pregnancies,<sup>23</sup> and the statutory language in 2 additional states implies the same exception.<sup>24</sup>**
  - In these 30 states, homicide charges can likely still be brought against another party for providing an abortion under these statutes, depending on the state.
- ❖ Although Oklahoma and Utah have exceptions in their statutes to prevent charging pregnant people, the exceptions are not absolute, and allow for prosecutions of pregnant people if their conduct is intentional and potentially criminalized.<sup>25</sup>
- ❖ Even in states where the fetal homicide laws prohibit charging pregnant people, overzealous prosecutors still prosecute them, either by improperly charging them with a homicide crime or bringing other criminal charges for pregnancy loss experiences. The charge itself is devastating, in an already traumatic moment of pregnancy loss and in the long term, even if the charges are ultimately dismissed.<sup>26</sup>

<sup>18</sup> Alaska, Florida, Georgia, Illinois, Indiana, Kentucky, Louisiana, Michigan, Minnesota, Nebraska, Nevada, North Carolina, North Dakota, Pennsylvania, South Carolina, South Dakota, and Virginia.

<sup>19</sup> In Louisiana, there are separate charges for first, second, and third degree feticide. La. Stat. Ann. §§ 14:32.6. - 14:32.8.

<sup>20</sup> North Dakota has such a chapter in its criminal code. N.D. Cent. Code. Ann. §§ 12.1-17.1-02 - 12.1-17.1-04.

<sup>21</sup> Florida, Minnesota, and South Carolina.

<sup>22</sup> Florida and Minnesota both have a unique fetal homicide statute for causing the loss of a pregnancy, as well as a statute that creates a separate, additional crime for causing the loss of a pregnancy while committing another crime. Fla. Stat. Ann. §§ 782.09, 775.021; Minn. Stat. Ann. §§ 609.2661 - 609.2664, 609.2114, 609.268. Indiana and South Dakota both authorize charges to be brought for causing the loss of a pregnancy under expanded definitions in the criminal code, and a unique fetal homicide statute. Ind. Code Ann. §§ 35-42-1-1 - 35-42-1-4, 35-42-1-6; S.D. Codified Laws §§ 22-16-1.1, 22-16-4.

<sup>23</sup> Alabama, Alaska, Arizona, Arkansas, Florida, Georgia, Idaho, Illinois, Indiana, Kansas, Kentucky, Maryland, Minnesota, Missouri, Montana, Nebraska, New Hampshire, North Carolina, North Dakota, Ohio, Pennsylvania, South Carolina, Tennessee, Texas, Washington, West Virginia, and Wisconsin.; Missouri’s exception is unlike others in that it qualifies whether charges can be brought based on the pregnant person’s behavior. It states: “[n]othing in this section shall be interpreted as creating a cause of action against a woman for indirectly harming her unborn child by failing to properly care for herself or by failing to follow any particular program of prenatal care.” Mo. Ann. Stat. § 1.205.

<sup>24</sup> California and Nevada.

<sup>25</sup> Oklahoma’s homicide statute states “[u]nder no circumstances shall the mother of the unborn child be prosecuted for causing the death of the unborn child *unless the mother has committed a crime that caused the death of the unborn child.*” Okla. Stat. Ann. tit. 21, § 691(D) (emphasis added). Utah’s homicide statute states that a woman is not guilty of criminal homicide of her own unborn child “if the death of her unborn child: (a) is caused by a criminally negligent act or reckless act of the woman; and (b) is not caused by an intentional or knowing act of the woman.” Utah Code Ann. § 76-5-201(4)(a) - (b). Both statutes suggest that a person knowingly seeking to terminate a pregnancy could be charged under that state’s homicide laws.

<sup>26</sup> See, e.g., *Becker* and *Perez supra* note 6. Ms. Becker spent 16 months in jail and 19 months fighting the case, and lost a child to the system because she was facing this case. Ms. Perez spent over 4 years in jail and then prison before her case was ultimately dismissed on appeal.

**Most fetal homicide laws don't just apply to fetuses, but also include zygotes and embryos. 29 of the 38 states with laws that authorize homicide charges for causing the loss of a pregnancy apply at conception or an equivalently early stage of pregnancy.**<sup>27 28</sup>

- ❖ In **14 states**, these laws are applicable to a pregnancy “at any stage of development.”<sup>29</sup>
- ❖ In **6 states**, these laws are applicable from the point of conception until birth.<sup>30</sup>
- ❖ In **8 states**, these laws are applicable from fertilization until birth.<sup>31</sup>
- ❖ In **2 states**, these laws are applicable from implantation until birth.<sup>32</sup>

Prior to the *Dobbs* decision, fetal homicide laws have been used to criminally prosecute pregnant people for the loss of their own pregnancy. This will likely not only worsen in the aftermath of *Dobbs*, but will potentially result in additional criminal charges related to abortion, assisted reproductive technology, and certain forms of contraception.

## **Fetal Homicide Laws and Abortion**

Although laws that authorize homicide charges for causing a pregnancy loss are written in a broad fashion, prior to the *Dobbs* decision, *Roe* prevented widespread use of these statutes to criminalize abortion. Post-*Dobbs*, the statutes may result in criminal charges against abortion providers, or potentially even people who have abortions. Because such laws are applicable from fertilization or implantation in the majority of these states, it's likely the laws will be applicable even before a person realizes that they are pregnant.

Several state statutes include exceptions that could further impact the likelihood of homicide charges being brought for an abortion.

- ❖ In **14 of the 38 states**, the statute includes provisions suggesting charges cannot be brought for legal abortions.<sup>33</sup> Now that many states have made abortion illegal in most cases, nothing prevents prosecutors from using fetal homicide laws to criminally charge providers.
  - In **6 of the 14 states** – Alabama, Arkansas, Mississippi, Oklahoma, Texas, and West Virginia – abortion bans are being enforced and this exception no longer applies.<sup>34</sup>

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<sup>27</sup> Alabama, Alaska, Arkansas, Arizona, Florida, Georgia, Idaho, Illinois, Indiana, Kansas, Kentucky, Louisiana, Minnesota, Mississippi, Missouri, Nebraska, North Carolina, North Dakota, Ohio, Oklahoma, Pennsylvania, South Carolina, South Dakota, Tennessee, Texas, Utah, West Virginia, Wisconsin, and Wyoming.

<sup>28</sup> Although the below numbers total 30, Louisiana defines “unborn child” as an individual of the human species “from fertilization and implantation until birth,” and has been included in each category. La. Stat. Ann. § 14:2(11).

<sup>29</sup> Alabama, Alaska, Arizona, Florida, Georgia, Idaho, Indiana, Mississippi, Nebraska, North Carolina, South Carolina, Tennessee, Utah, and Wyoming.

<sup>30</sup> Arkansas, Kentucky, Minnesota, Missouri, North Dakota, and Oklahoma.

<sup>31</sup> Kansas, Louisiana, Ohio, Pennsylvania, South Dakota, Texas, West Virginia, and Wisconsin.

<sup>32</sup> Illinois and Louisiana.

<sup>33</sup> Alabama, Alaska, Arkansas, California, Illinois, Indiana, Maryland, Minnesota, Mississippi, North Carolina, Oklahoma, Texas, West Virginia, and Wisconsin.

<sup>34</sup> *After Roe Fell: Abortion Laws by State*, Center for Reproductive Rights, <https://reproductiverights.org/maps/abortion-laws-by-state/>.

- In **7 of the 14 states** - Alaska, Arkansas, California, Illinois, Mississippi, Oklahoma, and West Virginia, this exception explicitly only applies to legal abortions performed with consent.
- ❖ In **21 of the 38 states**, the statute includes provisions suggesting charges cannot be brought when an abortion was performed with the consent of the pregnant person.<sup>35</sup>
  - In **12 of the 21 states**, the statutes only generally require the consent of the pregnant person.<sup>36</sup>
  - In Pennsylvania and South Dakota, the statute provides an exception for abortions performed with the consent of the pregnant person, whether legal or not.<sup>37</sup>
- ❖ In most cases, statutes are explicit about whether or not the law applies to an abortion, but some states also have exceptions for medical procedures in certain instances that could arguably apply to abortions.
  - In **4 of the 38 states**, the statute includes an exception for medical procedures with consent,<sup>38</sup> and in **4 states** the statute includes an exception for legal medical procedures.<sup>39 40</sup> Similar to the exceptions for legal abortions, if abortion is made illegal in any of the states with these provisions, it's unlikely this exception will protect providers.
  - In Mississippi, Tennessee, and Texas, which have exceptions for legal medical procedures or legal medical procedures to which the pregnant person has consented, abortion is already banned or severely restricted, and these exceptions are likely no longer applicable.<sup>41</sup>

## **Fetal Homicide Laws and Assisted Reproductive Technology**

It is possible, though not likely, that fetal homicide laws could be used in circumstances where assisted reproductive technology (ART), such as in vitro fertilization (IVF), was used to begin a pregnancy.

**18 of the 29 states** that apply these laws early in pregnancy only apply to fertilized eggs in the womb or in utero,<sup>42</sup> making them inapplicable to the pre-implantation treatment of embryos created through ART procedures. Another **5 states** apply these laws at either 7-8 weeks of pregnancy<sup>43</sup> or 20-24

<sup>35</sup> Alabama, Alaska, Arizona, Arkansas, California, Florida, Georgia, Idaho, Illinois, Kansas, Kentucky, Louisiana, Mississippi, Montana, North Dakota, Ohio, Oklahoma, Pennsylvania, South Carolina, South Dakota, and West Virginia.

<sup>36</sup> Alabama, Arizona, Florida, Georgia, Idaho, Kansas, Kentucky, Louisiana, Montana, North Dakota, Ohio, and South Carolina.

<sup>37</sup> Pa. Stat. and Cons. Stat. Ann. §2608(a)(1); S.D. Codified Laws § 22-16-1.1.

<sup>38</sup> Nebraska, Pennsylvania, Tennessee, and Texas.

<sup>39</sup> Maryland, Mississippi, Tennessee, and Texas.

<sup>40</sup> Tennessee and Texas both have statutory language that indicates charges are not to be brought for both medical procedures with consent and legal medical procedures.

<sup>41</sup> *Supra* notes 38-40.

<sup>42</sup> Alabama, Alaska, Arizona, Florida, Georgia, Idaho, Illinois, Kansas, Kentucky, Louisiana, Mississippi, Nebraska, North Carolina, Ohio, South Carolina, Tennessee, Wisconsin, and Wyoming.

<sup>43</sup> California and Montana.

weeks of pregnancy,<sup>44</sup> which could potentially impact ART procedures post-implantation, but not pre-implantation treatment of embryos.

Additional statutory language may further protect ART.

- ❖ Although in **8 states**, the relevant statute is applicable “from fertilization until birth,”<sup>45</sup> which could impact fertilized eggs outside the womb, all but one state include statutory language that either explicitly excludes charges for assisted reproductive technology or fertility treatment,<sup>46</sup> or implicitly excludes charges by clarifying the fertilized egg’s location in utero,<sup>47</sup> or has an exception for lawful medical procedures.<sup>48</sup>
- ❖ For the **6 states** that apply their laws from “conception until birth,”<sup>49</sup> if conception is interpreted to require implantation of a fertilized egg, the laws should not affect assisted reproductive technology.
  - **2 of the 6 states** include statutory language that explicitly exclude charges for ART and fertility treatment.<sup>50</sup>
- ❖ In **20 states**, the statute includes an exception for medical treatment,<sup>51</sup> which, broadly defined, *could* protect assisted reproductive technology. However, that ambiguity opens the door to many problematic prosecutions, for example, if “medical treatment” were very narrowly defined.

## **Fetal Homicide Laws and Contraception**

Most forms of contraception prevent ovulation, and because no fertilized egg is created, these forms of contraception are outside the scope of fetal homicide laws. Several laws also have explicit exceptions for contraception.

However, because many laws define the victim of fetal homicide using language like “from point of conception” or “from fertilization,” they could be used to criminalize the use of certain forms of contraception that prevent implantation of fertilized eggs. Two types of intrauterine devices (IUDs)<sup>52</sup>

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<sup>44</sup> Maryland, Michigan, and New Hampshire.

<sup>45</sup> Kansas, Louisiana, Ohio, Pennsylvania, South Dakota, Texas, West Virginia, and Wisconsin.

<sup>46</sup> Texas’s statute states it does not apply to “lawful medical procedures in assisted reproduction.” Tex. Penal Code Ann. § 19.06. West Virginia’s statute also provides an exception for fertility treatment, as well as “lawful procedures involving embryos that are not in a stage of gestation in utero.” W. Va. Code Ann. § 61-2-30(d)(2)-(3).

<sup>47</sup> Kansas, Louisiana, Ohio, and Wisconsin all include language clarifying the law’s application to an egg in utero.

<sup>48</sup> Pa. Stat. and Cons. Stat. Ann. §2608(a)(2).

<sup>49</sup> Arkansas, Kentucky, Minnesota, Missouri, North Dakota, and Oklahoma.

<sup>50</sup> Arkansas’ statute has an explicit exception for ART and IVF. Ark. Code Ann. § 5-1-102(13)(B)(ii)(d)&(e). Kentucky’s statute provides an exception for fertility treatment. Ky. Rev. Stat. Ann. § 507A.010(2)(b).

<sup>51</sup> Alabama, Alaska, Arizona, Arkansas, Florida, Georgia, Idaho, Illinois, Kentucky, Louisiana, Maryland, Montana, North Carolina, North Dakota, Oklahoma, Pennsylvania, South Carolina, Washington, West Virginia, and Wisconsin.

<sup>52</sup> A copper IUD is a device inserted into the uterus by a healthcare provider that works by interfering with sperm transport and fertilization of an egg, and possibly prevents implantation of a fertilized egg. FDA-approved label for ParaGard T380A Intrauterine Copper Contraceptive 3 (June 11, 2013), [https://www.accessdata.fda.gov/drugsatfda\\_docs/label/2013/018680s0661bl.pdf](https://www.accessdata.fda.gov/drugsatfda_docs/label/2013/018680s0661bl.pdf); An IUD with progestin, such as Mirena, is a device inserted into the uterus by a healthcare provider that works by thickening cervical mucus preventing passage of sperm into the uterus, inhibiting sperm capacitation or survival, and altering the endometrium. FDA-approved label for Mirena (levonorgestrel-releasing intrauterine system) (Aug. 11, 2021), [https://www.accessdata.fda.gov/drugsatfda\\_docs/label/2021/021225s0421bl.pdf](https://www.accessdata.fda.gov/drugsatfda_docs/label/2021/021225s0421bl.pdf).

and two emergency contraceptives<sup>53</sup> have been depicted as “abortion-causing” by opponents to abortion because although they primarily work by interfering with sperm transport and preventing fertilization, they may additionally inhibit implantation by altering the endometrium. There is some possibility these particular forms of contraception could be criminalized in states where pregnancy is defined as earlier than implantation, and if so, fetal homicide laws could apply.

- ❖ Only **8** include language in their laws to preclude their application for contraception.<sup>54</sup>
  - In **2 of the 8 states**, the statutes explicitly provide that criminal charges can not be brought for contraception.<sup>55</sup> In the other **6 states**, there is an exception for legal dispensation of medication.<sup>56</sup> Should any forms of contraception be made illegal, this language would no longer prevent the application of fetal homicide laws.
- ❖ In **6 states**, the law includes an exception for legal medical procedures and/or medical procedures performed with consent of the pregnant person,<sup>57</sup> which could potentially protect IUD insertion procedures, provided IUD insertion procedures remain legal.
- ❖ The exception for medical treatment mentioned above, which appears in **20 states**,<sup>58</sup> could additionally prevent criminal charges for contraception.

While it is not yet known how widely these fetal homicide laws will be used in the aftermath of *Dobbs* to authorize homicide charges for abortion, assisted reproductive technology, or contraception, we know that they have been used for decades to subject pregnant people to criminal charges for the loss of their own pregnancy. Without the protection of *Roe*, not only are such prosecutions of pregnant people likely to increase, but additional potential prosecutions for accessing basic reproductive health care are now a reality for millions of people.

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<sup>53</sup> Plan B and Ella are two emergency contraceptives in pill form that principally prevent or delay ovulation, but also may alter the endometrium in a way that could affect implantation of a fertilized egg. FDA-approved label for Plan B One-Step (levonorgestrel) tablets, 1.5 mg, 1 (July 10, 2009), [https://www.accessdata.fda.gov/drugsatfda\\_docs/label/2017/021045s016lbl.pdf](https://www.accessdata.fda.gov/drugsatfda_docs/label/2017/021045s016lbl.pdf); FDA-approved label for ella (ulipristal acetate) tablet (Aug. 13, 2010), [https://www.accessdata.fda.gov/drugsatfda\\_docs/label/2010/022474s000lbl.pdf](https://www.accessdata.fda.gov/drugsatfda_docs/label/2010/022474s000lbl.pdf).

<sup>54</sup> Alabama, Kansas, Mississippi, Nebraska, New Hampshire, Pennsylvania, Texas, and Wisconsin.

<sup>55</sup> Wisconsin’s statute explicitly states charges should not be applied to methods of contraception. Wis. Stat. Ann. § 939.75(2)(b)(4). Pennsylvania’s statute states the law does not apply to the “use of intrauterine device or birth control pill to inhibit or prevent ovulation, fertilization, or the implantation of a fertilized ovum within the uterus.” 18 Pa. Stat. and Cons. Stat. § 2608(a)(2).

<sup>56</sup> Alabama, Kansas, Mississippi, Nebraska, New Hampshire, and Texas all include statutory language preventing the law from being applied in instances where it involves lawful distribution of legal medication.

<sup>57</sup> Maryland, Mississippi, Nebraska, Pennsylvania, Tennessee, and Texas.

<sup>58</sup> Alabama, Alaska, Arizona, Arkansas, Florida, Georgia, Idaho, Illinois, Kentucky, Louisiana, Maryland, Montana, North Carolina, North Dakota, Oklahoma, Pennsylvania, South Carolina, Washington, West Virginia, and Wisconsin.

**Appendix  
Fetal Homicide Statutes**

State	Statute(s) & Title(s)	How the statute(s) create the crime of causing the loss of a pregnancy	When statute(s) apply	Exception for pregnant people	Other exceptions
Alabama	Ala. Code § 13A-6-1 Definitions	“Person” under homicide section of criminal code includes “an unborn child in utero at any stage of development”	In utero, at any stage of development	Yes	<ul style="list-style-type: none"> <li>● Legal abortion</li> <li>● Abortion with consent</li> <li>● Dispensation of prescribed medications</li> <li>● Medical procedures</li> <li>● Medical treatment</li> </ul>
Alaska	Alaska Stat. Ann. § 11.41.150 Murder of an Unborn Child	Creation of distinct offenses of murder, manslaughter, and criminally negligent homicide of a zygote, embryo, and fetus under homicide section	In the womb, at any stage of development	Yes	<ul style="list-style-type: none"> <li>● Legal abortion with consent</li> <li>● Medical practice to assist a pregnancy</li> <li>● Medical treatment</li> </ul>
	Alaska Stat. Ann. § 11.41.160 Manslaughter of an Unborn Child				
	Alaska Stat. Ann. § 11.41.170 Criminally Negligent Homicide of an Unborn Child				
Arizona	Ariz. Rev. Stat. § 13-1102 Negligent Homicide	Inclusion of “unborn child” as potential victim in negligent homicide, manslaughter, and murder statutes	In the womb, at any stage of development	Yes	<ul style="list-style-type: none"> <li>● Abortion with consent</li> <li>● Medical treatment</li> </ul>
	Ariz. Rev. Stat. § 13-1103 Manslaughter				
	Ariz. Rev. Stat. § 13-1104 Second Degree Murder				
	Ariz. Rev. Stat. § 13-1105 First Degree Murder				

State	Statute(s) & Title(s)	How the statute(s) create the crime of causing the loss of a pregnancy	When statute(s) apply	Exception for pregnant people	Other exceptions
Arkansas	Ark. Code Ann. § 5-1-102 Definitions	“Person” as used in capital murder, murder in the first and second degree, manslaughter, and negligent homicide statutes includes “unborn child in utero at any stage of development”	From conception until birth	Yes	<ul style="list-style-type: none"> <li>● Legal abortion with consent</li> <li>● Assisted reproductive technology</li> <li>● In vitro fertilization</li> <li>● Medical treatment</li> </ul>
California	Cal. Penal Code § 187 “Murder” Defined	Inclusion of fetus as potential victim in the definition of murder	Beginning at 7-8 weeks	Yes (implied)	<ul style="list-style-type: none"> <li>● Legal abortion</li> <li>● Physician or surgeon acting to save life of mother</li> </ul>
Florida	Fla. Stat. Ann. § 782.09 Killing of Unborn Child by Injury to Mother	Creation of distinct offense of causing the loss of a pregnancy by injury to the mother under homicide chapter	In the womb, at any stage of development	Yes	<ul style="list-style-type: none"> <li>● Abortion with consent</li> <li>● Medical treatment</li> </ul>
	Fla. Stat. Ann. § 775.021 Rules of Construction	Creation of additional offense for causing loss of a pregnancy while committing another offense			
Georgia	Ga. Code Ann. § 16-5-20 Feticide	Creation of a distinct offense of causing the loss of a pregnancy by injury to the mother	In the womb, at any stage of development	Yes	<ul style="list-style-type: none"> <li>● Abortion with consent</li> <li>● Medical treatment</li> </ul>

State	Statute(s) & Title(s)	How the statute(s) create the crime of causing the loss of a pregnancy	When statute(s) apply	Exception for pregnant people	Other exceptions
<b>Idaho</b>	Idaho Code Ann. § 18-4001 Murder Defined	Inclusion of “human embryo or fetus” as potential victim in definitions of murder and manslaughter	In utero	Yes	<ul style="list-style-type: none"> <li>● Abortion with consent</li> <li>● Medical treatment</li> </ul>
	Idaho Code Ann. § 18-4006 Manslaughter Defined				
<b>Illinois</b>	720 Ill. Comp. Stat. Ann. 5/9-1.2 Intentional Homicide of an Unborn Child	Creation of distinct offenses of intentional homicide and voluntary manslaughter by causing the loss of a pregnancy	From implantation until birth	Yes	<ul style="list-style-type: none"> <li>● Legal abortion with consent</li> <li>● Medical treatment</li> </ul>
	720 Ill. Comp. Stat. Ann. 5/9-2.1 Voluntary Manslaughter of an Unborn Child				
<b>Indiana</b>	Ind. Code Ann. § 35-42-1-1 Murder	Inclusion of “fetus in any stage of development” as potential victim in murder and manslaughter statutes	Any stage of development	Yes	<ul style="list-style-type: none"> <li>● Legal abortion</li> </ul>
	Ind. Code Ann. § 35-42-1-3 Voluntary Manslaughter				
	Ind. Code Ann. § 35-42-1-4 Involuntary Manslaughter				
	Ind. Code Ann. § 35-42-1-6 Feticide	Creation of distinct offense of knowingly or intentionally terminating a pregnancy			

State	Statute(s) & Title(s)	How the statute(s) create the crime of causing the loss of a pregnancy	When statute(s) apply	Exception for pregnant people	Other exceptions				
<b>Kansas</b>	Kan. Stat. Ann. § 21-5419 Application of Certain Crimes to an Unborn Child	“Person” and “human being” as used in capital murder, murder in the first and second degree, voluntary manslaughter, involuntary manslaughter, and vehicular homicide statutes also mean “an unborn child”	In utero, at any stage of gestation from fertilization until birth	Yes	<ul style="list-style-type: none"> <li>● Abortion performed by physician or other licensed medical professional at pregnant person’s request</li> <li>● Medical procedure</li> <li>● Lawful dispensation of lawfully prescribed medication</li> </ul>				
<b>Kentucky</b>	<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td data-bbox="275 743 821 841">Ky. Rev. Stat. Ann. § 507A.020 Fetal Homicide in the First Degree</td> </tr> <tr> <td data-bbox="275 841 821 938">Ky. Rev. Stat. Ann. § 507A.030 Fetal Homicide in the Second Degree</td> </tr> <tr> <td data-bbox="275 938 821 1036">Ky. Rev. Stat. Ann. § 507A.040 Fetal Homicide in the Third Degree</td> </tr> <tr> <td data-bbox="275 1036 821 1128">Ky. Rev. Stat. Ann. § 507A.050 Fetal Homicide in the Fourth Degree</td> </tr> </table>	Ky. Rev. Stat. Ann. § 507A.020 Fetal Homicide in the First Degree	Ky. Rev. Stat. Ann. § 507A.030 Fetal Homicide in the Second Degree	Ky. Rev. Stat. Ann. § 507A.040 Fetal Homicide in the Third Degree	Ky. Rev. Stat. Ann. § 507A.050 Fetal Homicide in the Fourth Degree	Creation of distinct offenses of intentionally, wantonly, or recklessly causing the loss of a pregnancy under a fetal homicide chapter	In utero, from conception until birth	Yes	<ul style="list-style-type: none"> <li>● Abortion with consent</li> <li>● Fertility treatment</li> <li>● Medical treatment</li> </ul>
Ky. Rev. Stat. Ann. § 507A.020 Fetal Homicide in the First Degree									
Ky. Rev. Stat. Ann. § 507A.030 Fetal Homicide in the Second Degree									
Ky. Rev. Stat. Ann. § 507A.040 Fetal Homicide in the Third Degree									
Ky. Rev. Stat. Ann. § 507A.050 Fetal Homicide in the Fourth Degree									
<b>Louisiana</b>	<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td data-bbox="275 1131 821 1229">La. Stat. Ann. § 32.6 First Degree Feticide</td> </tr> <tr> <td data-bbox="275 1229 821 1326">La. Stat. Ann. § 32.7 Second Degree Feticide</td> </tr> <tr> <td data-bbox="275 1326 821 1416">La. Stat. Ann. § 32-8 Third Degree Feticide</td> </tr> </table>	La. Stat. Ann. § 32.6 First Degree Feticide	La. Stat. Ann. § 32.7 Second Degree Feticide	La. Stat. Ann. § 32-8 Third Degree Feticide	Creation of distinct offenses of causing the loss of a pregnancy	From fertilization and implantation until birth	Yes	<ul style="list-style-type: none"> <li>● Abortion with consent</li> <li>● Medical treatment</li> </ul>	
La. Stat. Ann. § 32.6 First Degree Feticide									
La. Stat. Ann. § 32.7 Second Degree Feticide									
La. Stat. Ann. § 32-8 Third Degree Feticide									

State	Statute(s) & Title(s)	How the statute(s) create the crime of causing the loss of a pregnancy	When statute(s) apply	Exception for pregnant people	Other exceptions
<b>Maryland</b>	Md. Code Ann., Crim. Law § 2-103 Viable Fetuses	Allowing prosecution for murder or manslaughter of viable fetus	Viability	Yes	<ul style="list-style-type: none"> <li>● Legal abortion</li> <li>● Medical treatment</li> <li>● Does not confer personhood or any rights on the fetus</li> </ul>
<b>Michigan</b>	Mich. Comp. Laws Ann. § 750.322 Manslaughter; Willful Killing of Unborn Quick Child  Mich. Comp. Laws Ann. § 750.323 Manslaughter; Death of Quick Child or Mother From Use of Medicine or Instrument	Creation of distinct offenses of willfully causing the loss of a pregnancy by injury to the mother or from use of substance or instrument	Viability	No	None
<b>Minnesota</b>	Minn. Stat. Ann. § 609.2661 Murder of Unborn Child in the First Degree  Minn. Stat. Ann. § 609.2662 Murder of Unborn Child in the Second Degree  Minn. Stat. Ann. § 609.2663 Murder of Unborn Child in the Third Degree  Minn. Stat. Ann. § 609.2664 Manslaughter of Unborn Child in the First Degree  Minn. Stat. Ann. § 609.2114 Criminal Vehicular Operation	Creation of distinct offenses of murder, manslaughter, and vehicular homicide for causing the loss of a pregnancy under “Crimes Against Unborn Children”	From conception until birth	Yes	<ul style="list-style-type: none"> <li>● Legal abortion</li> </ul>

State	Statute(s) & Title(s)	How the statute(s) create the crime of causing the loss of a pregnancy	When statute(s) apply	Exception for pregnant people	Other exceptions
	Minn. Stat. Ann. § 609.268 Injury or Death of Unborn Child in Commission of Crime	Creation of additional offense for causing loss of pregnancy while committing another offense			
<b>Mississippi</b>	Miss. Code Ann. § 97-3-19 “Murder” and “Capital Murder” Defined	Inclusion of “unborn child” as potential victim in definition of murder	In the womb, at any stage of development, from conception until live birth	No	<ul style="list-style-type: none"> <li>● Legal abortion with consent</li> <li>● Lawful dispensation of lawfully prescribed medication</li> </ul>
	Miss. Code Ann. § 97-3-37 Injury to Pregnant Woman Resulting in Miscarriage or Stillbirth; “Human Being” Defined; Crimes; Exceptions	“Human being” as used in homicide and murder statutes includes “an unborn child at every stage of gestation”			
<b>Missouri</b>	Mo. Ann. Stat. § 1.205 Life Begins at Conception - Unborn Child, Defined	Fetal personhood law and creation of general legal protections for zygotes, embryos, and fetuses	From conception until birth	Yes, if pregnant person failed to care for self or follow program of prenatal care	None

State	Statute(s) & Title(s)	How the statute(s) create the crime of causing the loss of a pregnancy	When statute(s) apply	Exception for pregnant people	Other exceptions
<b>Montana</b>	Mont. Code Ann. § 45-5-102 Deliberate Homicide	Inclusion of fetus as potential victim in homicide statutes	8 weeks of development until birth	Yes	<ul style="list-style-type: none"> <li>• Abortion with consent</li> <li>• Medical treatment</li> </ul>
	Mont. Code Ann. § 45-5-103 Mitigated Deliberate Homicide				
<b>Nebraska</b>	Neb. Rev. Stat. Ann. §28-391 Murder of an Unborn Child in the First Degree; Penalty	Creation of distinct offenses of murder, manslaughter, and vehicular homicide for causing the loss of a pregnancy under the Homicide of the Unborn Child Act	In utero, at any stage of development	Yes	<ul style="list-style-type: none"> <li>• Medical procedure</li> <li>• Lawful dispensation of lawfully prescribed medication</li> </ul>
	Neb. Rev. Stat. Ann. §28-392 Murder of an Unborn Child in the Second Degree; Penalty				
	Neb. Rev. Stat. Ann. §28-393 Manslaughter of an Unborn Child; Penalty				
	Neb. Rev. Stat. Ann. §28-394 Motor Vehicle Homicide of an Unborn Child; Penalty				
<b>Nevada</b>	Nev. Rev. Stat. Ann. § 200.210 Killing of Unborn Quick Child; Penalty	Creation of distinct manslaughter charge for causing the loss of a pregnancy by injury to the mother	Not specified	Yes (implied)	None
	Nev. Rev. Stat. Ann. § 200.220 Taking Drugs to Terminate Pregnancy; Penalty	Creation of distinct manslaughter charge for using substances or instruments with intent		No, this law explicitly applies to pregnant	<ul style="list-style-type: none"> <li>• Abortion performed by physician to save life of mother</li> </ul>

State	Statute(s) & Title(s)	How the statute(s) create the crime of causing the loss of a pregnancy	When statute(s) apply	Exception for pregnant people	Other exceptions
		to terminate a pregnancy after 24 weeks		person terminating pregnancy	
<b>New Hampshire</b>	N.H. Rev. Stat. Ann. § 630:1-a First Degree Murder	“Another” as used in murder, manslaughter, negligent homicide, and causing or aiding suicide statutes includes a fetus	End of 20 weeks after conception or, in the case of IVF, end of 20 weeks after implantation until birth	Yes	<ul style="list-style-type: none"> <li>● Act committed at request of pregnant person</li> <li>● Abortion performed by physician</li> <li>● Lawful dispensation of medication</li> </ul>
	N.H. Rev. Stat. Ann. § 630:1-b Second Degree Murder				
	N.H. Rev. Stat. Ann. § 630:2 Manslaughter				
	N.H. Rev. Stat. Ann. § 630:3 Negligent Homicide				
	N.H. Rev. Stat. Ann. § 630:4 Causing or Aiding Suicide				
<b>North Carolina</b>	N.C. Gen. Stat. Ann. §14-23.2 Murder of an Unborn Child; Penalty	Creation of distinct offenses of murder and manslaughter for causing the loss of a pregnancy	In the womb, at any stage of development	Yes	<ul style="list-style-type: none"> <li>● Legal abortion</li> <li>● Medical treatment</li> </ul>
	N.C. Gen. Stat. Ann. §14-23.3 Voluntary Manslaughter of an Unborn Child; Penalty				
	N.C. Gen. Stat. Ann. §14-23.4 Involuntary Manslaughter of an Unborn Child; Penalty				

State	Statute(s) & Title(s)	How the statute(s) create the crime of causing the loss of a pregnancy	When statute(s) apply	Exception for pregnant people	Other exceptions
North Dakota	N.D. Cent. Code Ann. § 12.1-17.1-02 Murder of an Unborn Child	Creation of distinct offenses of murder, manslaughter, and negligent homicide for intentionally, recklessly, or negligently causing the loss of a pregnancy under “Offenses Against Unborn Children” in the criminal code	From conception until birth	Yes	<ul style="list-style-type: none"> <li>● Abortion with consent</li> <li>● Medical treatment</li> </ul>
	N.D. Cent. Code Ann. § 12.1-17.1-03 Manslaughter of an Unborn Child				
	N.D. Cent. Code Ann. § 12.1-17.1-04 Negligent Homicide of an Unborn Child				
Ohio	Ohio Rev. Code Ann. § 2903.01 Aggravated Murder	Inclusion of “unlawful termination of another’s pregnancy” in definitions of murder, manslaughter, and homicide	In the womb, from fertilization until birth	Yes	<ul style="list-style-type: none"> <li>● Abortion with consent</li> </ul>
	Ohio Rev. Code Ann. § 2903.02 Murder				
	Ohio Rev. Code Ann. § 2903.03 Voluntary Manslaughter				
	Ohio Rev. Code Ann. § 2903.04 Involuntary Manslaughter				
	Ohio Rev. Code Ann. § 2903.041 Reckless Homicide				
	Ohio Rev. Code Ann. § 2903.05 Negligent Homicide				
	Ohio Rev. Code Ann. § 2903.06 Aggravated Vehicular Homicide				

State	Statute(s) & Title(s)	How the statute(s) create the crime of causing the loss of a pregnancy	When statute(s) apply	Exception for pregnant people	Other exceptions
<b>Oklahoma</b>	Okla. Stat. Ann. tit. 21, § 691 Homicide Defined	“Human being” as used in homicide section includes an unborn child	Conception until birth	No, if “the mother has committed a crime that caused the death of the unborn child”	<ul style="list-style-type: none"> <li>● Legal abortion with consent</li> <li>● Medical treatment</li> </ul>
<b>Pennsylvania</b>	18 Pa. Stat. and Cons. Stat. § 2603 Criminal Homicide of Unborn Child <hr/> 18 Pa. Stat. and Cons. Stat. § 2604 Murder of Unborn Child <hr/> 18 Pa. Stat. and Cons. Stat. § 2605 Voluntary Manslaughter of Unborn Child	Creation of distinct offenses of homicide, murder, and manslaughter for causing the loss of a pregnancy under the Crimes Against the Unborn Child Act	Fertilization until birth	Yes	<ul style="list-style-type: none"> <li>● Abortion with consent, lawful or unlawful</li> <li>● Contraception (IUD or birth control pill)</li> <li>● Lawful medical procedure</li> <li>● Medical treatment</li> </ul>
<b>South Carolina</b>	S.C. Code Ann. § 16-3-1083 Death or Injury of Child in Utero Due to Commission of Violent Crime	Creation of additional offense for causing loss of pregnancy while committing another violent offense	In the womb, at any stage of development	Yes	<ul style="list-style-type: none"> <li>● Abortion with consent</li> <li>● Medical treatment</li> </ul>
<b>South Dakota</b>	S.D. Codified Laws § 22-16-1.1 Fetal Homicide	Creation of distinct homicide offense for causing the loss of a pregnancy	Fertilization until birth	No	<ul style="list-style-type: none"> <li>● Abortion with consent, lawful or unlawful</li> </ul>

State	Statute(s) & Title(s)	How the statute(s) create the crime of causing the loss of a pregnancy	When statute(s) apply	Exception for pregnant people	Other exceptions
	S.D. Codified Laws § 22-16-4 Homicide as Murder in the First Degree	Inclusion of unborn child as potential victim in homicide statutes		No	None
	S.D. Codified Laws § 22-16-41 Vehicular Homicide				
<b>Tennessee</b>	Tenn. Code Ann. § 39-13-214 Victims; Embryo or Fetus; Construction of Law	“Another” as used in the criminal homicide section includes an embryo or fetus	In utero, at any stage of development	Yes	<ul style="list-style-type: none"> <li>• Legal medical procedure with consent performed by health care professional</li> </ul>
<b>Texas</b>	Tex. Penal Code Ann. § 1.07 Definitions	“Individual” as used in the penal code includes “an unborn child at every stage of gestation”	From fertilization until birth	Yes	<ul style="list-style-type: none"> <li>• Legal abortion</li> <li>• Legal medical procedures with consent</li> <li>• Medical procedures in assisted reproduction</li> <li>• Lawful dispensation of medication</li> </ul>
<b>Utah</b>	Utah Code Ann. § 76-5-201 Criminal Homicide	Inclusion of “unborn child at any stage of its development” as potential victim in criminal homicide statute	Any stage of development	No, only if loss of pregnancy is “caused by a criminally negligent act or reckless act of the woman” or is not intentional	None

State	Statute(s) & Title(s)	How the statute(s) create the crime of causing the loss of a pregnancy	When statute(s) apply	Exception for pregnant people	Other exceptions
<b>Virginia</b>	Va. Code Ann. §18.2-32.2 Killing a Fetus; Penalty	Creation of distinct offense for intentionally causing the loss of a pregnancy	Not defined	No	None
<b>Washington</b>	Wash. Rev. Code. Ann. § 9A.32.060 Manslaughter in the First Degree	Inclusion of “unborn quick child” as potential victim of manslaughter	Not defined	Yes	<ul style="list-style-type: none"> <li>• Medical treatment</li> </ul>
<b>West Virginia</b>	W. Va. Code Ann. § 61-2-30 Recognizing an Embryo or Fetus as a Distinct Unborn Victim of Certain Crimes of Violence Against the Person	Recognition of pregnant person and embryo or fetus as distinct and separate potential victims in murder and manslaughter statutes	From fertilization until birth	Yes	<ul style="list-style-type: none"> <li>• Legal abortion with consent</li> <li>• Fertility treatment, procedures involving embryos not in utero</li> <li>• Medical treatment</li> </ul>
<b>Wisconsin</b>	<p>Wis. Stat. Ann. § 940.01 First-degree Intentional Homicide</p> <p>Wis. Stat. Ann. § 940.02 First-degree Reckless Homicide</p> <p>Wis. Stat. Ann. § 940.05 Second-degree Intentional Homicide</p> <p>Wis. Stat. Ann. § 940.06 Second-degree Reckless Homicide</p> <p>Wis. Stat. Ann. § 940.08 Homicide by Negligent Handling of Dangerous Weapon, Explosives, Fire</p>	Inclusion of unborn child as potential victim in intentional, reckless, and negligent homicide statutes	From fertilization until birth, gestating inside person	Yes	<ul style="list-style-type: none"> <li>• Legal abortion</li> <li>• Medical treatment</li> <li>• Medicine, drug, or device for contraception</li> </ul>

State	Statute(s) & Title(s)	How the statute(s) create the crime of causing the loss of a pregnancy	When statute(s) apply	Exception for pregnant people	Other exceptions
	Wis. Stat. Ann. § 940.09 Homicide by Intoxicated Use of Vehicle or Firearm				
	Wis. Stat. Ann. § 940.10 Homicide by Negligent Operation of Vehicle				
<b>Wyoming</b>	Wyo. Stat. Ann. § 6-2-101 Murder in the First Degree; Penalty	Inclusion of unborn child as potential victim of first or second degree murder	In the womb, at any stage of development	No	None
	Wyo. Stat. Ann. § 6-2-104 Murder in the Second Degree; Penalty				