

Pain-Capable Unborn Child Protection Act

April 18, 2013

Pain-Capable Unborn Child Protection Act recognizes that medical science demonstrates that unborn children are capable of experiencing pain certainly by 20 weeks after fertilization. The Act protects pain-capable unborn children from being killed by abortion absence of significant risk to the mother. The scientific evidence can be found at www.doctorsonfetalpain.com.

Legislative Findings:

- (1) Pain receptors (nociceptors) are present throughout the unborn child's entire body and nerves link these receptors to the brain's thalamus and subcortical plate by no later than 20 weeks.
- (2) By eight (8) weeks after fertilization, the unborn child reacts to touch. After twenty (20) weeks, the unborn child reacts to stimuli that would be recognized as painful if applied to an adult human, for example, by recoiling.
- (3) In the unborn child, application of such painful stimuli is associated with significant increases in stress hormones known as the stress response.
- (4) Subjection to such painful stimuli is associated with long-term harmful neurodevelopmental effects, such as altered pain sensitivity and, possibly, emotional, behavioral, and learning disabilities later in life.
- (5) For the purposes of surgery on unborn children, fetal anesthesia is routinely administered and is associated with a decrease in stress hormones compared to their level when painful stimuli are applied without such anesthesia.
- (6) The position, asserted by some medical experts, that the unborn child is incapable of experiencing pain until a point later in pregnancy than 20 weeks after fertilization predominately rests on the assumption that the ability to experience pain depends on the cerebral cortex and requires nerve connections between the thalamus and the cortex. However, recent medical research and analysis, especially since 2007, provides strong evidence for the conclusion that a functioning cortex is not necessary to experience pain.
- (7) Substantial evidence indicates that children born missing the bulk of the cerebral cortex, those with hydranencephaly, nevertheless experience pain.
- (8) In adults, stimulation or ablation of the cerebral cortex does not alter pain perception, while stimulation or ablation of the thalamus does.
- (9) Substantial evidence indicates that structures used for pain processing in early development differ from those of adults, using different neural elements available at specific times during development, such as the subcortical plate, to fulfill the role of pain processing.

(10) The position, asserted by some medical experts, that the unborn child remains in a coma-like sleep state that precludes the unborn child experiencing pain is inconsistent with the documented reaction of unborn children to painful stimuli and with the experience of fetal surgeons who have found it necessary to sedate the unborn child with anesthesia to prevent the unborn child from thrashing about in reaction to invasive surgery.

(11) Consequently, there is substantial medical evidence that an unborn child is capable of experiencing pain by 20 weeks after fertilization.

(12) It is the purpose of the State to assert a compelling state interest in protecting the lives of unborn children from the stage at which substantial medical evidence indicates that they are capable of feeling pain.

STATES WITH PAIN-CAPABLE UNBORN CHILD PROTECTION ACT LAWS:

- Nebraska: R.R.S. Neb. § 28-3,109 (2010)
- Kansas: K.S.A § 65-6722
- Idaho: Idaho Code Ann. §§18-501-10 (2011) Law enjoined. *McCormack v. Hiedeman*, Case No. 4:11-cv-00433-BLW (March 6, 2013).
- Oklahoma: Okla. Stat. Ann. §§1-745.1-11 (2011)
- Alabama: Ala. Code § 26-23B-2
- Georgia: 2012 H.B. 954, signed by Governor May 1, 2012 (Preliminary injunction issued *Lathrop, et al. v. Deal, et al.* No. CV224423, (Sup. Ct. of Fulton Cnty., Ga., Dec. 21, 2012).
- Louisiana: 2012 SB 766, signed by Governor June 15, 2012
- Arkansas: 2013, Arkansas Code Title 20, Chapter 16, Subchapter 13 — Pain-Capable Unborn Child Protection Act. Governor's veto overridden by the General Assembly, effective immediately.
- North Dakota: 2013, S.B. 2368, signed by Governor April 16, 2013

** In 2011, the Arizona Legislature passed a 20-week (LPM) ban, the Woman's Health and Safety Act, based on the findings that late abortions are dangerous to mothers but also contained a finding that the unborn child feels pain. This law has been enjoined, pending litigation in *Paul A. Isaacson, M.D. et al. v. Tom Horne, Attorney General of Arizona, et al.* (Case No. 12-16670, 9th Cir. 2012).