



OHIO LEGISLATIVE SERVICE COMMISSION

Final Analysis

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Sub. S.B. 145

132nd General Assembly
(As Passed by the General Assembly)

Sens. Huffman and Wilson, Uecker, Lehner, Jordan, Terhar, Hottinger, Hackett, LaRose, Bacon, Burke, Eklund, Gardner, Hite, Hoagland, Obhof, Oelslager

Reps. Anielski, Antani, Brenner, Butler, Carfagna, Dean, Faber, Gavarone, Ginter, Hambley, Hoops, T. Johnson, Kick, Koehler, LaTourette, McClain, Merrin, Perales, Riedel, Roegner, Romanchuk, Schaffer, T. Smith, Stein, Thompson, Wiggam, Young

Effective date: March 22, 2019

ACT SUMMARY

- Generally prohibits a person from knowingly performing or attempting to perform a dismemberment abortion.
- Provides that a person who violates the prohibition is guilty of dismemberment feticide, a felony of the fourth degree.
- Defines a dismemberment abortion as dismembering a living unborn child and extracting the child one piece at a time from the uterus through use of clamps, grasping forceps, tongs, scissors, or similar instruments that, through the convergence of two rigid levers, slice, crush, or grasp a portion of the child's body to cut or rip it off, with the purpose of causing the child's death.
- Specifies that a dismemberment abortion does not include a procedure performed after the death of the unborn child to extract any remaining parts of the unborn child.
- Specifies that the act does not prohibit the suction curettage or suction aspiration procedures of abortion.
- Provides an exception to the crime for when it is necessary, in reasonable medical judgment, to preserve the life or physical health of the mother as a result of the mother's life or physical health being endangered by a serious risk of the substantial and irreversible physical impairment of a major bodily function.

- Specifies that none of the following are guilty of committing, attempting to commit, complicity in the commission of, or conspiracy in the commission of a dismemberment abortion:
 - The pregnant woman upon whom the abortion was performed;
 - An individual who is employed by, and acts at the direction of, the person who performs the abortion; and
 - A pharmacist or other individual who fills a prescription or provides instruments or materials used in the abortion.
- Permits the following to sue a person who performs an illegal dismemberment abortion:
 - The woman upon whom the abortion was performed;
 - The father, if the child was not conceived by rape; and
 - The parent of the woman if she was under 18 at the time of the abortion.
- Provides for an increased penalty for a person guilty of unlawful distribution of an abortion-inducing drug, from a fourth degree felony to a third degree felony, if that person had previously been convicted of or pleaded guilty to dismemberment feticide.
- Repeals law stating that the statute prohibiting partial birth abortions does not prohibit the dilation and evacuation procedure of abortion.

CONTENT AND OPERATION

Dismemberment abortion prohibited

The act generally prohibits a person from knowingly performing or attempting to perform a dismemberment abortion. It provides that a person who violates that prohibition is guilty of the crime of dismemberment feticide, a fourth degree felony.¹

The act defines a dismemberment abortion as dismembering a living unborn child and extracting the child one piece at a time from the uterus through use of clamps, grasping forceps, tongs, scissors, or similar instruments that, through the convergence of two rigid levers, slice, crush, or grasp a portion of the child's body to cut or rip it off, with the purpose of causing the child's death. The definition excludes a procedure

¹ R.C. 2919.15(B) and (C).

performed after the death of the unborn child to extract any remaining parts of the unborn child.²

Exception for preserving the mother's life or physical health

The act does not prohibit a dismemberment abortion that is necessary, in reasonable medical judgment, to preserve the life or physical health of the mother as a result of the mother's life or physical health being endangered by a serious risk of the substantial and irreversible physical impairment of a major bodily function. The act defines a "serious risk of the substantial and irreversible impairment of a major bodily function" as any medically diagnosed condition that so complicates the woman's pregnancy as to directly or indirectly cause substantial and irreversible impairment of a major bodily function.³

Certain individuals not guilty

The act provides that the following are not guilty of committing, attempting to commit, complicity in the commission of, or conspiracy in the commission of dismemberment feticide:

- A pregnant woman upon whom an illegal dismemberment abortion is performed;
- An individual who is employed by, and acts at the direction of, a person who performs an illegal dismemberment abortion; and
- A pharmacist or other individual who fills a prescription or provides instruments or materials used in an illegal dismemberment abortion.⁴

Suction curettage and suction aspiration not prohibited

The act states that its establishing the crime of dismemberment feticide does not prohibit suction curettage and suction aspiration procedures of abortion.⁵ Continuing law that prohibits partial birth procedures also states that the section prohibiting partial birth procedures does not prohibit suction curettage and suction aspiration procedures of abortion.⁶ Because the act and continuing law do not define "suction curettage" or

² R.C. 2919.15(A).

³ R.C. 2919.15(A) and 2919.151(A)(4).

⁴ R.C. 2919.15(D).

⁵ R.C. 2919.15(E).

⁶ R.C. 2919.151(F).



"suction aspiration," their common usage defines their meaning.⁷ Suction curettage involves a pump to suction out the fetus, placenta, and other uterine contents. After the suctioning, the physician may use a curette (a sharp, spoon-like instrument) to remove any remaining tissue from the uterus.⁸ Suction aspiration likely involves the use of a manual or machine vacuum to remove all tissue from the uterus.⁹

Civil action

The act creates a cause of action for:

- A woman upon whom an illegal dismemberment abortion is performed;
- The father of the child, if the child was not conceived by rape; and
- The parent of the woman, if the woman was not 18 when the illegal dismemberment abortion occurred.

These individuals may sue the person who performed the illegal dismemberment abortion for compensatory damages, punitive or exemplary damages if permitted under law governing tort cases, and court costs and reasonable attorney's fees.¹⁰ The civil action must begin within one year of the abortion.¹¹

Enhanced penalty, unlawful distribution of an abortion-inducing drug

The act provides an enhanced penalty of a third degree felony for a person who has been convicted of or pleaded guilty to a violation of dismemberment feticide and subsequently violates the prohibition in continuing law against the unlawful distribution of an abortion-inducing drug.

The unlawful distribution of an abortion-inducing drug, under continuing law, is generally a *fourth* degree felony. However, continuing law also makes the crime a third

⁷ R.C. 1.42, not in the act.

⁸ "Suction Curettage," available at: http://www.michigan.gov/mdhhs/0,5885,7-339-73971_4909_6437_19077-46301--,00.html.

⁹ "Vacuum Aspiration for Abortion," available at: <http://www.webmd.com/women/manual-and-vacuum-aspiration-for-abortion>.

¹⁰ R.C. 2307.53.

¹¹ R.C. 2305.114.



degree felony if the offender has previously been convicted of or pleaded guilty to a number of other crimes, including partial birth feticide.¹²

Removal of statement that dilation and evacuation not prohibited

The act repeals the law stating that the statute prohibiting partial birth procedures does not prohibit the dilation and evacuation procedure of abortion. It also repeals a law stating that, for this purpose, the dilation and evacuation procedure of abortion does not include the dilation and *extraction* procedure.¹³ "Dilation and evacuation" and "dilation and extraction" are not defined in law, leaving their meaning to common usage.¹⁴ During a dilation and evacuation procedure, the uterus may be scraped with a curette, and the fetus and placenta are extracted with forceps or other instruments.¹⁵ Dilation and *extraction* is a surgical abortion in which the death of the fetus is induced after it has passed partway through the dilated cervix.¹⁶

Credit for time served

The act provides that a person who is convicted of dismemberment feticide may earn one day of credit toward satisfaction of the person's stated prison term for each month during which the person participates in certain programs. Under continuing law, that one-day of credit is awarded only if the most serious offense for which the offender is confined is a first or second degree felony. Although the act applies the one-day credit to dismemberment feticide, that offense is a fourth degree felony, creating some confusion regarding that credit application. The confusion is compounded because a related provision of continuing law granting a five-day credit for each month would appear to apply to dismemberment feticide.¹⁷

Dismemberment abortions in certain cases

The act states that an abortion that does not violate laws limiting the application or construction of certain terms ("another's unborn," "such other person's unborn," "unborn human who is viable," or "unlawful termination of another's pregnancy") used

¹² R.C. 2919.123(E).

¹³ R.C. 2919.151.

¹⁴ R.C. 1.42, not in the act.

¹⁵ "Dilation and Evacuation (D&E)," available at: http://www.michigan.gov/mdhhs/0,5885,7-339-73971_4909_6437_19077-46298--,00.html.

¹⁶ "Definition of Dilation and Extraction," available at: <https://www.merriam-webster.com/dictionary/dilation%20and%20extraction>.

¹⁷ R.C. 2967.193(D)(1)(a) and (5).



to prohibit abortions, but that does violate the prohibition against dismemberment abortions, may be punished as a violation of the prohibition against dismemberment abortions. Continuing law contains the same statement for other crimes, including partial birth feticide.¹⁸

HISTORY

ACTION	DATE
Introduced	05-04-17
Reported, S. Judiciary	06-27-17
Passed Senate (24-9)	06-28-17
Reported, H. Criminal Justice	12-12-18
Passed House (65-28)	12-13-18
Senate concurred in House amendments (23-9)	12-13-18

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¹⁸ R.C. 2901.01(B)(2)(a) and 2903.09(C)(1).

