

Facts of Life: Ohio laws

RIGHT TO CHOOSE ABORTION — (Ohio Constitution, Section 1, Article 1)

In *Preterm Cleveland v. Voinovich*, 627 N.E. 2d 570 (the case which found Ohio's Woman's Right to Know Law constitutional), the Tenth Appellate District Court said: "Although Ohio recognizes a common law right of privacy, *Housh v. Peth* (1956), 165 Ohio St. 35, it is not necessary to find a constitutional right of privacy in order to reach the conclusion that the choice of a woman whether or not to bear a child is one of the liberties guaranteed by Section 1, Article 1, Ohio Constitution." This was not an Ohio Supreme Court decision, and therefore not the final word on the interpretation of the Ohio Constitution. However, it probably means that, when *Roe v. Wade* is overturned by the U.S. Supreme Court, any attempt in Ohio to prohibit abortion would be short-circuited until this issue is resolved.

LATE-TERM ABORTION

Abortions are legal in Ohio throughout all nine months of pregnancy. The 6th Circuit Court of Appeals affirmed a district court decision which found Ohio's post-viability laws unconstitutional. *Women's Medical Professional Corp. v. Voinovich*, 130 F.3d 187.

PARTIAL-BIRTH ABORTION — (O.R.C. 2919.151)

On June 28, 2004, Ohio became the first state to have a ban on partial-birth abortions go into effect since the U.S. Supreme Court struck down Nebraska's ban in 2000. In May of 2000, Governor Taft signed a new law passed by the Ohio legislature. On December 17, 2003, the majority of a 3-judge panel of the U.S. Court of Appeals for the 6th Circuit reversed a district court ruling and held that this statute was constitutional (*Women's Medical Professional Corp. v. Taft*, 353 F.3d 436). The full 6th Circuit denied a petition to rehear the case and the law went into effect when the plaintiffs decided not to appeal to the Supreme Court. Ohio's law does include a health exception approved by the Supreme Court in *Planned Parenthood v. Casey*, and it does define partial-birth abortion more narrowly than the Nebraska law which was struck down in 2000. Ohio was the first state to pass a ban on partial-birth abortions in 1995, but that law was declared unconstitutional by the United States Court of Appeals for the Sixth Circuit in 1997. (President George W. Bush signed a federal ban on partial birth abortion in 2003 which was ultimately held up by the U.S. Supreme Court in 2007 (*Gonzales vs. Carhart*), making the procedure illegal in all 50 states.)

PARENTAL INVOLVEMENT — (O.R.C. 2919.121)

An unemancipated minor under 18 may not obtain an abortion unless one of her parents or her guardian has given written consent or she obtains a court order. (The provisions of this parental consent statute are now in

effect, except for a section preventing additional judicial bypass requests after a first request had been denied, which was held unconstitutional by a panel of the U.S. 6th Circuit Court of Appeals in November 2006 in *Cincinnati Women's Services v. Taft*, Case No. 05-4174.)

INFORMED CONSENT — (O.R.C. 2317.56)

Except in the case of a medical emergency, at least 24 hours prior to an abortion: 1) a doctor must meet in-person with the woman and inform her of the nature of the procedure, the medical risks of abortion and childbirth, and the probable gestational age of the child; and 2) the woman must be told the name of the abortionist and given state-printed materials describing the development of the unborn child and listing agencies which can help with her pregnancy and childbirth. Prior to the abortion, the woman must sign a form consenting to the abortion. (The requirement that a doctor meet with the woman in person at least 24 hours before the abortion was upheld by a panel of the U.S. 6th Circuit Court of Appeals in November 2006 in *Cincinnati Women's Services v. Taft*, Case No. 05-4174. The law is now in effect.)

PREFER CHILDBIRTH OVER ABORTION – (O.R.C. 9.041)

It is the public policy of the state of Ohio to prefer childbirth over abortion to the extent that is constitutionally permissible.

FREEDOM OF CONSCIENCE — (O.R.C. 4731.91)

No person may be required to participate in medical procedures which result in abortion.

ABORTION MANSLAUGHTER — (O.R.C. 2919.13)

Prohibits purposely taking the life of or not taking measures required by medical judgment to preserve the life of a child who is alive when removed from the woman's uterus.

FETAL HOMICIDE

All of Ohio's homicide and assault statutes prohibit actions which kill or injure another person's unborn child at any stage of pregnancy. There are exceptions for legal abortions and actions by the mother.

PUBLIC FUNDING

(O.R.C. 124.85) Prohibits the use of tax money to pay for state employees' insurance coverage for nontherapeutic abortions. (O.R.C. 5101.56) State and local funds cannot be used for an abortion, except in the case of rape, incest, or to preserve the woman's life. (O.R.C. 3702.33) State "genetic services" funds cannot be used to counsel or refer for an abortion, except in a medical emergency. (O.R.C. 3701.046) State "women health services" funds cannot be used to provide abortion services and cannot be used to counsel or refer for an abortion, except in a medical emergency. Programs that receive these funds must provide services that are physically and financially separate from abortion-providing and abortion-promoting activities.

PHYSICIAN REQUIREMENT — (O.R.C. 2919.11)

Abortion is the practice of medicine or surgery for purposes of O.R.C. 4731.41, which means that only licensed physicians may perform abortions. Nurses (O.R.C. 4723.28) and physician assistants (O.R.C. 4730.25) are prohibited from "prescribing any drug or device to perform or induce an abortion, or otherwise performing or inducing an abortion".

FETAL EXPERIMENTATION/SALE — (O.R.C. 2919.14)

Prohibits experimenting on or selling the "product of conception" which is aborted. The sale of "baby parts" is thus prohibited in Ohio.

FORCED ABORTION — (O.R.C. 2701.15)

Prohibits any court from ordering a woman to have an abortion. (O.R.C. 5101.55) No person may be ordered to obtain an abortion by any public agency. Refusal to obtain an abortion cannot be used to cause the loss of public assistance or other rights or privileges. (O.R.C. 3701.791) Requires abortion facilities to post a "No One Can Force You to Have an Abortion" notice that informs women not to sign a consent form and to tell clinic personnel if they are being coerced.

ABORTION REPORTING — (O.R.C. 3701.79)

Requires filing a confidential report on each abortion with the Ohio Department of Health which uses the information to produce an annual statistical report.

WRONGFUL BIRTH AND WRONGFUL LIFE — (O.R.C. 2305.116)

Prohibits "wrongful birth" and "wrongful life" lawsuits which are medical claims that allege that a child with a disability would have been aborted rather than born if a medical professional had discovered the disability and informed the parents.

RU-486 REGULATION – (O.R.C. 2919.123)

Creates state criminal penalty for providing RU-486 (mifepristone) to another to induce an abortion without complying with the requirements of federal law governing RU-486. (This law is currently being challenged in the U.S. 6th Circuit Court of Appeals.)

UMBILICAL CORD BLOOD

Requires the Ohio Department of Health to place printable information on umbilical cord blood banking and donation on its website. The Department of Health also will encourage health care professionals to provide the information to pregnant women. Umbilical cord blood is an ethical source of stem cells obtained with no risk to the mother or child. These stem cells have been used to successfully treat over 70 diseases.

ULTRASOUND VIEWING OPTION – (O.R.C. 2317.561)

Requires that if an ultrasound is to be performed prior to or during an abortion, the abortionist must provide the woman an opportunity to view the active ultrasound image of the fetus or embryo and offer to provide her a physical picture of the image of the embryo or fetus.

CLINIC REGULATIONS — (Admin. Code sections 3701-83-01 to 22)

The Ohio Department of Health rules regarding “Ambulatory Surgical Facilities” create personnel and staffing requirements, service standards including informed consent, building and site requirements, medical records requirements and allow inspections. (Admin. Code section 3701-47) Public Health Council regulations cover human fetal disposal and post-abortion procedures which only apply to abortions performed after 14 weeks.

ASSISTED SUICIDE – (O.R.C. 3795.01, 3795.02, 3795.03)

Under a law which became effective on March 24, 2003, assisting a suicide is against the public policy of Ohio. An injunction may be issued against any person who is preparing to assist a suicide, in the course of assisting a suicide or who has assisted a suicide.

POWER OF ATTORNEY FOR HEALTH CARE — (O.R.C. 1337.11 - 1337.17)

Ohio has a durable power of attorney for health care law, which permits an individual to appoint another person to make medical decisions in the event the patient is unable to do so.

LIVING WILL — (O.R.C. 2133.02)

Ohio law permits an adult to create a declaration (living will) indicating his or her wishes regarding the use or continuation or withholding or withdrawal of life-sustaining treatment when in a terminal condition or permanently unconscious state and can no longer make informed decisions. O.R.C. 2133.08 and 2133.09 permits a guardian or certain relatives to authorize the use or continuation or withholding or withdrawal of life-sustaining treatment when the patient is in a terminal condition or permanently unconscious state, can no longer make informed decisions, and does not have a declaration or durable power of attorney for health care.

PLEASE NOTE: This is only a brief summary of Ohio statutes, administrative regulations, and case law on selected life issues. In addition to state law, there are federal laws and rules as well as local ordinances and regulations.

Information provided by Ohio Right to Life, January 2011. For more information visit Ohio Right to Life at www.ohiolive.com.