

TITLE 18
CRIMES AND PUNISHMENTS

CHAPTER 6
ABORTION AND CONTRACEPTIVES

18-601. INTERPRETATION OF STATE STATUTES AND THE STATE CONSTITUTION. The supreme court of the United States having held in the case of "Planned Parenthood v. Casey" that the states have a "profound interest" in preserving the life of preborn children, Idaho hereby expresses the fundamental importance of that "profound interest" and it is hereby declared to be the public policy of this state that all state statutes, rules and constitutional provisions shall be interpreted to prefer, by all legal means, live childbirth over abortion.

[18-601, added 2001, ch. 273, sec. 1, p. 996.]

18-602. LEGISLATIVE FINDINGS AND INTENT. (1) The legislature finds:

(a) That children have a special place in society that the law should reflect;

(b) That minors too often lack maturity and make choices that do not include consideration of both immediate and long-term consequences;

(c) That the medical, emotional and psychological consequences of abortion and childbirth are serious and can be lasting, particularly when the patient is immature;

(d) That the capacity to become pregnant and the capacity for mature judgment concerning the wisdom of bearing a child or of having an abortion are not necessarily related;

(e) That parents, when aware that their daughter is pregnant or has had an abortion are in the best position to ensure that she receives adequate medical attention during her pregnancy or after her abortion;

(f) That except in rare cases, parents possess knowledge regarding their child which is essential for a physician to exercise the best medical judgment for that child;

(g) That when a minor is faced with the difficulties of an unplanned pregnancy, the best interests of the minor are always served when there is careful consideration of the rights of parents in rearing their child and the unique counsel and nurturing environment that parents can provide;

(h) That informed consent is always necessary for making mature health care decisions.

(2) It is the intent of the legislature in enacting section [18-609A](#), Idaho Code, to further the following important and compelling state interests recognized by the United States supreme court in:

(a) Protecting minors against their own immaturity;

(b) Preserving the integrity of the family unit;

(c) Defending the authority of parents to direct the rearing of children who are members of their household;

(d) Providing a pregnant minor with the advice and support of a parent during a decisional period;

(e) Providing for proper medical treatment and aftercare when the life or physical health of the pregnant minor is at serious risk in the rare instance of a sudden and unexpected medical emergency.

[(18-602) 18-601, added 2000, ch. 7, sec. 1, p. 11; am. and redesign. 2001, ch. 273, sec. 2, p. 997; am. 2005, ch. 393, sec. 1, p. 1319 (2007, ch. 193, sec. 1, repealed 2005, ch. 393)]

18-603. ADVERTISING MEDICINES OR OTHER MEANS FOR PREVENTING CONCEPTION, OR FACILITATING MISCARRIAGE OR ABORTION. Every person, except licensed physicians of this state and those licensed or registered health care providers hereinafter referred to acting under their direct supervision or medical order, who wilfully publishes any notice or advertisement of any medicine or means for producing or facilitating a miscarriage or abortion, or for the prevention of conception, or who offers his services by any notice, advertisement, or otherwise to assist in the accomplishment of any such purpose, is guilty of a felony. A licensed physician or licensed or registered health care provider acting at his direction or medical order may lawfully provide examinations, prescriptions, devices and informational materials regarding prevention of conception to any person requesting the same who, in the good faith judgment of the physician or such provider, is sufficiently intelligent and mature to understand the nature and significance thereof.

[I.C., sec. 18-603, as added by 1972, ch. 336, sec. 1, p. 862; am. 1974, ch. 69, sec. 1, p. 1150.]

18-604. DEFINITIONS. As used in this act:

(1) "Abortion" means the use of any means to intentionally terminate the clinically diagnosable pregnancy of a woman with knowledge that the termination by those means will, with reasonable likelihood, cause the death of the unborn child except that, for the purposes of this chapter, abortion shall not mean the use of an intrauterine device or birth control pill to inhibit or prevent ovulations, fertilization or the implantation of a fertilized ovum within the uterus.

(2) "Department" means the Idaho department of health and welfare.

(3) "Down syndrome" means a chromosomal disorder associated either with an extra chromosome 21, in whole or in part, or an effective trisomy for chromosome 21. Down syndrome is sometimes referred to as "trisomy 21."

(4) "Emancipated" means any minor who has been married or is in active military service.

(5) "Fetus" and "unborn child." Each term means an individual organism of the species Homo sapiens from fertilization until live birth.

(6) "First trimester of pregnancy" means the first thirteen (13) weeks of a pregnancy.

(7) "Hospital" means an acute care general hospital in this state, licensed as provided in [chapter 13, title 39](#), Idaho Code.

(8) "Informed consent" means a voluntary and knowing decision to undergo a specific procedure or treatment. To be voluntary, the decision must be made freely after sufficient time for contemplation and without coercion by any person. To be knowing, the decision must be based on the physician's accurate and substantially complete explanation of:

(a) A description of any proposed treatment or procedure;

(b) Any reasonably foreseeable complications and risks to the patient from such procedure, including those related to reproductive health; and

(c) The manner in which such procedure and its foreseeable complications and risks compare with those of each readily available alternative to such procedure, including childbirth and adoption.

The physician must provide the information in terms that can be understood by the person making the decision, with consideration of age, level of maturity and intellectual capability.

(9) "Medical emergency" means a condition that, on the basis of the physician's good faith clinical judgment, so complicates the medical condition of a pregnant woman as to necessitate the immediate abortion of her pregnancy to avert her death or for which a delay will create serious risk of substantial and irreversible impairment of a major bodily function.

(10) "Minor" means a woman under eighteen (18) years of age.

(11) "Pregnant" and "pregnancy." Each term shall mean the reproductive condition of having a developing fetus in the body and commences with fertilization.

(12) "Physician" means a person licensed to practice medicine and surgery or osteopathic medicine and surgery in this state as provided in [chapter 18, title 54](#), Idaho Code.

(13) "Second trimester of pregnancy" means that portion of a pregnancy following the thirteenth week and preceding the point in time when the fetus becomes viable, and there is hereby created a legal presumption that the second trimester does not end before the commencement of the twenty-fifth week of pregnancy, upon which presumption any licensed physician may proceed in lawfully aborting a patient pursuant to section [18-608](#), Idaho Code, in which case the same shall be conclusive and un rebuttable in all civil or criminal proceedings.

(14) "Third trimester of pregnancy" means that portion of a pregnancy from and after the point in time when the fetus becomes viable.

(15) Any reference to a viable fetus shall be construed to mean a fetus potentially able to live outside the mother's womb, albeit with artificial aid.

[18-604, added 1973, ch. 197, sec. 3, p. 442; am. 2000, ch. 7, sec. 2, p. 12; am. 2005, ch. 393, sec. 2, p. 1320; am. 2006, ch. 438, sec. 1, p. 1322; am. 2021, ch. 258, sec. 1, p. 792.]

18-605. UNLAWFUL ABORTIONS -- PROCUREMENT OF -- PENALTY. (1) Every person not licensed or certified to provide health care in Idaho who knowingly, except as permitted by this chapter, provides, supplies or administers any medicine, drug or substance to any woman or uses or employs any instrument or other means whatever upon any then-pregnant woman with intent thereby to cause or perform an abortion shall be guilty of a felony and shall be fined not to exceed five thousand dollars (\$5,000) and/or imprisoned in the state prison for not less than two (2) and not more than five (5) years.

(2) Any person licensed or certified to provide health care pursuant to [title 54](#), Idaho Code, and who knowingly, except as permitted by the provisions of this chapter, provides, supplies or administers any medicine, drug or substance to any woman or uses or employs any instrument or other means whatever upon any then-pregnant woman with intent to cause or perform an abortion shall:

(a) For the first violation, be subject to professional discipline and be assessed a civil penalty of not less than one thousand dollars (\$1,000), payable to the board granting such person's license or certification;

(b) For the second violation, have their license or certification to practice suspended for a period of not less than six (6) months and be assessed a civil penalty of not less than two thousand five hundred dollars (\$2,500), payable to the board granting such person's license or certification; and

(c) For each subsequent violation, have their license or certification to practice revoked and be assessed a civil penalty of not less than five thousand dollars (\$5,000), payable to the board granting such person's license or certification.

(3) Any person who is licensed or certified to provide health care pursuant to [title 54](#), Idaho Code, and who knowingly violates the provisions of this chapter is guilty of a felony punishable as set forth in subsection (1) of this section, separate from and in addition to the administrative penalties set forth in subsection (2) of this section.

[18-605, added 1973, ch. 197, sec. 4, p. 442; am. 2001, ch. 277, sec. 1, p. 1000; am. 2005, ch. 393, sec. 3, p. 1321; am. 2007, ch. 193, sec. 3, p. 565.]

18-606. UNLAWFUL ABORTIONS -- ACCOMPLICE OR ACCESSORY -- SUBMITTING TO -- PENALTY. Except as permitted by this act:

(1) Every person who, as an accomplice or accessory to any violation of section [18-605](#), [Idaho Code,] induces or knowingly aids in the production or performance of an abortion; and

(2) Every woman who knowingly submits to an abortion or solicits of another, for herself, the production of an abortion, or who purposely terminates her own pregnancy otherwise than by a live birth, shall be deemed guilty of a felony and shall be fined not to exceed five thousand dollars (\$5,000) and/or imprisoned in the state prison for not less than one (1) and not more than five (5) years; provided, however, that no hospital, nurse, or other health care personnel shall be deemed in violation of this section if in good faith providing services in reliance upon the directions of a physician or upon the hospital admission of a patient for such purpose on the authority of a physician.

[18-606, added 1973, ch. 197, sec. 5, p. 442.]

18-607. ABORTIFACIENTS -- UNAUTHORIZED SALE. A person who sells, offers to sell, possesses with intent to sell, advertises, or displays for sale anything specially designed to terminate a pregnancy, or held out by the actor as useful for that purpose, commits a misdemeanor, unless:

(1) The sale, offer or display is to a physician or druggist or to an intermediary in a chain of distribution to physicians or druggists; or

(2) The same is made upon prescription or order of a physician; or

(3) The possession is with intent to sell as authorized in paragraphs (1) and (2) of this section; or

(4) The advertising is addressed to persons named in paragraph (1) of this section and confined to trade or professional channels not likely to reach the general public.

[18-607, added 1973, ch. 197, sec. 6, p. 442.]

18-608. CERTAIN ABORTIONS PERMITTED -- CONDITIONS AND GUIDELINES. The provisions of sections [18-605](#) and [18-606](#), Idaho Code, shall not apply to and

neither this act nor other controlling rule of Idaho law shall be deemed to make unlawful an abortion performed by a physician if:

(1) When performed upon a woman who is in the first trimester of pregnancy, the same is performed following the attending physician's consultation with the pregnant patient and a determination by the physician that such abortion is appropriate in consideration of such factors as in his medical judgment he deems pertinent, including but not limited to physical, emotional, psychological and/or familial factors, that the pregnancy resulted from rape, incest or other felonious intercourse, and a legal presumption is hereby created that all illicit intercourse with a girl below the age of sixteen (16) years shall be deemed felonious for purposes of this section, the patient's age and any other consideration relevant to her well-being or directly or otherwise bearing on her health and, in addition to medically diagnosable matters, including but not limited to such factors as the potential stigma of unwed motherhood, the imminence of psychological harm or stress upon the mental and physical health of the patient, the potential stress upon all concerned of an unwanted child or a child brought into a family already unable, psychologically or otherwise, to care for it, and/or the opinion of the patient that maternity or additional offspring probably will force upon her a distressful life and future; the emotional or psychological consequences of not allowing the pregnancy to continue, and the aid and assistance available to the pregnant patient if the pregnancy is allowed to continue; provided, in consideration of all such factors, the physician may rely upon the statements of and the positions taken by the pregnant patient, and the physician shall not be deemed to have held himself out as possessing special expertise in such matters nor shall he be held liable, civilly or otherwise, on account of his good faith exercise of his medical judgment, whether or not influenced by any such nonmedical factors. Abortions permitted by this subsection shall only be lawful if and when performed in a hospital or in a physician's regular office or a clinic, which office or clinic is properly staffed and equipped for the performance of such procedures and respecting which the responsible physician or physicians have made satisfactory arrangements with one (1) or more acute care hospitals within reasonable proximity thereof providing for the prompt availability of hospital care as may be required due to complications or emergencies that might arise.

(2) When performed upon a woman who is in the second trimester of pregnancy, the same is performed in a hospital and is, in the judgment of the attending physician, in the best medical interest of such pregnant woman, considering those factors enumerated in subsection (1) of this section and such other factors as the physician deems pertinent.

(3) When performed upon a woman who is in the third trimester of pregnancy, the same is performed in a hospital and, in the judgment of the attending physician, corroborated by a like opinion of a consulting physician concurring therewith, either is necessary for the preservation of the life of such woman or, if not performed, such pregnancy would terminate in birth or delivery of a fetus unable to survive. Third-trimester abortions undertaken for preservation of the life of a pregnant patient, as permitted by this subsection, shall, consistent with accepted medical practice and with the well-being and safety of such patient, be performed in a manner consistent with preservation of any reasonable potential for survival of a viable fetus.

[18-608, added 1973, ch. 197, sec. 7, p. 442; am. 2021, ch. 258, sec. 2, p. 793.]

18-608A. PERSONS AUTHORIZED TO PERFORM ABORTIONS. It is unlawful for any person other than a physician to cause or perform an abortion.

[18-608A, added 2000, ch. 7, sec. 3, p. 13.]

18-609. PHYSICIANS AND HOSPITALS NOT TO INCUR CIVIL LIABILITY -- CONSENT TO ABORTION -- NOTICE. (1) Any physician may perform an abortion not prohibited by this act and any hospital or other facility described in section [18-608](#), Idaho Code, may provide facilities for such procedures without, in the absence of negligence, incurring civil liability therefor to any person including, but not limited to, the pregnant patient and the prospective father of the fetus to have been born in the absence of abortion, if informed consent for such abortion has been duly given by the pregnant patient.

(2) In order to provide assistance in assuring that the consent to an abortion is truly informed consent, the director of the department of health and welfare shall publish easily comprehended, nonmisleading and medically accurate printed material to be made available at no expense to physicians, hospitals or other facilities providing abortion and abortion-related services, and which shall contain the following:

(a) Descriptions of the services available to assist a woman through a pregnancy, at childbirth and while the child is dependent, including adoption services, a comprehensive list of the names, addresses, and telephone numbers of public and private agencies that provide such services and financial aid available;

(b) Descriptions of the physical characteristics of a normal fetus, described at two (2) week intervals, beginning with the fourth week and ending with the twenty-fourth week of development, accompanied by scientifically verified photographs of a fetus during such stages of development. The description shall include information about physiological and anatomical characteristics;

(c) Descriptions of the abortion procedures used in current medical practices at the various stages of growth of the fetus and any reasonable foreseeable complications and risks to the mother, including those related to subsequent childbearing;

(d) A list, compiled by the department of health and welfare, of health care providers, facilities and clinics that offer to perform ultrasounds free of charge and that have contacted the department annually with a request to be included in the list. The list shall be arranged geographically and shall include the name, address, hours of operation, telephone number and e-mail address of each entity;

(e) A statement that the patient has a right to view an ultrasound image and to observe the heartbeat monitoring of her unborn child and that she may obtain an ultrasound free of charge. The statement shall indicate that printed materials required by the provisions of this section contain a list, compiled by the department of health and welfare, of health care providers, facilities and clinics that offer to perform such ultrasounds free of charge;

(f) Information directing the patient where to obtain further information and assistance in locating a health care provider whom she can consult about chemical abortion, including the interventions, if any, that may affect the effectiveness or reversal of a chemical abortion,

and informs the patient that if she wants to consult with such health care providers, she should contact those health care providers before she takes the abortifacient; and

(g) A section specific to unborn children diagnosed with Down syndrome in order to help educate mothers about the development of children with Down syndrome and the resources available in both the private and public sectors to assist parents of children with Down syndrome with the delivery and care of a child born with Down syndrome. The section shall include:

(i) Easily comprehended, medically accurate information regarding the development of a child with Down syndrome, including treatment and therapy strategies available during a pregnancy and after birth; and

(ii) Descriptions of the services available to assist Idaho families with children born with Down syndrome, including adoption services, support agencies, and organizations in both the public and private sectors. Such directory shall include the name, address, telephone number, website, and email address of agencies, ministries, and organizations that provide financial, medical, emotional, and spiritual support services to mothers and families with a child with Down syndrome.

The department shall ensure that a Spanish language version of the informed consent materials required in this subsection is made available to women considering an abortion.

(3) (a) The department of health and welfare shall develop and maintain a stable internet website, that may be part of an existing website, to provide the information described in subsection (2) of this section. No information regarding persons using the website shall be collected or maintained. The department of health and welfare shall monitor the website on a weekly basis to prevent and correct tampering.

(b) As used in this section, "stable internet website" means a website that, to the extent reasonably practicable, is safeguarded from having its content altered other than by the department of health and welfare.

(c) When a pregnant patient contacts a physician by telephone or visit and inquires about obtaining an abortion, the physician or the physician's agent before or while scheduling an abortion-related appointment must provide the woman with the address of the state-sponsored internet website on which the printed materials described in subsection (2) of this section may be viewed as required in subsection (2) of this section.

(4) Except in the case of a medical emergency, no abortion shall be performed unless, prior to the abortion, the attending physician or the attending physician's agent certifies in writing that the materials provided by the director have been provided to the pregnant patient at least twenty-four (24) hours before the performance of the abortion. If the materials are not available from the director of the department of health and welfare, no certification shall be required. The attending physician, or the attending physician's agent, shall provide any other information required under this act.

(5) Except in the case of medical emergency, no abortion shall be performed unless, prior to an initial consultation or any testing, and not less than twenty-four (24) hours prior to the performance of the abortion, the woman is informed by telephone or in person, by the physician who is to

perform the abortion or by an agent of the physician, that ultrasound imaging and heartbeat monitoring are available to the woman enabling the pregnant woman to view her unborn child or observe the heartbeat of the unborn child. The physician or agent of the physician shall inform the pregnant woman that the website and printed materials described in subsection (2) (d), (e) and (f) of this section contain telephone numbers, addresses and e-mail addresses of facilities that offer such services at no cost. If the woman contacts the abortion facility by e-mail, the physician or agent of the physician shall inform the woman of the requirements of this subsection by e-mail with the required information in a larger font than the rest of the e-mail. No fee for an abortion shall be collected prior to providing the information required in this subsection.

(6) All physicians or their agents who use ultrasound equipment in the performance of an abortion shall inform the patient that she has the right to view the ultrasound image of her unborn child before an abortion is performed. If the patient requests to view the ultrasound image, she shall be allowed to view it before an abortion is performed. The physician or agent shall also offer to provide the patient with a physical picture of the ultrasound image of her unborn child prior to the performance of the abortion, and shall provide it if requested by the patient. In addition to providing the material, the attending physician may provide the pregnant patient with such other information which in the attending physician's judgment is relevant to the pregnant patient's decision as to whether to have the abortion or carry the pregnancy to term.

(7) Within thirty (30) days after performing any abortion without certification and delivery of the materials, the attending physician, or the attending physician's agent, shall cause to be delivered to the director of the department of health and welfare, a report signed by the attending physician, preserving the patient's anonymity, denoting the medical emergency that excused compliance with the duty to deliver the materials. The director of the department of health and welfare shall compile the information annually and report to the public the total number of abortions performed in the state where delivery of the materials was excused; provided that any information so reported shall not identify any physician or patient in any manner which would reveal their identities.

(8) If section [18-608](#)(3), Idaho Code, applies to the abortion to be performed and the pregnant patient is an adult and for any reason unable to give a valid consent thereto, the requirement for that pregnant patient's consent shall be met as required by law for other medical or surgical procedures and shall be determined in consideration of the desires, interests and welfare of the pregnant patient.

(9) The knowing failure of the attending physician to perform any one (1) or more of the acts required under subsection (7) of this section or section [39-261](#), Idaho Code, is grounds for discipline pursuant to section [54-1814](#)(6), Idaho Code, and shall subject the physician to assessment of a civil penalty of one hundred dollars (\$100) for each month or portion thereof that each such failure continues, payable to the vital statistics unit of the department of health and welfare, but such failure shall not constitute a criminal act.

[18-609, added 1973, ch. 197, sec. 8, p. 442; am. 1982, ch. 242, sec. 1, p. 628; am. 1983, ch. 149, sec. 1, p. 403; am. 2000, ch. 7, sec. 4, p. 13; am. 2006, ch. 438, sec. 3, p. 1324; am. 2007, ch. 224, sec. 1, p. 676;

am. 2008, ch. 348, sec. 1, p. 958; am. 2016, ch. 283, sec. 1, p. 782; am. 2018, ch. 159, sec. 1, p. 315; am. 2021, ch. 258, sec. 3, p. 794.]

18-609A. CONSENT REQUIRED FOR ABORTIONS FOR MINORS. (1) Except as otherwise provided in this section, a person shall not knowingly perform an abortion on a pregnant unemancipated minor unless the attending physician has secured the written consent from one (1) of the minor's parents or the minor's guardian or conservator.

(2) A judge of the district court shall, on petition or motion, and after an appropriate hearing, authorize a physician to perform the abortion if the judge determines, by clear and convincing evidence, that:

(a) The pregnant minor is mature and capable of giving informed consent to the proposed abortion; or

(b) The performance of an abortion would be in her best interests.

(3) The pregnant minor may participate in the court proceedings on her own behalf. The court may appoint a guardian ad litem for her. The court shall provide her with counsel unless she appears through private counsel.

(4) Proceedings in the court under this section shall be closed and have precedence over other pending matters. A judge who conducts proceedings under this section shall make in writing specific factual findings and legal conclusions supporting the decision and shall order a confidential record of the evidence to be maintained including the judge's own findings and conclusions. The minor may file the petition using a fictitious name. All records contained in court files of judicial proceedings arising under the provisions of this section shall be confidential and exempt from disclosure pursuant to section [74-110](#), Idaho Code. Dockets and other court records shall be maintained and court proceedings undertaken so that the names and identities of the parties to actions brought pursuant to this section will not be disclosed to the public.

(5) The court shall hold the hearing within forty-eight (48) hours, excluding weekends and holidays, after the petition is filed, and shall issue its ruling at the conclusion of the hearing. If the court fails to issue its ruling at the conclusion of the hearing, the petition is deemed to have been granted and the consent requirement is waived.

(6) An expedited confidential appeal is available to a pregnant minor for whom the court denies an order authorizing an abortion without parental consent. A minor shall file her notice of appeal within five (5) days, excluding weekends and holidays, after her petition was denied by the district court. The appellate court shall hold the hearing within forty-eight (48) hours, excluding weekends and holidays, after the notice of appeal is filed and shall issue its ruling at the conclusion of the hearing. If the appellate court fails to issue its ruling at the conclusion of the hearing, the petition is deemed to have been granted and the consent requirement is waived. Filing fees are not required of the pregnant minor at either the district court or the appellate level.

(7) Parental consent or judicial authorization is not required under this section if either:

(a) The pregnant minor certifies to the attending physician that the pregnancy resulted from rape as defined in section [18-6101](#), Idaho Code, excepting subsections (1) and (2) thereof, or sexual conduct with the minor by the minor's parent, stepparent, uncle, grandparent, sibling, adoptive parent, legal guardian or foster parent.

(b) A medical emergency exists for the minor and the attending physician records the symptoms and diagnosis upon which such judgment was made in the minor's medical record.

[18-609A, added 2007, ch. 193, sec. 5, p. 566; am. 2010, ch. 352, sec. 4, p. 922; am. 2015, ch. 141, sec. 14, p. 389.]

18-609F. REPORTING BY COURTS. The administrative director of the courts shall compile statistics for each calendar year, accessible to the public, including:

- (1) The total number of petitions filed pursuant to section [18-609A](#), Idaho Code; and
- (2) The number of such petitions filed where a guardian ad litem was requested and the number where a guardian ad litem or other person acting in such capacity was appointed; and
- (3) The number of petitions where counsel appeared for the minor without court appointment; and
- (4) The number of petitions where counsel was requested by the minor and the number where counsel was appointed by the court; and
- (5) The number of such petitions for which the right to self-consent was granted; and
- (6) The number of such petitions for which the court granted its informed consent; and
- (7) The number of such petitions which were denied; and
- (8) The number of such petitions which were withdrawn by the minor; and
- (9) For categories described in subsections (3), (4) and (7) of this section, the number of appeals taken from the court's order in each category; and
- (10) For each of the categories set out in subsection (9) of this section, the number of cases for which the district court's order was affirmed and the number of cases for which the district court's order was reversed; and
- (11) The age of the minor for each petition; and
- (12) The time between the filing of the petition and the hearing of each petition; and
- (13) The time between the hearing and the decision by the court for each petition; and
- (14) The time between the decision and filing a notice of appeal for each case, if any; and
- (15) The time of extension granted by the court in each case, if any.

[18-609F, added 2007, ch. 193, sec. 5, p. 567.]

18-609G. STATISTICAL RECORDS. (1) The bureau of vital statistics of the department of health and welfare shall, in addition to other information required pursuant to section [39-261](#), Idaho Code, require the complete and accurate reporting of information relevant to each abortion performed upon a minor which shall include, at a minimum, the following:

- (a) Whether the abortion was performed following the physician's receipt of:
 - (i) The written informed consent of a parent, guardian or conservator and the minor; or
 - (ii) The written informed consent of an emancipated minor for herself; or

(iii) The written informed consent of a minor for herself pursuant to a court order granting the minor the right to self-consent; or
 (iv) The court order which includes a finding that the performance of the abortion, despite the absence of the consent of a parent, is in the best interests of the minor; or
 (v) Certification from the pregnant minor to the attending physician pursuant to section [18-609A](#), Idaho Code, that parental consent is not required because the pregnancy resulted from rape as defined in section [18-6101](#), Idaho Code, excepting subsections (1) and (2) thereof, or sexual conduct with the minor by the minor's parent, stepparent, uncle, grandparent, sibling, adoptive parent, legal guardian or foster parent.

(b) If the abortion was performed due to a medical emergency and without consent from a parent, guardian or conservator or court order, the diagnosis upon which the attending physician determined that the abortion was immediately necessary due to a medical emergency.

(2) The knowing failure of the attending physician to perform any one (1) or more of the acts required under this section is grounds for discipline pursuant to section [54-1814](#) (6), Idaho Code, and shall subject the physician to assessment of a civil penalty of one hundred dollars (\$100) for each month or portion thereof that each such failure continues, payable to the bureau of vital statistics of the department of health and welfare, but such failure shall not constitute a criminal act.

[18-609G, added 2007, ch. 193, sec. 5, p. 568; am. 2010, ch. 352, sec. 5, p. 923.]

18-610. REFUSAL TO CONSENT BY PREGNANT WOMAN -- EFFECT. Notwithstanding any provision of law permitting valid consent for medical or surgical procedures to be given by a person or persons other than the patient, the refusal of any pregnant woman, irrespective of age or competence, to submit to an abortion shall be grounds for a physician or hospital otherwise authorized to proceed, to decline performance of an abortion and/or to submit the matter of consent to adjudication by a court of competent jurisdiction.

[18-610, added 1973, ch. 197, sec. 9, p. 442.]

18-611. FREEDOM OF CONSCIENCE FOR HEALTH CARE PROFESSIONALS. (1) As used in this section:

(a) "Abortifacient" means any drug that causes an abortion as defined in section [18-604](#), Idaho Code, emergency contraception or any drug the primary purpose of which is to cause the destruction of an embryo or fetus.

(b) "Conscience" means the religious, moral or ethical principles sincerely held by any person.

(c) "Embryo" means the developing human life from fertilization until the end of the eighth week of gestation.

(d) "Fetus" means the developing human life from the start of the ninth week of gestation until birth.

(e) "Health care professional" means any person licensed, certified or registered by the state of Idaho to deliver health care.

(f) "Health care service" means an abortion, dispensation of an abortifacient drug, human embryonic stem cell research, treatment regimens

utilizing human embryonic stem cells, human embryo cloning or end of life treatment and care.

(g) "Provide" means to counsel, advise, perform, dispense, assist in or refer for any health care service.

(h) "Religious, moral or ethical principles," "sincerely held," "reasonably accommodate" and "undue hardship" shall be construed consistently with title VII of the federal civil rights act of 1964, as amended.

(2) No health care professional shall be required to provide any health care service that violates his or her conscience.

(3) Employers of health care professionals shall reasonably accommodate the conscience rights of their employees as provided in this section, upon advanced written notification by the employee. Such notice shall suffice without specification of the reason therefor. It shall be unlawful for any employer to discriminate against any health care professional based upon his or her declining to provide a health care service that violates his or her conscience, unless the employer can demonstrate that such accommodation poses an undue hardship.

(4) No health care professional or employer of the health care professional shall be civilly, criminally or administratively liable for the health care professional declining to provide health care services that violate his or her conscience, except for life-threatening situations as provided for in subsection (6) of this section.

(5) The provisions of this section do not allow a health care professional or employer of the health care professional to refuse to provide health care services because of a patient's race, color, religion, sex, age, disability or national origin.

(6) If a health care professional invokes a conscience right in a life-threatening situation where no other health care professional capable of treating the emergency is available, such health care professional shall provide treatment and care until an alternate health care professional capable of treating the emergency is found.

(7) In cases where a living will or physician's orders for scope of treatment (POST) is operative, as defined by the medical consent and natural death act, and a physician has a conscience objection to the treatment desired by the patient, the physician shall comply with the provisions of section [39-4513](#)(2), Idaho Code, before withdrawing care and treatment to the patient.

(8) Nothing in this section shall affect the rights of conscience provided for in section [18-612](#), Idaho Code, to the extent that those rights are broader in scope than those provided for in this section.

[18-611, added 2010, ch. 127, sec. 1, p. 273; am. 2011, ch. 225, sec. 1, p. 612.]

18-612. REFUSAL TO PERFORM ABORTIONS -- PHYSICIANS AND HOSPITALS NOT LIABLE. [EFFECTIVE CONTINGENT UPON GOVERNOR'S PROCLAMATION] Nothing in this act shall be deemed to require any hospital to furnish facilities or admit any patient for any abortion if, upon determination by its governing board, it elects not to do so. Neither shall any physician be required to perform or assist in any abortion, nor shall any nurse, technician or other employee of any physician or hospital be required by law or otherwise to assist or participate in the performance or provision of any abortion if he or she, for personal, moral or religious reasons, objects thereto. Any such person in

the employ or under the control of a hospital shall be deemed to have sufficiently objected to participation in such procedures only if he or she has advised such hospital in writing that he or she generally or specifically objects to assisting or otherwise participating in such procedures. Such notice will suffice without specification of the reason therefor. No refusal to accept a patient for abortion or to perform, assist or participate in any such abortion as herein provided shall form the basis of any claim for damages or recriminatory action against the declining person, agency or institution.

[18-612, added 1973, ch. 197, sec. 11, p. 442.]

18-613. PARTIAL-BIRTH ABORTIONS PROHIBITED. (1) Prohibited acts. Any physician who knowingly performs a partial-birth abortion and thereby kills a human fetus shall be subject to the penalties imposed in section [18-605](#), Idaho Code. This section shall not apply to partial-birth abortions necessary to save the life of the mother when her life is endangered by a physical disorder, physical illness, or physical injury, including a life-endangering physical condition caused by or arising from the pregnancy itself.

(2) Definitions. As used in this section:

(a) "Fetus" has the same meaning as provided in section [18-604](#)(5), Idaho Code.

(b) "Partial-birth abortion" means an abortion in which the person performing the abortion:

(i) Deliberately and intentionally vaginally delivers a living fetus until, in the case of a head-first presentation, the entire fetal head is outside the body of the mother or, in the case of breech presentation, any part of the fetal trunk past the navel is outside the body of the mother, for the purpose of performing an overt act that the physician knows will kill the partially delivered living fetus; and

(ii) Performs the overt act, other than completion of delivery, that kills the partially delivered living fetus.

(c) "Physician" has the same meaning provided in section [18-604](#), Idaho Code. However, any individual who is not a physician or not otherwise legally authorized by this state to perform abortions but who nevertheless directly performs a partial-birth abortion shall be subject to the provisions described in this section.

(3) (a) Civil actions. The father of the aborted fetus, if married to the mother of the aborted fetus at the time of the partial-birth abortion, or the maternal grandparents of the aborted fetus, if the mother is not at least eighteen (18) years of age at the time of the abortion, may bring a civil action against the defendant physician to obtain appropriate relief. Provided however, that a civil action by the father is barred if the pregnancy resulted from the father's criminal conduct or if the father consented to the abortion. Further, a civil action by the maternal grandparents is barred if the pregnancy is the result of a maternal grandparent's criminal conduct or if a maternal grandparent consented to the abortion.

(b) As used in this section, "appropriate relief" shall include:

(i) Money damages for all mental and physical injuries suffered by the plaintiff as a result of the abortion performed in violation of this section;

(ii) Money damages equal to three (3) times the cost of performing the abortion procedure.

(4) (a) Hearing. A physician accused of violating this section may request a hearing before the state board of medicine on whether the physician's conduct was necessary to save the life of the mother whose life was endangered by a physical disorder, physical illness, or physical injury, including a life-endangering physical condition caused by or arising from the pregnancy itself.

(b) The findings of the board of medicine regarding the issues described in paragraph (a) of this subsection are admissible at the criminal and civil trials of the defendant physician. Upon a motion by the defendant physician, the court shall delay the beginning of the criminal and civil trials for not more than thirty (30) days to permit the hearing to take place.

(5) Immunity. A woman upon whom a partial-birth abortion is performed shall not be prosecuted for violations of this section, for conspiracy to violate this section, or for violations of section [18-603](#), [18-605](#) or [18-606](#), Idaho Code, in regard to the partial-birth abortion performed.

[18-613, added 1998, ch. 34, sec. 1, p. 154; am. 2019, ch. 60, sec. 1, p. 150; am. 2021, ch. 258, sec. 4, p. 797.]

18-614. DEFENSES TO PROSECUTION. (1) No physician shall be subject to criminal or administrative liability for causing or performing an abortion upon a minor in violation of subsection (1) of section [18-609A](#), Idaho Code, if prior to causing or performing the abortion the physician obtains either positive identification or other documentary evidence from which a reasonable person would have concluded that the woman seeking the abortion was either an emancipated minor or was not then a minor and if the physician retained, at the time of receiving the evidence, a legible photocopy of such evidence in the physician's office file for the woman.

(2) For purposes of this section, "positive identification" means a lawfully issued state, district, territorial, possession, provincial, national or other equivalent government driver's license, identification card or military card, bearing the person's photograph and date of birth, the person's valid passport or a certified copy of the person's birth certificate.

[18-614, added 2001, ch. 277, sec. 4, p. 1007; am. 2005, ch. 393, sec. 5, p. 1328; am. 2007, ch. 193, sec. 6, p. 569.]

18-615. CRIMINAL ACT TO COERCE OR ATTEMPT TO COERCE A WOMAN TO OBTAIN AN ABORTION. (1) A person violates the provisions of this section when, knowing that a woman is pregnant, and with the intent to induce the pregnant woman to abort, whether by a medical procedure or otherwise:

(a) Threatens to inflict physical injury or death on the pregnant woman; or

(b) Conspires to inflict physical injury or death on the pregnant woman; or

(c) Unlawfully inflicts physical injury on the pregnant woman.

(2) A pregnant woman injured by reason of a person's violation of the provisions of this section may bring a civil suit for recovery of damages for such injury, whether or not the perpetrator is criminally prosecuted or con-

victed. In such a civil suit, the pregnant woman shall be entitled to recover her reasonable attorney's fees and costs if she is the prevailing party.

(3) Violations of the provisions of this section are classified and punishable as follows:

(a) A violation of subsection (1) (a) or (1) (b) of this section constitutes a misdemeanor punishable by not more than six (6) months in jail, or a fine of not more than one thousand dollars (\$1,000), or both.

(b) A violation of subsection (1) (c) of this section constitutes a felony punishable by imprisonment for not more than five (5) years, or a fine of not more than five thousand dollars (\$5,000), or both.

(4) The term "physical injury" means a condition of the body, such as a wound or external or internal injury, whether of a minor or serious nature, caused by physical force.

(5) The term "woman" includes a minor female.

[18-615, added 2008, ch. 388, sec. 1, p. 1067.]

18-616. SEVERABILITY. If any one (1) or more provision, section, subsection, sentence, clause, phrase, or word of this chapter or the application thereof to any person or circumstance is found to be unconstitutional, the same is hereby declared to be severable and the balance of this chapter shall remain effective notwithstanding such unconstitutionality. The legislature hereby declares that it would have passed every section of this chapter and each provision, section, subsection, sentence, clause, phrase or word thereof irrespective of the fact that any one (1) or more provision, section, subsection, sentence, clause, phrase or word be declared unconstitutional.

[(18-616) 18-615, added 2000, ch. 7, sec. 8, p. 21; am. and redesign. 2008, ch. 388, sec. 2, p. 1068.]

18-617. CHEMICAL ABORTIONS. (1) As used in this section:

(a) "Abortifacient" means mifepristone, misoprostol and/or other chemical or drug dispensed with the intent of causing an abortion as defined in section [18-604](#)(1), Idaho Code. Nothing in the definition shall apply when used to treat ectopic pregnancy;

(b) "Chemical abortion" means the exclusive use of an abortifacient or combination of abortifacients to effect an abortion;

(c) "Physician" has the same meaning as provided in section [18-604](#)(12), Idaho Code.

(2) No physician shall give, sell, dispense, administer, prescribe or otherwise provide an abortifacient for the purpose of effecting a chemical abortion unless the physician:

(a) Has the ability to assess the duration of the pregnancy accurately in accordance with the applicable standard of care for medical practice in the state;

(b) Has determined, if clinically feasible, that the unborn child to be aborted is within the uterus and not ectopic;

(c) Has the ability to provide surgical intervention in cases of incomplete abortion or severe bleeding, or, if the physician does not have admitting privileges at a local hospital, has made and documented in the patient's medical record plans to provide such emergency care through other qualified physicians who have agreed in writing to provide such care;

(d) Informs the patient that she may need access to medical facilities equipped to provide blood transfusions and resuscitation, if necessary, as a result of or in connection with the abortion procedure on a twenty-four (24) hour basis. If the appropriate medical facility is other than a local hospital emergency room, the physician shall provide the patient with the name, address and telephone number of such facility in writing; and

(e) Has complied with the informed consent provisions of section [18-609](#), Idaho Code.

(3) The physician inducing the abortion, or a person acting on behalf of the physician inducing the abortion, shall make reasonable efforts to ensure that the patient returns for a follow-up visit so that a physician can confirm that the pregnancy has been terminated and assess the patient's medical condition.

[18-617, added 2015, ch. 270, sec. 2, p. 1123; am. 2017, ch. 242, sec. 2, p. 599; am. 2021, ch. 258, sec. 5, p. 798.]

18-618. CIVIL CAUSES OF ACTION. (1) Any female upon whom an abortion has been attempted or performed, or the father of the unborn child who was the subject of the abortion if the father was married to the woman who received the abortion at the time the abortion was attempted or performed, or a maternal grandparent of the unborn child in the event the mother is deceased, may maintain an action for actual damages against the person who in knowing or reckless violation of section [18-617](#), Idaho Code, attempted or performed the abortion. The court may, in its discretion, award punitive damages pursuant to section [6-1604](#), Idaho Code, and enjoin further violations of sections [18-617](#) through [18-621](#), Idaho Code.

(2) A cause of action for injunctive relief against any person who has knowingly or recklessly violated sections [18-617](#) through [18-621](#), Idaho Code, may be maintained by a county prosecuting attorney with appropriate jurisdiction or by the attorney general. The injunction shall prevent the abortion provider from performing further abortions in violation of sections [18-617](#) through [18-621](#), Idaho Code, in this state.

[18-618, added 2015, ch. 270, sec. 2, p. 1124.]

18-619. ANONYMITY OF FEMALE. In every court proceeding or action brought under this chapter, the court shall rule whether the anonymity of any female upon whom an abortion has been performed or attempted shall be preserved from public disclosure if she does not give her consent to such disclosure. The court, upon motion or sua sponte, shall make such a ruling and, upon determining that her anonymity should be preserved, shall issue orders to the parties, witnesses and counsel and shall direct the sealing of the record and exclusion of individuals from courtrooms or hearing rooms to the extent necessary to safeguard her identity from public disclosure. Each order shall be accompanied by specific written findings explaining why the anonymity of the female should be preserved from public disclosure, why the order is essential to that end, how the order is narrowly tailored to serve that interest and why no reasonable less restrictive alternative exists. In the absence of written consent of the female upon whom an abortion has been performed or attempted, anyone, other than a public official, who brings an action under this section shall do so under a pseudonym. This section may not

be construed to conceal the identity of the plaintiff or of witnesses from the defendant.

[18-619, added 2015, ch. 270, sec. 2, p. 1124.]

18-620. CONSTRUCTION. (1) Nothing in sections [18-617](#) through [18-621](#), Idaho Code, shall be construed as creating or recognizing a right to abortion.

(2) It is not the intention of sections [18-617](#) through [18-621](#), Idaho Code, to make lawful an abortion that is currently unlawful.

[18-620, added 2015, ch. 270, sec. 2, p. 1125.]

18-621. SEVERABILITY. The provisions of this act are hereby declared to be severable and if any provision of this act or the application of such provision to any person or circumstance is declared invalid for any reason, such declaration shall not affect the validity of the remaining portions of this act.

[18-621, added 2015, ch. 270, sec. 2, p. 1125.]

18-622. CRIMINAL ABORTION. [EFFECTIVE DATE - SEE SUBSECTION (1)] (1) Notwithstanding any other provision of law, this section shall become effective thirty (30) days following the occurrence of either of the following circumstances:

(a) The issuance of the judgment in any decision of the United States supreme court that restores to the states their authority to prohibit abortion; or

(b) Adoption of an amendment to the United States constitution that restores to the states their authority to prohibit abortion.

(2) Every person who performs or attempts to perform an abortion as defined in this chapter commits the crime of criminal abortion. Criminal abortion shall be a felony punishable by a sentence of imprisonment of no less than two (2) years and no more than (5) years in prison. The professional license of any health care professional who performs or attempts to perform an abortion or who assists in performing or attempting to perform an abortion in violation of this subsection shall be suspended by the appropriate licensing board for a minimum of six (6) months upon a first offense and shall be permanently revoked upon a subsequent offense.

(3) It shall be an affirmative defense to prosecution under subsection (2) of this section and to any disciplinary action by an applicable licensing authority, which must be proven by a preponderance of the evidence, that:

(a) (i) The abortion was performed or attempted by a physician as defined in this chapter;

(ii) The physician determined, in his good faith medical judgment and based on the facts known to the physician at the time, that the abortion was necessary to prevent the death of the pregnant woman. No abortion shall be deemed necessary to prevent the death of the pregnant woman because the physician believes that the woman may or will take action to harm herself; and

(iii) The physician performed or attempted to perform the abortion in the manner that, in his good faith medical judgment and based on the facts known to the physician at the time, provided the best opportunity for the unborn child to survive, unless, in his good

faith medical judgment, termination of the pregnancy in that manner would have posed a greater risk of the death of the pregnant woman. No such greater risk shall be deemed to exist because the physician believes that the woman may or will take action to harm herself; or

(b) (i) The abortion was performed or attempted by a physician as defined in this chapter;

(ii) If the woman is not a minor or subject to a guardianship, then, prior to the performance of the abortion, the woman has reported the act of rape or incest to a law enforcement agency and provided a copy of such report to the physician who is to perform the abortion;

(iii) If the woman is a minor or subject to a guardianship, then, prior to the performance of the abortion, the woman or her parent or guardian has reported the act of rape or incest to a law enforcement agency or child protective services and a copy of such report has been provided to the physician who is to perform the abortion; and

(iv) The physician who performed the abortion complied with the requirements of paragraph (a) (iii) of this subsection regarding the method of abortion.

(4) Medical treatment provided to a pregnant woman by a health care professional as defined in this chapter that results in the accidental death of, or unintentional injury to, the unborn child shall not be a violation of this section.

(5) Nothing in this section shall be construed to subject a pregnant woman on whom any abortion is performed or attempted to any criminal conviction and penalty.

[18-622, added 2020, ch. 284, sec. 1, p. 827.]