

TITLE 18  
CRIMES AND PUNISHMENTS

CHAPTER 87 [88]

FETAL HEARTBEAT PREBORN CHILD PROTECTION ACT [EFFECTIVE DATE - SEE SECTION  
18-8806]

18-8701 [18-8801]. DEFINITIONS. [EFFECTIVE DATE - SEE SECTION  
18-8806] As used in this chapter:

(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 preborn child. "Abortion" does 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) "Fetal heartbeat" means embryonic or fetal cardiac activity or the steady and repetitive rhythmic contraction of the fetal heart within the gestational sac.

(3) "Fetus" and "preborn child" each mean an individual organism of the species *Homo sapiens* from fertilization until live birth.

(4) "Gestational age" means the age of a preborn human individual as calculated from the first day of the last menstrual period of a pregnant woman.

(5) "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.

[18-8701 [18-8801], added 2021, ch. 289, sec. 1, p. 867.]

18-8702 [18-8802]. LEGISLATIVE FINDINGS AND INTENT. [EFFECTIVE DATE -  
SEE SECTION 18-8806] The legislature finds and declares that:

(1) The life of each human being begins at fertilization, and unborn children have interests in life, health, and well-being that should be protected.

(2) The cardiopulmonary definition of death, which is the reigning common law standard for determining death, is defined as the "irreversible cessation of circulatory and respiratory functions." This cardiopulmonary definition of death was included in the uniform determination of death act, a model law that was adopted by numerous medical and ethics organizations, including the national conference of commissioners on uniform state laws, the American medical association, and almost all states in the United States.

(3) Legal standards and the medical community at large both affirm that a consistent human heartbeat, independent of life support, is a core determining factor in establishing the legal presence of human life in a full range of circumstances, for old and young alike.

(4) The heartbeat of a preborn child begins at a biologically identifiable moment in time that can be detected and imaged by medical equipment.

(5) A detectable fetal heartbeat and its characteristics is a key medical predictor in whether a preborn child will reach live birth.

(6) The fetal heartbeat, when detected, presents a clearly identifiable point at which the preborn child in the womb has a greater than ninety-five percent (95%) chance of survival when carried to term.

(7) The presence of a human heartbeat is a more reliable indicator of life than the medically uncertain concept of "viability" and whether that preborn child is "potentially able to live outside the mother's womb."

(8) Therefore, the state of Idaho has a compelling interest in protecting the life of a preborn child at all stages of its development, including after the preborn child has a detectable heartbeat, which signals rhythmically and without pause the presence of a precious and unique life, one that is independent and distinct from the mother's and one that is also worthy of our utmost protection.

[18-8702 [18-8802], added 2021, ch. 289, sec. 1, p. 867.]

18-8703 [18-8803]. DETERMINATION OF FETAL HEARTBEAT. [EFFECTIVE DATE - SEE SECTION 18-8806] Any person who intends to perform or induce an abortion on a pregnant woman must determine if there is the presence of any fetal heartbeat, except in the case of a medical emergency. In testing for any fetal heartbeat, the person conducting the physical examination on the pregnant woman must determine in his reasonable medical judgment and according to standard medical practice whether or not any fetal heartbeat is present. The person who determines the presence or absence of any fetal heartbeat must record in the pregnant woman's medical record the estimated gestational age of the preborn human individual or individuals, the method used to test for the fetal heartbeat, the date and time of the test, and the results of the test.

[18-8703 [18-8803], added 2021, ch. 289, sec. 1, p. 868.]

18-8704 [18-8804]. ABORTION FOLLOWING DETECTION OF A FETAL HEARTBEAT PROHIBITED. [EFFECTIVE DATE - SEE SECTION 18-8806] A person may not perform an abortion on a pregnant woman when a fetal heartbeat has been detected, except in the case of a medical emergency, in the case of rape as defined in section [18-6101](#), Idaho Code, or in the case of incest as described in section [18-6602](#), Idaho Code. In the case of rape or incest:

(1) If the woman is not a minor or subject to 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; or

(2) If the woman is a minor or subject to 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 have been provided to the physician who is to perform the abortion.

[18-8704 [18-8804], added 2021, ch. 289, sec. 1, p. 868.]

18-8705 [18-8805]. PENALTIES FOR VIOLATIONS. [EFFECTIVE DATE - SEE SECTION 18-8806] Every licensed health care professional who intentionally, knowingly, and recklessly performs or induces an abortion in violation of 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 five (5) years in prison. The professional license of any health care professional who performs or induces an abortion or who assists in performing or inducing an abortion in violation of this chapter 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.

[18-8705 [18-8805], added 2021, ch. 289, sec. 1, p. 868.]

18-8706 [18-8806]. EFFECTIVE UPON A CERTAIN OCCURRENCE.[EFFECTIVE DATE - SEE SECTION 18-8806] (1) This chapter shall become effective thirty (30) days following the issuance of the judgment in any United States appellate court case in which the appellate court upholds a restriction or ban on abortion for a preborn child because a detectable heartbeat is present on the grounds that such restriction or ban does not violate the United States constitution.

(2) Nothing in this section shall be construed to conflict with the effectiveness of section [18-622](#), Idaho Code, following the occurrence of the circumstances described therein. In the event both this section and section [18-622](#), Idaho Code, are enforceable, section [18-622](#), Idaho Code, shall supersede this section.

[18-8706 [18-8806], added 2021, ch. 289, sec. 1, p. 869.]

18-8707 [18-8807]. CIVIL ACTION.[EFFECTIVE DATE - SEE SECTION 18-8806] Any woman on whom an abortion is performed in violation of this chapter may recover in a civil action all damages available to her under Idaho law from the person or persons who intentionally, knowingly, and recklessly violated the provisions of section 18-8703 [\[18-8803\]](#) or 18-8704 [\[18-8804\]](#), Idaho Code.

[18-8707 [18-8807], added 2021, ch. 289, sec. 1, p. 869.]

18-8708 [18-8808]. SEVERABILITY.[EFFECTIVE DATE - SEE SECTION 18-8806] The provisions of this chapter are hereby declared to be severable, and if any provision of this chapter or the application of such provision to any person or circumstance is declared invalid for any reason, such declaration does not affect the validity of the remaining portions of this chapter. Any invalidity or potential invalidity of the provisions of this chapter does not impair the immediate and continuing enforceability of the remaining provisions. The provisions of this chapter do not have the effect of repealing or limiting any other laws of this state, except as specified by this chapter.

[18-8708 [18-8808], added 2021, ch. 289, sec. 1, p. 869.]