

TITLE 18
CRIMES AND PUNISHMENTS

CHAPTER 88
FETAL HEARTBEAT PREBORN CHILD PROTECTION ACT

18-8801. DEFINITIONS. 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, in reasonable medical 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.

[(18-8801) 18-8701, added 2021, ch. 289, sec. 1, p. 867; am. and redesign. 2022, ch. 111, sec. 10, p. 372; am. and redesign. 2022, ch. 152, sec. 1, p. 532.]

18-8802. LEGISLATIVE FINDINGS AND INTENT. The legislature finds and declares that:

(1) The life of each human being begins at fertilization, and preborn 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.

[(18-8802) 18-8702, added 2021, ch. 289, sec. 1, p. 867; am. and redesign. 2022, ch. 111, sec. 10, p. 372; am. and redesign. 2022, ch. 152, sec. 2, p. 533.]

18-8803. DETERMINATION OF FETAL HEARTBEAT. 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.

[(18-8803) 18-8703, added 2021, ch. 289, sec. 1, p. 868; am. and redesign. 2022, ch. 111, sec. 10, p. 373; am. and redesign. 2022, ch. 153, sec. 2, p. 536.]

18-8804. ABORTION FOLLOWING DETECTION OF A FETAL HEARTBEAT PROHIBITED. (1) 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 [18-6601](#), Idaho Code. In the case of rape or incest:

(a) 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

(b) 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.

(2) Nothing in this section recognizes a right to abortion before a fetal heartbeat is detected.

[(18-8804) 18-8704, added 2021, ch. 289, sec. 1, p. 868; am. and redesign. 2022, ch. 111, sec. 10, p. 373; am. and redesign. 2022, ch. 124, sec. 19, p. 452; am. and redesign. 2022, ch. 152, sec. 3, p. 533.]

18-8805. PENALTIES FOR VIOLATIONS -- EFFECTIVE UPON A CERTAIN OCCURRENCE. (1) This section 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) Every licensed health care professional who knowingly or 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.

(3) 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.

(4) 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 in that section. In the event both this section and section [18-622](#), Idaho Code, are enforceable, section [18-622](#), Idaho Code, shall supersede this section.

[(18-8805) 18-8705, added 2021, ch. 289, sec. 1, p. 868; am. and redesign. 2022, ch. 111, sec. 10, p. 373; am. and redesign. 2022, ch. 152, sec. 4, p. 534, effective August 19, 2022.]

18-8807. CIVIL CAUSES OF ACTION. (1) Any female upon whom an abortion has been attempted or performed, the father of the preborn child, a grandparent of the preborn child, a sibling of the preborn child, or an aunt or uncle of the preborn child may maintain an action for:

(a) All damages from the medical professionals who knowingly or recklessly attempted, performed, or induced the abortion in violation of this chapter;

(b) Notwithstanding any other provision of law, statutory damages in an amount not less than twenty thousand dollars (\$20,000) from the medical professionals who knowingly or recklessly attempted, performed, or induced an abortion in violation of this chapter; and

(c) Costs and attorney's fees.

(2) Notwithstanding any other provision of law, a person may bring an action under this section not later than four (4) years following the date the cause of action accrues.

(3) Notwithstanding any other provision of law, including [chapter 1, title 12](#), Idaho Code, a court may not award costs or attorney's fees to a defendant in an action brought under this section unless the defendant has complied with the applicable requirements of sections [18-8803](#) and [18-8804](#), Idaho Code.

(4) The civil causes of action provided for in this section exist independently of any criminal action commenced pursuant to this chapter. A civil cause of action may be pursued under the provisions of this chapter even if a criminal prosecution is not pursued.

(5) Notwithstanding any other provision of law, including chapters 14, 17, and 18, [title 54](#), Idaho Code, the requirements of this section shall be enforced exclusively through the private civil causes of action described. No enforcement of this section may be taken or threatened against any person by this state, a political subdivision of this state, a prosecuting attor-

ney, or an executive or administrative officer or employee of this state or a political subdivision of this state.

(6) Notwithstanding any other provision of law, this state, a state official, or a prosecuting attorney may not intervene in an action brought under this section. Nothing in this subsection shall prohibit a person described in this subsection from filing an amicus curiae brief in the action.

(7) Nothing in this section shall be deemed to affect any familial rights or responsibilities or any proceedings conducted under Idaho law.

(8) In an action brought under this section, a court may not award compensatory or punitive damages if a person demonstrates that the person paid, or has been ordered to pay, compensatory or punitive damages, respectively, in a previous civil action for that particular violation of this chapter.

(9) Notwithstanding any other law to the contrary, a civil action may not be brought under this section by a person who, through an act of rape, sexual assault, incest, or other criminal conduct, impregnated the pregnant woman seeking an abortion in violation of this chapter.

(10) Notwithstanding any other law to the contrary, the following shall not be defenses to an action brought under this section:

- (a) That the pregnant woman or, if the pregnant woman is a minor, a parent or guardian consented to an unlawful abortion;
- (b) Ignorance or mistake of law;
- (c) A person's belief that any provision of this section is or was unconstitutional;
- (d) A person's reliance on a state or federal court decision that is not binding on the court in which the action has been brought;
- (e) Non-mutual issue preclusion or non-mutual claim preclusion;
- (f) Contributory or comparative negligence;
- (g) Assumption of risk; or
- (h) A claim that an action brought under the section will violate a constitutional right of a third party.

(11) Notwithstanding any other law to the contrary, a court may:

- (a) Not award attorney's fees or costs to a person subject to an action brought under this section unless the action is frivolous, without foundation, or brought in bad faith or for the sole reason for delay;
- (b) Not award attorney's fees or costs to a person who prevails in challenging the constitutionality of this section under state law, unless the defense of this section is frivolous, without foundation, or brought in bad faith or for the sole reason for delay; and
- (c) Award attorney's fees or costs to a person who prevails in defending the constitutionality of this section under state law, even though the challenge to the constitutionality of this section was not frivolous, without foundation, or brought in bad faith or for the sole reason for delay.

(12) The provisions of this section shall not be construed to impose liability on speech or conduct protected by the first amendment of the United States constitution or by section 9, article I of the constitution of the state of Idaho.

[(18-8807) 18-8707, added 2021, ch. 289, sec. 1, p. 869; am. and redesign. 2022, ch. 111, sec. 10, p. 374; am. and redesign. 2022, ch. 152, sec. 6, p. 534; am. 2022, ch. 153, sec. 1, p. 535; am. 2023, ch. 218, sec. 4, p. 608; am. 2023, ch. 310, sec. 2, p. 948.]

18-8808. SEVERABILITY. 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.

[(18-8808) 18-8708, added 2021, ch. 289, sec. 1, p. 869; am. and redesign. 2022, ch. 111, sec. 10, p. 374.]