



OHIO LEGISLATIVE SERVICE COMMISSION

Bill Analysis

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Sub. S.B. 145

132nd General Assembly
(As Reported by H. Criminal Justice)

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

BILL SUMMARY

- Generally prohibits a person from knowingly performing or attempting to perform a dismemberment abortion.
- Provides that a person who violates the above 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 bill 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 felony of the fourth degree to a felony of the third degree, if that person had previously been convicted of or pleaded guilty to dismemberment feticide.
 - Repeals a provision that states that the section prohibiting partial birth abortions does not prohibit the dilation and evacuation procedure of abortion.

CONTENT AND OPERATION

Dismemberment abortion prohibited

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

The bill 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 bill 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.³ The bill defines a "serious risk of the substantial and irreversible impairment of a major bodily function" as any medically diagnosed condition that so complicates the pregnancy of the woman as to directly or indirectly cause the substantial and irreversible impairment of a major bodily function.⁴

Certain individuals not guilty

The bill 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.⁵

Suction curettage and suction aspiration not prohibited

The bill states that the section establishing the crime of dismemberment feticide does not prohibit suction curettage and suction aspiration procedures of abortion.⁶ Continuing law that prohibits partial birth procedures also states that the section prohibiting partial birth procedures does not prohibit suction curettage and suction

² R.C. 2919.15(A).

³ R.C. 2919.15(B).

⁴ R.C. 2919.15(A) and 2919.151(A)(4).

⁵ R.C. 2919.15(D).

⁶ R.C. 2919.15(E).

aspiration procedures of abortion.⁷ Neither the bill nor continuing law provides a definition for "suction curettage" or "suction aspiration."

As explained by the Michigan Department of Health & Human Services, suction curettage is generally used in the first trimester, and the procedure involves the use of 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 According to WebMD, a vacuum aspiration abortion procedure (which may be synonymous with "suction aspiration") is also generally performed during the first trimester and involves the use of a manual or machine vacuum to remove all tissue from the uterus.⁹

Civil action

The bill creates a cause of action for the following:

- 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 continuing 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 for unlawful distribution of an abortion-inducing drug

The bill 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-

⁷ R.C. 2919.151(F).

⁸ "Suction Curettage," available at: http://www.michigan.gov/mdhhs/0,5885,7-339-73971_4909_6437_19077-46301--,00.html (last visited June 12, 2017).

⁹ "Vacuum Aspiration for Abortion," available at: <http://www.webmd.com/women/manual-and-vacuum-aspiration-for-abortion> (last visited June 12, 2017).

¹⁰ R.C. 2307.53.

¹¹ R.C. 2305.114.



inducing drug is generally a felony of the *fourth* degree. However, continuing law makes the crime a felony of the third degree if the offender has previously been convicted of or pleaded guilty to a number of other crimes, including partial birth feticide.¹²

Removal of provision stating that dilation and evacuation is not prohibited

The bill repeals a provision that states that the section prohibiting partial birth procedures does not prohibit the dilation and evacuation procedure of abortion. The bill also repeals a provision that states that, for purposes of the provision discussed in the previous sentence, the dilation and evacuation procedure of abortion does not include the dilation and *extraction* procedure of abortion.¹³ Neither term – "dilation and evacuation" nor "dilation and extraction" – is defined in current law. As explained by the Michigan Department of Health & Human Services, dilation and evacuation is generally used after the first trimester. 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.¹⁴

Merriam-Webster defines "dilation and *extraction*" as a "surgical abortion that is typically performed during the third trimester or later part of the second trimester of pregnancy and in which the death of the fetus is induced after it has passed partway through the dilated cervix."¹⁵

Credit for time served

The bill 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. That day of credit is awarded only if the most serious offense for which the offender is confined is a felony of the first or second degree (see **COMMENT**).¹⁶

¹² R.C. 2919.123(E).

¹³ R.C. 2919.151.

¹⁴ "Dilation and Evacuation (D&E)," available at: http://www.michigan.gov/mdhhs/0,5885,7-339-73971_4909_6437_19077-46298--,00.html (last visited June 12, 2017).

¹⁵ "Definition of Dilation and Extraction," available at: <https://www.merriam-webster.com/dictionary/dilation%20and%20extraction> (last visited June 12, 2017).

¹⁶ R.C. 2967.193(D)(1)(a).



Dismemberment abortions punishable as dismemberment abortions

The bill states that an abortion that does not violate certain conditions in continuing law 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.¹⁷

COMMENT

The bill adds the crime of dismemberment feticide to a provision of continuing law that permits criminal offenders to earn credit for time served in a state correctional institution. That provision applies to felonies of the first or second degree.¹⁸ However, dismemberment feticide is a felony of the fourth degree.¹⁹ A corrective amendment may be needed to address this issue.

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

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¹⁷ R.C. 2901.01(B)(2)(a) and 2903.09(C)(1).

¹⁸ R.C. 2967.193(D)(1)(a).

¹⁹ R.C. 2919.15(C).

