



OHIO LEGISLATIVE SERVICE COMMISSION

Joseph Rogers

Fiscal Note & Local Impact Statement

Bill: S.B. 145 of the 132nd G.A.

Status: As Reported by Senate Judiciary

Sponsor: Sens. Huffman and Wilson

Local Impact Statement Procedure Required: No

Subject: Prohibits dismemberment abortions

State & Local Fiscal Highlights

- The frequency with which a violation of the bill's prohibitions might occur is uncertain, but likely to be relatively small in number compared to the overall criminal and civil caseloads of any given court of common pleas. This suggests that the costs for any given county to prosecute, adjudicate, and sanction a violation will be minimal annually, and may be offset some degree by the collection of fines, and court costs and fees. On occasion, a violator may be sentenced to a prison term, which creates a minimal annual increase in the Department of Rehabilitation and Correction's GRF-funded incarceration expenditures.

Detailed Fiscal Analysis

Dismemberment abortion prohibition

The bill generally prohibits a person from knowingly performing or attempting to perform a dismemberment abortion ("dismemberment feticide"), a violation of which is a felony of the fourth degree. The bill provides: (1) an exception for preserving the mother's life or physical health, and (2) that certain individuals are not guilty in relation to the commission of dismember feticide.¹

The bill creates a civil cause of action for: (1) a woman upon whom an illegal dismemberment abortion is performed, (2) the father of the child, if the child was not conceived by rape, and (3) 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. The civil action must begin within one year of the abortion.

¹ These individuals include: (1) a pregnant woman upon whom an illegal dismember abortion is performed, (2) an individual who is employed by, and acts at the direction of, a person who performs an illegal dismember abortion, and (3) a pharmacist or other individual who fills a prescription or provides instruments or materials used in an illegal dismember abortion.

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-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.

A dismemberment abortion is the same as a dilation and evacuation (D&E) which is currently the common method used between 13 and 24 weeks of pregnancy. According to the Ohio Department of Health, 2,951 D&Es were performed in 2015 out of 20,976 total abortions.

Arguably, very few physicians, if any, would knowingly violate the bill's prohibitions and essentially risk their careers by exposing themselves to the possibility of a criminal prosecution or civil action. Some physicians may simply opt to no longer perform that method of pregnancy termination. That said, it would seem likely that some physicians will continue to perform the procedure as medically necessary, and in certain circumstances, a prosecutor or individual will dispute that judgment. The frequency with which that might occur is uncertain, but likely to be relatively small in number compared to the overall criminal and civil caseloads of any given court of common pleas. This suggests that the costs for any given county to prosecute, adjudicate, and sanction such disputes will be minimal annually, and may be offset to some degree by the collection of fines, and court costs and fees imposed by the court on a person found to have violated the bill's prohibitions. On occasion, a person may be sentenced to a prison term, which creates a minimal annual increase in the Department of Rehabilitation and Correction's GRF-funded incarceration expenditures.