



## Indiana | RANKING 5

Indiana has made significant strides in recent years to protect women and unborn children from the harms inherent in abortion and from substandard conditions and practices in many abortion clinics. Further, it has taken steps to regulate the rapidly growing (and generally under-regulated) biotechnologies industry, prohibiting human cloning for any purpose and encouraging the donation of umbilical cord blood to support ethical research. Whole Woman's Health has challenged many of the laws in court and litigation is ongoing.

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### ABORTION

- Abortions may be performed at or after 5 months (i.e., 20 weeks) only for “medical necessity.”
- Indiana prohibits abortions based solely on the baby’s race, sex, or diagnosis or potential diagnosis of a disability. The law also requires that a woman be provided with information on perinatal hospice when considering an abortion because the unborn child has been diagnosed with a lethal fetal anomaly. The law is permanently enjoined.
- Indiana prohibits partial-birth abortion.
- Indiana also prohibits the dismemberment abortion procedure. The law is enjoined and in ongoing litigation.
- Indiana law requires that, at least 18 hours before an abortion, a woman receive information about the type of abortion procedure to be used, the risks of and alternatives to that particular procedure (including the risks of chemical abortion), the probable gestational age of the unborn child, the risks associated with carrying the pregnancy to term, and the name of the physician who will perform the abortion. Further, the woman must be told about state medical assistance benefits, the father’s liability for child support, and abortion alternatives.
- Informed consent information must include the fact that human physical life begins when a human ovum is fertilized by a human sperm. Further, before an abortion, women must be informed that “objective scientific information shows that a fetus can feel pain” at or before 5 months (i.e., 20 weeks) gestation, but that portion of the law has been declared invalid as applied to women in the first trimester. The law is in ongoing litigation.
- Indiana requires an ultrasound at least 18 hours before an abortion. The image must be displayed unless the woman signs a form indicating that she does not desire to see the image. Further, the auscultation of fetal heart tone must be made audible, if possible, unless the woman signs a form indicating that she does not wish to hear the heart tone.
- A physician may not perform an abortion on an unemancipated minor under the age of 18 without first obtaining written consent from one parent, a legal guardian, or a custodian accompanying the minor, unless there is a medical emergency or court order. The adult must bring government-issued identification as well as evidence showing the relationship between the adult and the minor. The law is in ongoing litigation.

- If an abortion is performed on a female who is less than 14 years of age, the physician who performed the abortion must transmit an informational form to both the state Department of Health and the state Department of Child Services within a specified time period.
- A woman must be informed that she has a right to determine how the fetal remains are disposed.
- All facilities performing surgical abortions must be licensed by the state Department of Health and meet comprehensive health and safety standards. State officials are required to inspect abortion facilities once a year.
- Indiana also requires that post-first-trimester abortions be performed in a hospital or ambulatory outpatient surgical center. A law requiring facilities providing chemical abortions to meet the same standards as facilities providing surgical abortions was struck down by a federal district court.
- Only physicians licensed to practice medicine in Indiana may perform abortions. Abortion providers must have admitting privileges in the county where they provide abortions or in a contiguous county. In 2014, Indiana amended its admitting privileges requirement to remove the option of contracting with another physician who has admitting privileges and to require that each abortion provider personally maintain local admitting privileges.
- Indiana's abortion reporting law requires the reporting of information to the Centers for Disease Control (CDC). The measure applies to both surgical and nonsurgical abortions and requires abortion providers to report both short-term and long-term complications. The law is in ongoing litigation.
- Abortion providers must report, among other things, the post-fertilization age (of the unborn child) and, if an abortion is performed at or after 5 months (i.e., 20 weeks), the medical reason for the abortion.
- Indiana requires that a physician examine a woman before providing abortion-inducing drugs, effectively preventing the dangerous practice of "webcam abortion." The law also provides that the drugs cannot be administered past nine weeks post-fertilization unless the Food & Drug Administration (FDA) has approved them for such use.
- Indiana funds abortions for women eligible for public assistance when necessary to preserve the woman's life or physical health or when the pregnancy is the result of rape or incest. It further provides that neither the state nor any political subdivision of the state may make a payment from any fund under its control for the performance of an abortion unless the abortion is necessary to preserve the life of the pregnant woman.
- The state Office of Women's Health director and employees are not permitted to advocate, promote, refer for, or otherwise advance abortion or abortion-inducing drugs.
- In 2011, Indiana prohibited state agencies from contracting with or making grants (of state or state-administered federal funds) to entities that perform abortions or maintain or operate facilities where abortions are performed, and cancelled existing contracts with such entities. However, the Seventh Circuit enjoined the law as applied to Medicaid funding.
- Indiana prohibits insurance companies from offering abortion coverage within the state insurance Exchanges established pursuant to the federal healthcare law, except in cases of life endangerment, substantial and irreversible impairment of a major bodily function, rape, or incest.
- Indiana prohibits insurance coverage of abortion, with exceptions protecting the mother's life, guarding against substantial threats to the mother's health, and applying in cases of rape and incest. The measure is based on AUL's Abortion Coverage Prohibition Act.

- Indiana offers “Choose Life” license plates, the proceeds of which benefit pregnancy resource centers.

## **LEGAL RECOGNITION AND PROTECTION OF UNBORN CHILDREN AND NEWLY BORN INFANTS**

- Under Indiana criminal law, the killing of an unborn child is defined as a form of homicide. In 2018, it expanded this to include the crimes of voluntary manslaughter, involuntary manslaughter, and feticide.
- A person who causes the death of a child in utero while committing murder or felony murder may be sentenced to an additional fixed term of imprisonment that is equal to the advisory sentence for murder. This provision applies at any stage of gestation.
- An assault on a viable unborn child is a prosecutable crime.
- In addition, Indiana defines criminal assaults on a pregnant woman that result in miscarriage, stillbirth, or “damage to pregnancy” as an enhanced offense for sentencing purposes.
- Indiana allows a wrongful death (civil) action only when an unborn child is born alive following a negligent or criminal act and dies thereafter.
- Indiana has created a specific affirmative duty of physicians to provide medical care and treatment to infants born alive at any stage of development.
- Indiana defines substance abuse during pregnancy as “child abuse” under civil child welfare statutes. In 2013, it allocated funds for “prenatal substance use and prevention” for pregnant women.
- The state Department of Health has been directed to develop a system of registry for stillbirth information.
- Indiana law requires that an abortion clinic or healthcare facility having possession of an aborted fetus shall provide for the final disposition of the aborted fetus by interment or cremation. The woman may provide interment or cremation for the final disposition herself or request the abortion facility provide interment or cremation.
- It is a felony to sell or unlawfully transfer fetal tissue.
- Indiana prohibits altering the timing, method, or procedure of an abortion for the purpose of obtaining or collecting fetal tissue.

## **BIOETHICS LAWS**

- Indiana prohibits human cloning for any purpose and prohibits taxpayer funding of human cloning.
- While Indiana does not explicitly prohibit destructive embryo research, it does prohibit research on embryos created from ova initially provided for use in in vitro fertilization (IVF) procedures as well as experimentation on aborted fetuses. However, the state’s prohibition on experimentation on embryos created for use in IVF explicitly excludes fetal stem-cell research from its application.
- Indiana has established a public umbilical cord-blood bank and an educational initiative to promote public awareness of the importance of donating. Participating facilities must offer patients the option of donating cord blood following delivery.
- Indiana has also directed the Board of Trustees at Indiana University to establish an adult stem-cell research center.

- Indiana prohibits the purchase or sale of human ova but does not prohibit certain transactions between a woman and a qualified IVF clinic for certain expenses (e.g., earnings lost, travel expenses, medical expenses, or recovery time).
- It does not otherwise regulate assisted reproductive technologies but does prohibit gestational surrogacy contracts.

## **PATIENT PROTECTION LAWS**

- Assisting a suicide constitutes a felony.

## **HEALTHCARE FREEDOM OF CONSCIENCE**

### **PARTICIPATION IN ABORTION AND CONTRACEPTION**

- A physician, nurse, physician’s assistant, pharmacist, or hospital employee or staff member who objects on religious, moral, or ethical grounds is not required to perform abortions or prescribe, administer, or dispense abortion inducing drugs.
- A private or religiously affiliated hospital is not required to permit the use of its facilities for the performance of an abortion.
- Indiana has a “contraceptive equity” law, requiring health insurance coverage for contraception. No exemption is provided for employers or insurers with a moral or religious objection to contraception.

### **PARTICIPATION IN RESEARCH HARMFUL TO HUMAN LIFE**

- Indiana currently provides no protection for the rights of healthcare providers who conscientiously object to participation in human cloning, destructive embryo research, or other forms of medical research that violate a provider’s moral or religious beliefs.

## **WHAT HAPPENS AFTER *ROE* IS OVERTURNED?**

- Abortion will be legal up to 20 weeks of pregnancy.

# RECOMMENDATIONS FOR INDIANA

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## WOMEN'S PROTECTION PROJECT PRIORITIES

- Enhanced penalties and enforcement mechanisms for the state's abortion-related laws
  - Parental Involvement Enhancement Act
  - Drug-Induced Abortion Information and Reporting Act
  - Components of the Child Protection Act related to evidence retention and remedies for third-party interference with parental rights
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## INFANTS' PROTECTION PROJECT PRIORITIES

- Unborn Infants Wrongful Death Act
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## PATIENT PROTECTION ACT PRIORITIES

- Joint Resolution Opposing Suicide by Physician
  - Charlie Gard Act (formerly the Life Sustaining Care Act)
  - Pain Management Education Act
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## ADDITIONAL PRIORITIES

### LEGAL RECOGNITION AND PROTECTION FOR THE UNBORN

- Pregnant Woman's Protection Act

### BIOETHICS

- Promotion of ethical research alternatives