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# ***In Vitro Fertilization, State Wrongful Death Statutes and State Fetal Homicide Statutes: The Reaction to *LePage v. Center for Reproductive Medicine****

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**ABSTRACT:** The Alabama Supreme Court recently held, in *LePage v. Center for Reproductive Medicine*, that the parents of human embryos that were negligently destroyed at a fertility clinic could bring an action for damages under the State's wrongful death statute. Although the Alabama legislature promptly enacted a law essentially overturning the state supreme court's decision, concerns have been raised that the court's decision might influence courts in other States to interpret their wrongful death statutes, or possibly even their fetal homicide statutes, to apply in similar circumstances,

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thereby threatening the availability of *in vitro* fertilization (IVF) technology. This article addresses those concerns.

With respect to wrongful death statutes, only fourteen States (excluding Alabama) have interpreted their statutes to apply to unborn children without regard to their stage of gestation or development. The majority of States impose a gestational requirement (typically, viability) which would preclude their application to the destruction of human embryos. Even with respect to the minority of States that impose no limitation on the cause of action, those statutes, either by their express language or by fair interpretation, would not apply to unimplanted human embryos.

With respect to the fetal homicide statutes in thirty-one States that do not have any gestational or developmental limitation, the statutes in twenty-six of those States apply only to acts causing the death of an unborn child *in utero*. As to the statutes in the other five States, the structure of the statute, considered in light of the applicable case law, strongly suggests that there would be no liability for causing the death of an unborn child before implantation. In sum, the Alabama Supreme Court's decision in *LePage* is not likely to be followed as a precedent in interpreting either the wrongful death statutes or the fetal homicide statutes of any other State.

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The Alabama Supreme Court recently held, in *LePage v. Center for Reproductive Medicine*,<sup>1</sup> that Alabama's wrongful death statute applies to the destruction of human embryos being kept in a fertility clinic. In reaction to the court's decision, the Alabama legislature enacted a law that bars wrongful death actions for the intentional or negligent destruction of unimplanted human embryos.<sup>2</sup> As a result of that legislation, the Alabama Supreme Court's decision in *LePage* has been effectively overturned. Notwithstanding that development, some commentators have expressed concerns that the court's decision, if followed in other States, could adversely affect the availability of *in vitro* fertilization (IVF) because of the potential for civil, or even criminal, liability under state wrongful death statutes or fetal homicide statutes. This

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<sup>1</sup> 2024 Ala. LEXIS 60 (Feb. 16, 2024).

<sup>2</sup> S.B. 159.

article addresses those concerns and concludes that they are unfounded. A careful examination of the applicable statutes and court decisions leads to but one conclusion: in the absence of specific legislation directed at IVF technology, neither state wrongful death statutes nor fetal homicide statutes would likely be applied to the destruction of unimplanted human embryos.

## Liability Under State Wrongful Death Statutes

All States have enacted statutes providing a cause of action for wrongful death. Only fourteen of those States (in addition to Alabama), however, allow a wrongful death action to be brought on behalf of an unborn child (who is still-born) without regard to the child's stage of development. The other thirty-five States either do not allow a wrongful death action to be brought on behalf of an unborn child at all (six States), impose various gestational limits, such as "quickening,"<sup>3</sup> or viability (twenty-eight States), or have never addressed the issue as to whether a wrongful death action will lie for the death of an unborn child (one State).<sup>4</sup> Obviously, none of those wrongful death statutes could be applied to the destruction of unimplanted human embryos. What about the other fourteen States?

In nine States, the statutory language limits the cause of action to an unborn child *in utero*,<sup>5</sup> or refers to "pregnancy"<sup>6</sup> or "every stage of biological devel-

<sup>3</sup> "Quickening" is that stage of pregnancy when the woman first detects fetal movement, typically sixteen to eighteen weeks gestation.

<sup>4</sup> For a chart listing the States and the applicable rules under their wrongful death statutes, see Appendix A to this article. Citations to the statutes and cases on which the chart is based may be found in two of the author's law review articles. See Paul Benjamin Linton and Maura K. Quinlan, "Does *Stare Decisis* Preclude Reconsideration of *Roe v. Wade*? A Critique of *Planned Parenthood v. Casey*," 70 CASE WESTERN. L. REV. 283, 323-24 & notes 217-219 (Winter 2019), and Paul Benjamin Linton, "The Legal Status of the Unborn Child under State Law," VI U. ST. THOMAS J. LAW & PUB. POLICY 141, 148-50 & notes 32-38 (Fall 2011).

<sup>5</sup> See ALASKA STAT. § 09.55.585 (wrongful death of an "unborn child"), incorporating by reference § 11.81.900(b)(66) (defining "unborn child" as "a member of the species *Homo sapiens*, at any stage of development, *who is carried in the womb*") (emphasis added); KAN. STAT. ANN. §§ 60-1901(b), (c) (defining "unborn child," for purposes of the wrongful death statute, to mean "a living individual organism of the species *homo sapiens*, *in utero*, at any stage of gestation from fertilization to birth") (emphasis added); MICH. COMP. LAWS ANN. § 600.2922a(1) ("A person who commits a wrongful or negligent act *against a pregnant individual* is liable for damages if the act results in a miscarriage or stillbirth by that individual, or physical injury to or the death of the embryo or fetus") (emphasis added); NEB. REV. STAT. ANN. § 30-809(1) (recognizing cause of action for wrongful death of any person, "including an unborn child *in utero* at any stage of gestation") (emphasis added); TEX. CIV. PRAC. & REM. CODE § 71.001(4) (defining "individual," for purposes of wrongful death statute, to include "an unborn child at every stage of gestation from fertilization until birth") (emphasis added); VA. CODE ANN. § 8.01.50(B), recognizing cause of action for causing "fetal death," defined in § 32.1-249 as "death prior to the complete expulsion or extraction from its mother of a product of human conception, regardless of the duration of pregnancy") (emphasis added).

<sup>6</sup> See OKLA. STAT. tit. 12, § 1053(F) (wrongful death statute), incorporating by reference tit. 63, § 1-730(A)(4) (defining "unborn child" or "unborn person" as "the unborn offspring of human

opment,”<sup>7</sup> or expressly excludes IVF technology.<sup>8</sup> In four States, the statutory language has been interpreted to apply only to the wrongful death of an unborn child *in utero*.<sup>9</sup>

Finally, in a case of first impression, the Utah Supreme Court interpreted a statute creating a cause of action for the wrongful death of a “minor child” to include unborn children, apparently without any restriction as to the child’s stage of development when the injury causing death occurs.<sup>10</sup> Although four

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beings from the moment of conception, *through pregnancy*, and until live birth including the human conceptus, zygote, morula, blastocyst, embryo and fetus”) (emphasis added). Whether the definition of “unborn child” or “unborn person” in tit. 63, § 1-730(A)(4), is limited to an unborn child *in utero*, it must be noted that no Oklahoma court has applied the definition to a wrongful death action brought on behalf of the destruction of an unimplanted embryo, and there is no evidence that the definition has affected the availability of IVF technology in the State.

<sup>7</sup> For purposes of a rule of construction that applies to the interpretation of its laws generally, a Missouri statute defines “unborn children” or “unborn child,” to include “all unborn child or children or the offspring of human beings from the moment of conception until birth at every stage of biological development.” MO. ANN STAT. § 1.205.3 (emphasis added). Although the Missouri Supreme Court cited this statute in holding that the State’s wrongful death statute applies to the wrongful death of a non-viable child, see *Connor v. Monkem Co.*, 898 S.W.2d 89 (Mo. 1995), no Missouri case has interpreted the rule of construction to apply to unimplanted human embryos. See *Queen v. Gadberrry*, 507 S.W.3d 127 (Mo. Ct. App. 2016) (unimplanted human embryos are not “children” for purposes of resolving issue regarding their disposition in divorce proceedings). Furthermore, it must be noted that § 1.205.3 was enacted almost forty years ago and has never been applied to the destruction of unimplanted human embryos, nor has the rule of construction had any impact on the availability of IVF technology in the State. Finally, to eliminate any remaining doubt about the possible application of § 1.205.3 to the destruction of human embryos, a bill has been introduced in the Missouri General Assembly (S.B. 1486) to amend § 1.205.3 by adding the following language to the definition of “unborn children” or “unborn child” in that section: “but shall not apply to human embryos created through in vitro fertilization prior to successful implantation in the uterus.”

<sup>8</sup> See ARK. CODE ANN. § 16-62-102(a)(3)(D) (excluding from scope of wrongful death statute “Actions occurring before transfer to the uterus of the woman of an embryo created through in vitro fertilization”).

<sup>9</sup> See *Miller v. American Infertility Group of Illinois*, 897 N.E.2d 837 (Ill. App. Ct. 2008) (interpreting Illinois wrongful death act not to apply to the negligent destruction of unimplanted human embryos); *Wiersma v. Maple Leaf Farms*, 543 N.W.2d 787, 790 (S.D. 1996) (in amending the wrongful death statute to include an “unborn child,” the legislature intended “to include any child still within a mother’s womb; no distinction was made between viable and nonviable”); *Farley v. Sartin*, 466 S.E.2d 522, 523 n. 3, 535 (W.Va. 1995); *Saleh v. Damron*, 836 S.E.2d 716, 720–25 (W.Va. 2019) (wrongful death action does not extend to ectopic pregnancies). In *Danos v. St. Pierre*, 402 So.2d 633, 638–39 (La. 1981), the Louisiana Supreme Court implied that an action for the wrongful death of an unborn child applies only to the death an unborn child *in utero*. That implication is supported by the enactment of separate Louisiana statutes that deal with IVF technology. See LA. REV. STAT. § 9:121 *et seq.* One of those statutes prohibits the intentional destruction of an unimplanted human embryo, see § 9:129, but that prohibition has not affected the operation of fertility clinics in the State.

<sup>10</sup> *Carranza v. United States*, 267 P.3d 912, 913 (Utah 2011) (answering question of law certified by federal district court). None of the opinions in the case indicates the unborn child’s

justices concurred in that holding (one justice dissented), they were divided on the appropriate analysis. Chief Justice Durham, joined by Justice Parrish, expressed no opinion on whether their interpretation of the statute extended beyond unborn children *in utero*.<sup>11</sup> Justice Lee, joined by Associate Chief Justice Durrant, however, interpreted the term “minor child” in the wrongful death statute “to include children in utero,”<sup>12</sup> which would exclude unimplanted human embryos. In sum, under the Utah Supreme Court’s decision in *Carranza*, the statute allowing a cause of action for the wrongful death of a “minor child” would not apply to unimplanted human embryos.<sup>13</sup>

### Summary

Based on the foregoing analysis, there is no reason to believe that any state wrongful death statute would be applied to the intentional, knowing, reckless or negligent destruction of unimplanted human embryos. And, it should be noted, that, with the exception of the Alabama Supreme Court in the *LePage* case (which has been overturned by the state legislature), no state court in any State has ever held that a wrongful death action may be brought for the destruction of an unimplanted human embryo.

## Liability under State Fetal Homicide Statutes

Thirty-seven States have enacted statutes criminalizing the killing of unborn children outside the context of abortion.<sup>14</sup> The statutes in thirty-one of those States are not limited to any particular stage of pregnancy (e.g., “quickening” or viability), but apply to criminal acts causing fetal death at any stage of pregnancy. As to these statutes, could any of them plausibly be applied to the destruction of human embryos before implantation? In other words, do these statutes, fairly interpreted, affect *in vitro* fertilization (IVF) technology? Given

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stage of development.

<sup>11</sup> *Id.* at 913–15 (Op. of Durham, C.J.).

<sup>12</sup> *Id.* at 916 (Op. of Lee, J.).

<sup>13</sup> It should also be noted that the statute creating a cause of action for the wrongful death of a “minor child” has been amended to create a cause of action only for the *injury* of a “minor child.” See UTAH CODE ANN. § 78B-3-102. At the same time, the legislature amended § 78B-3-106(1) to state that “when the death of a person is caused by the wrongful act or neglect of another, his heirs . . . may maintain an action for damages against the person causing the death.” The amendment deleted the words “not a minor” from the statute as it had previously read. *Carranza* did not address the scope of this amendment in answering the certified question of law. See *Carranza*, 267 P.3d at 913 n. 1.

<sup>14</sup> A chart describing these statutes may be found in Appendix B to this article. A separate chart classifying the statutes according to their scope may be found in Appendix C.

For citations to the statutes and cases on which the charts are based, see Paul Benjamin Linton and Maura K. Quinlan, “Does *Stare Decisis* Preclude Reconsideration of *Roe v. Wade*? A Critique of *Planned Parenthood v. Casey*,” 70 CASE WESTERN. L. REV. 283, 321–22 & notes 204–09 (Winter 2019), and Paul Benjamin Linton, “The Legal Status of the Unborn Child under State Law,” VI U. ST. THOMAS J. LAW & PUB. POLICY 141, 143–44 & notes 18–21 (Fall 2011).

their structure and language, the answer is almost certainly “No.” All but five of these statutes are, by their express terms, limited to unborn children “in gestation” or “*in utero*,” or otherwise expressly exclude IVF technology.<sup>15</sup> What about the other five States?

### **Indiana**

Several Indiana statutes prohibit the intentional or knowing killing of a fetus “in any stage of development” outside the context of a legal abortion.<sup>16</sup> Would these statutes apply to the intentional or knowing destruction of unimplanted human embryos? The answer is almost certainly “No.”

As an initial matter, it may be questioned whether a human embryo maintained in a cryogenic environment could be said to be in a stage of “development.”<sup>17</sup> Moreover, under the rule of lenity, any ambiguity in a criminal statute must be resolved in favor of the defendant, *i.e.*, that the criminal statute in question does *not* apply. Finally, there are no Indiana cases applying these criminal statutes to the intentional or knowing destruction of unimplanted human embryos. On the other hand, the Indiana Court of Appeals has recently held that, “although Indiana law attributes ‘human physical life’ to fertilized eggs in utero, it sets pre-embryos in vitro apart. As such, we cannot say in vitro frozen pre-embryos are entitled to personhood under Indiana law.”<sup>18</sup> In a footnote to this statement, the court said that “Indiana law treats pregnancy and abortion, which occur in utero, differently from IVF, which occurs in vitro—ex utero.”<sup>19</sup> Although *Freed* did not address whether Indiana’s statutes criminalizing the intentional or knowing destruction of unimplanted human embryos (or, as the court described them, “pre-embryos”), the court’s opinion suggests that those statutes would *not* apply in those circumstances. Based on the foregoing, it is unlikely that Indiana’s statutes criminalizing conduct that causes the death of a “fetus” apply to the destruction of unimplanted human embryos.

### **Minnesota**

Under Minnesota law, the killing of an “unborn child” outside the context of abortion may be prosecuted as murder or manslaughter.<sup>20</sup> An “unborn child” is defined as “the unborn offspring of a human being conceived, but not

<sup>15</sup> See, e.g., ARK. REV. STAT. ANN. § 5-1-102 (13)(B)(ii)(e).

<sup>16</sup> See IND. CODE §§ 35-42-1-1(4), 35-42-1-3(a)(2), 35-42-1-4(a), (c).

<sup>17</sup> See, e.g., *Miller v. American Infertility Group*, 897 N.E.2d 837, 840–45 (Ill. App. Ct. 2008) (unimplanted human embryos are not in a “state of gestation or development” as those terms are used in the state wrongful death statute) (emphasis added).

<sup>18</sup> *Freed v. Freed*, 2024 Ind. App. LEXIS 17 at p. 18 (Jan. 26, 2024) (citing IND. CODE § 16-34-2-1.1).

<sup>19</sup> *Id.* at p. 18 note 8.

<sup>20</sup> See MINN. STAT ANN. §§ 609.266 through 609.2665, § 609.268.

yet born.”<sup>21</sup> In *State v. Merrill*,<sup>22</sup> the Minnesota Supreme Court rejected both due process and equal protection challenges to the statutes criminalizing the killing of “an unborn child.” In the course of its opinion, the court said that “[t]he state must prove only that *the implanted embryo or the fetus in the mother’s womb was living*, that it had life, and that it has life no longer” as a result of the defendant’s criminal conduct.<sup>23</sup> The court explained:

To have life, as that term is commonly understood, means to have the property of all living things to grow, to become. It is not necessary to prove, nor does the statute require, that the living organism *in the womb* in its embryonic or fetal state be considered a person or a human being. . . . Criminal liability here requires only that the genetically human embryo be a living organism *that is growing into a human being*. Death occurs when the embryo is no longer living, when it ceases to have the properties of life.<sup>24</sup>

The Minnesota Supreme Court’s understanding that the State’s fetal homicide statutes apply *only* to a “living organism” “in the mother’s womb” that is “growing into a human being” unmistakably indicates that those laws do *not* apply to the destruction of *unimplanted* human embryos.<sup>25</sup> Accordingly, those statutes have no application to *in vitro* fertilization.

### Missouri

A Missouri statute provides that “the life of each human being begins at conception” and that “unborn children have protectable interests in life, health, and well being.”<sup>26</sup> The same statute provides that “the laws of this state shall be interpreted and construed to acknowledge on behalf of the unborn child at every stage of development, all the rights, privileges, and immunities available to other persons, citizens, and residents of this state, subject only to the Constitution of the United States, and decisional interpretations thereof by the United States Supreme Court and specific provisions to the contrary in the statutes and constitution of this state.”<sup>27</sup> Finally, as previously noted, the statute provides that “the term ‘unborn children’ or ‘unborn child’ shall include all unborn child or children or the offspring of human beings from the moment of conception until birth *at every stage of biological development*.”<sup>28</sup>

<sup>21</sup> *Id.* § 609.266(a).

<sup>22</sup> 450 N.W.2d 318 (Minn. 1990).

<sup>23</sup> *Id.* at 324 (emphasis added).

<sup>24</sup> *Id.* (emphasis added).

<sup>25</sup> The Minnesota statutes were enacted in 1986, almost forty years ago. There is no evidence that these statutes have affected the operation of fertility clinics in the State.

<sup>26</sup> MO. ANN. STAT. §§ 1.205.1(1), (2).

<sup>27</sup> *Id.* § 1.205.2.

<sup>28</sup> *Id.* § 1.205.3. Emphasis supplied.

For purposes of Missouri's homicide statutes, does the broad definition of "unborn child" extend to human embryos before implantation? The answer would appear to be "No." As an initial matter, it may be questioned whether, as in the case of the language in the Indiana fetal homicide statutes, a human embryo maintained in a cryogenic environment could be said to be in a stage of "biological development."<sup>29</sup> Moreover, as previously noted, under the rule of lenity, any ambiguity in a criminal statute must be resolved in favor of the defendant, *i.e.*, that the criminal statute in question does *not* apply. Finally, although Missouri courts have interpreted § 1.205 to apply to various criminal offenses committed against pregnant women resulting in the death of their unborn children,<sup>30</sup> no Missouri court has applied § 1.205 (in a criminal context) to the intentional, knowing, reckless or negligent destruction of unimplanted human embryos. Furthermore, the Missouri Court of Appeals has held that the rule of construction laid down in § 1.205 does *not* apply to the disposition of unimplanted human embryos.<sup>31</sup> Based on the foregoing, it is implausible that the Missouri rule of construction set forth in § 1.205 could be applied (in the criminal context) to the destruction of unimplanted human embryos.<sup>32</sup>

### **Oklahoma**

Oklahoma law defines "homicide" as "the killing of one human being by another."<sup>33</sup> A "human being," for purposes of the homicide statutes, "includes an unborn child."<sup>34</sup> As previously noted, an "unborn child," in turn is defined as "the unborn offspring of human beings from the moment of conception, *through pregnancy*, and until live birth including the human conceptus, zygote, morula, blastocyst, embryo and fetus."<sup>35</sup> Without regard to whether the use of the word "pregnancy" may limit the scope of the definition to an unborn child *in utero*, there is no evidence that Oklahoma's homicide laws have been applied to the destruction of unimplanted human embryos or that they have affected the operation of fertility clinics in the State.

### **Pennsylvania**

Under the Pennsylvania "Crimes Against the Unborn Child Act," it is a criminal offense to intentionally, knowingly, recklessly or negligently cause

<sup>29</sup> See *supra* note 17.

<sup>30</sup> See *State v. Knapp*, 843 S.W.2d 345 (Mo. 1992), *State v. Holcomb*, 956 S.W.2d 286 (Mo. 1997), and *State v. Rollen*, 133 S.W.3d 57 (Mo. Ct. App. 2003).

<sup>31</sup> *McQueen v. Gadberry*, 507 S.W.3d 127 (Mo. Ct. App. 2016).

<sup>32</sup> As previously mentioned, a bill has been introduced in the Missouri General Assembly that would amend the definition of "unborn children" and "unborn child" in § 1.205.3 expressly to exclude "human embryos created through in vitro fertilization prior to successful implantation in the uterus." S.B. 1486.

<sup>33</sup> OKLA. STAT. tit. 21, § 691(A).

<sup>34</sup> *Id.* § 691(B).

<sup>35</sup> *Id.* (incorporating by reference OKLA. STAT. tit. 63, § 1-730(A)(4) (emphasis added)).



the death of an “unborn child” outside the context of a lawful abortion.<sup>36</sup> For purposes of the Act, “unborn child” means “an individual organism of the species homo sapiens from fertilization until live birth.”<sup>37</sup> “Fertilization,” in turn, is defined as “the fusion of a human spermatozoon with a human ovum.”<sup>38</sup> Does the definition of “unborn child” have any application to human embryos before implantation? The answer would appear to be “No.”

In *People v. Bullock*,<sup>39</sup> the Pennsylvania Supreme Court held that the “Crimes Against the Unborn Child Act” “prescribes that it is unlawful to intentionally, knowingly, recklessly, or negligently cause the death of an unborn child, defined to include all stages of gestation from fertilization to live birth.”<sup>40</sup> Obviously, cryogenically preserved human embryos are *not* in a “stage[] of gestation.”

Two other statutes shed light on whether the destruction of unimplanted embryos is criminal. One statute, which prohibits nontherapeutic experimentation on unborn children, provides, “Nor shall anything in this section be construed to condone or prohibit the performance of in vitro fertilization and accompanying embryo transfer.”<sup>41</sup> Section 3216(c) thus clearly contemplates that IVF technology is legal. Another statute requires “all persons conducting, or experimenting in, in vitro fertilization” to file quarterly reports with the Department of Health which must contain, among other information, the “number of fertilized eggs destroyed or discarded.”<sup>42</sup> Such a reporting requirement could not be imposed if the conduct required to be reported were itself criminal. Based on the foregoing, it could not reasonably be said that the “Crimes Against the Unborn Child Act” applies to the destruction of unimplanted human embryos.

### Summary

By their express terms, twenty-six of the thirty-one States whose fetal homicide laws apply throughout pregnancy, could not apply to IVF technology. As to the other five States with such laws, they would not likely be applied to IVF technology, either because the language of the laws would seem to preclude such application and/or because of case law limiting the scope of the laws to the killing of unborn children during gestation. It should also be noted that, although some fetal homicide laws have been on the books for decades, there is not a single example of any of these laws having been applied to the

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<sup>36</sup> See 18 PA. CONS. STAT. ANN. § 2601 *et seq.*

<sup>37</sup> *Id.* § 2602, incorporating by reference the definition of “unborn child” in § 3203.

<sup>38</sup> *Id.* § 3203.

<sup>39</sup> 913 A.2d 207 (Pa. 2006).

<sup>40</sup> *Id.* at 212 (emphasis added).

<sup>41</sup> 18 PA. CONS. STAT. ANN. § 3216(c) (last sentence).

<sup>42</sup> *Id.*, § 3213(e)(5).

intentional, knowing, reckless or negligent destruction of human embryos before implantation in the womb. Finally, as to the six States that impose a gestational requirement (“quickening,” viability or some other stage of pregnancy),<sup>43</sup> none of those laws could be applied to IVF technology.

### **Conclusion**

In the absence of special legislation directed at IVF technology, it is implausible to believe that either state wrongful death statutes or state fetal homicide statutes would be applied to the intentional, knowing, reckless or negligent destruction of unimplanted human embryos. Concerns expressed that these statutes might be applied to IVF technology are unfounded.

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<sup>43</sup> California, Maryland, Montana, Nevada, New Hampshire and Washington.

## Appendix A

### Chart of States That Allow, Deny Or Limit Wrongful Death Actions For The Wrongful Stillbirth Of Unborn Children (List Does Not Include States Allowing Action For Wrongful Death Of Children After Live Birth From Prenatal Injuries)

States Allowing Wrongful Death Action Throughout Pregnancy	States Allowing Wrongful Death Action After Viability Or Quickening, But Not Ruling On Pre-Viability Or Pre-Quickening	States Allowing Wrongful Death Action After Viability Or Quickening, But Denying Earlier Action	States Denying Wrongful Death Action for Stillbirth, Regardless Of Stage of Pregnancy	States With No Case Law Or Statute On Wrongful Death of Unborn Child
Alabama	Colorado (but see statute on cause of action for terminating pregnancy)	Arizona	California	Wyoming
Alaska	Connecticut	Idaho	Florida	
Arkansas	Delaware	Indiana	Iowa	
Illinois	Georgia (quickening)	Kentucky	Maine	
Kansas	Hawaii	Maryland	New Jersey	
Louisiana	Minnesota	Massachusetts	New York	
Michigan	Mississippi (quickening)	Montana		
Missouri	Nevada	New Hampshire		
Nebraska	North Carolina	New Mexico		
Oklahoma	North Dakota	Oregon		
South Dakota	Ohio	Pennsylvania		
Texas	Tennessee	Rhode Island		
Utah	Vermont	South Carolina		
Virginia	Wisconsin	Washington		
West Virginia				
15 States	14 States	14 States	6 States	1 State

## Appendix B

### Chart on State Fetal Homicide Laws†

State	Application of Coverage	Citation
Alabama	throughout pregnancy	ALA. CODE § 13A-6-1(a)(3)
Alaska	throughout pregnancy	ALASKA STAT. §11.81.900(b)(62) (definition); §§ 11.41.150 through 11.41.170 (substantive offenses)
Arizona	throughout pregnancy	ARIZ. REV. STAT. ANN. §§ 13-1102(A), (B), 13-1103(A)(5), (C), 13-1104(A), (B), 13-1105(A)(1), (C)
Arkansas	throughout pregnancy	ARK. CODE ANN. §§ 5-1-102(13)(B)(i)(a), (b) (extending scope of homicide statutes)
California	post-embryonic (fetal stage)	CAL. PENAL CODE § 187(a), as interpreted in <i>People v. Davis</i> , 872 P.2d 591 (Cal. 1994)
Colorado	no applicable statute	
Connecticut	no applicable statute	
Delaware	no applicable statute	
Florida	throughout pregnancy	FLA. STAT. § 775.021(5) (defining “another” as used in homicide statutes); §§ 782.071, 782.09 (substantive offenses)
Georgia	throughout pregnancy	GA. CODE ANN. §§40-6-393.1, 52-7-12.3
Hawaii	no applicable statute	
Idaho	throughout pregnancy	IDAHO CODE ANN. § 18-4016 (definitions); §§ 18-4001, 18-4006 (substantive offenses)
Illinois	throughout pregnancy	720 ILL. COMP. STAT. ANN. §§ 5/9-1.2, 5/9-2.1, 5/9-3.2
Indiana	throughout pregnancy	IND. CODE §§ 35-42-1-1(4), 35-42-1-3(a)(2), 35-42-1-4(a), (c)
Iowa	no applicable statute	
Kansas	throughout pregnancy	KAN. STAT. ANN. § 21-5419
Kentucky	throughout pregnancy	KY. REV. STAT. ANN. § 507A.010 (definitions); §§ 507A.020 through 507A.050 (substantive offenses).
Louisiana	throughout pregnancy	LA. REV. STAT. ANN. § 14:2(A)(11) (definition); §§ 14.32.6 through 14.32.8 (substantive offenses)
Maine	no applicable statute	
Maryland	viability	MD. CODE ANN., CRIM. LAW, § 2-103
Massachusetts	no applicable statute (however, state supreme court has interpreted homicide law to apply to viable unborn children)	
Michigan	throughout pregnancy	MICH. COMP. LAWS. ANN. §§ 750.90a through 750.90f

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**Appendix B (Continued)**


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<b>State</b>	<b>Application of Coverage</b>	<b>Citation</b>
Minnesota	throughout pregnancy	MINN. STAT ANN. § 609.266(a) (definition); §§ 609.266 through 609.2665, § 609.268 (substantive offenses)
Mississippi	throughout pregnancy	MISS. CODE ANN. § 97-3-37
Missouri	throughout pregnancy	MO. ANN. STAT. § 1.205 (setting forth rule of construction for state statutes); <i>see State v. Knapp</i> , 843 S.W.2d 345 (Mo. 1992); <i>State v. Holcomb</i> , 956 S.W.2d 286 (Mo. 1997); <i>State v. Rollen</i> , 133 S.W.3d 57 (Mo. Ct. App. 2003)
Montana	post-embryonic (from eight weeks of development)	MONT. CODE ANN. § 45-5-116(3) (definition); §§ 45.5-102(1)(c), 45-5-103(1) (substantive offenses)
Nebraska	throughout pregnancy	NEB. REV. STAT. ANN. § 28-389 (definitions); §§ 28-391 through 28-394 (substantive offenses)
Nevada	“quickening” (16-18 weeks)	NEV. REV. STAT. ANN. § 200.210
New Hampshire	post twenty weeks	N.H. REV. STAT. § 630:1-a(V)(b)(1) (definition); §§ 630-1-a(I), 630:1-b, 630:2, 630:3, 630:4 (substantive offenses)
New Jersey	no applicable statute	
New Mexico	no applicable statute	
New York	no applicable statute	
North Carolina	throughout pregnancy	N.C. GEN. STAT. § 14-23..1 (definitions); §§ 14-23.2 through 14.23.4 (substantive offenses)
North Dakota	throughout pregnancy	N.D. CENT. CODE § 12.1-17.1-01 (definitions); §§ 12.1-17.1-02 through 12.1-17.1-04 (substantive offenses)
Ohio	throughout pregnancy	OHIO REV. CODE ANN. § 2903.09(A), (B) (definitions); §§ 2903.01(A), (B), 2903.02(A), 2903.03(A), 2903.04(A), (B), 2903.041(A), 2903.05(A), 2903.06(A) (substantive offenses)
Oklahoma	throughout pregnancy	OKLA STAT. tit. 63, § 1-730(4) (definition of “unborn child”), tit. 21, § 691 (definition of “homicide” applicable to homicide offenses)
Oregon	no applicable statute	
Pennsylvania	throughout pregnancy	18 PA. CONS. STAT. ANN. §§ 2602, 3203 (definitions); §§ 2603 through 2605 (substantive offenses)
Rhode Island	no applicable statute	
South Carolina	throughout pregnancy	S. C. CODE ANN. § 16-3-1083
South Dakota	throughout pregnancy	S.D. CODIFIED LAWS §§ 22-1-2(31), (50A) (definitions); §§ 22-16.1.1, 22-17-6 (substantive offenses)
Tennessee	throughout pregnancy	TENN. CODE ANN. § 39-13-214 (definitions of “another” and “unborn child”), 39-13-201 (definition of “homicide” applicable to homicide offenses)

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**Appendix B** *(Continued)*


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<b>State</b>	<b>Application of Coverage</b>	<b>Citation</b>
Texas	throughout pregnancy	TEXAS PENAL CODE §§ 1.07(a)(26) (definition of “individual”) and 1.07(a)(38) (definition of “person”), as used in Penal Code applicable to homicide and assaultive offenses)
Utah	throughout pregnancy	UTAH CODE ANN. § 76-5-201(1) (a)(ii) (definition of “homicide” applicable to homicide offenses)
Vermont	no applicable statute	
Virginia	throughout pregnancy	VA. CODE ANN. § 18.2-32.2
Washington	“quickening” (16-18 weeks)	WASH. REV. CODE ANN. § 9A.32.060(1)(b)
West Virginia	throughout pregnancy	W.VA. CODE ANN. § 61-2-30 (applying homicide offenses to the killing of an unborn child)
Wisconsin	throughout pregnancy	WIS. STAT. ANN. § 939.75(1) (definition of “unborn child”); §§ 940.01(1)(b), 940.02(1m), 940.05(2g), 940.04(3), 940.06(2), 940.08(2), 940.09(1c), (cm), (d), (e), 940.09(1g), (c), (cm), (d), 940.10(2) (substantive offenses)
Wyoming	throughout pregnancy	WYO. STAT. ANN. § 6-1-104(a)(xviii) (definition of “unborn child”); §§ 6-2-101(d), 6-2-104(b) (substantive offenses)

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† Only statutes that recognize the killing of an unborn child as a form of homicide are included in this table. Also excluded are assaultive offenses committed against unborn children.

## Appendix C

## Chart Summarizing State Fetal Homicide Statutes

<b>Statutes That Apply Throughout Pregnancy (thirty-one States)</b>	<b>Statutes That Apply Post-Embryonic (Fetal Stage) (two States)</b>	<b>Statutes That Apply After “Quickening” (16–18 weeks) (two States)</b>	<b>Statutes That Apply After Viability (one State)</b>	<b>Other Statutes (one State)</b>	<b>No Applicable Statute (thirteen States)</b>
Alabama	California (fetal stage)	Nevada	Maryland	New Hampshire (twenty weeks)	Connecticut
Alaska	Montana (eight weeks)	Washington			Colorado
Arizona					Delaware
Arkansas					Hawaii
Florida					Iowa
Georgia					Maine
Idaho					Massachusetts
Illinois					New Jersey
Indiana					New Mexico
Kansas					New York
Kentucky					Oregon
Louisiana					Rhode Island
Michigan					Vermont
Minnesota					
Mississippi					
Missouri					
Nebraska					
North Carolina					
North Dakota					
Ohio					
Oklahoma					
Pennsylvania					
South Carolina					
South Dakota					
Tennessee					
Texas					
Utah					

**Appendix C (Continued)**

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<b>Statutes That Apply Throughout Pregnancy (thirty-one States)</b>	<b>Statutes That Apply Post-Embryonic (Fetal Stage) (two States)</b>	<b>Statutes That Apply After “Quickening” (16–18 weeks) (two States)</b>	<b>Statutes That Apply After Viability (one State)</b>	<b>Other Statutes (one State)</b>	<b>No Applicable Statute (thirteen States)</b>
Virginia					
West Virginia					
Wisconsin					
Wyoming					

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