

ABORTION GUIDELINES

Abortion: means the use or prescription of any instrument, medicine, drug, or any other substance or device intentionally to terminate the pregnancy of a female known to be pregnant with an intention other than to increase the probability of a live birth, to preserve the life or health of the child after live birth, to remove an ectopic pregnancy, or to remove a dead unborn child who died as the result of a spontaneous miscarriage, accidental trauma, or a criminal assault on the pregnant female or her unborn child. [63 O.S. § 1-730\(A\)\(1\)](#) & [63 O.S. §1-745.51\(1\)\(b\) and \(c\)](#)

Saving the Life of a Pregnant Woman: A person shall not purposely perform or attempt to perform an abortion except to save the life of a pregnant woman in a medical emergency. [63 O.S. §1-731.4\(B\)\(1\)](#); A medical emergency means a condition which cannot be remedied by delivery of the child in which an abortion is necessary to preserve the life of a pregnant woman whose life is endangered by a physical disorder, physical illness or physical injury including a life-endangering physical condition caused by or arising from the pregnancy itself. [63 O.S. §1-731.4\(A\)\(2\)](#). No condition shall be deemed a medical emergency if based on “psychological or emotional conditions.” [63 O.S. §1-745.13\(4\)](#). Written notation shall be made in the pregnant woman’s medical record regarding the physician’s belief that a medical emergency that necessitated the abortion and the medical condition of the pregnant woman that prevented compliance with the act. [63 O.S. §1-745.35](#).

Rape & Incest Exceptions: Although [63 O.S. §1-745.52](#) provides exceptions for a pregnancy that is the result of rape, sexual assault or incest that has been reported to law enforcement, those exceptions only apply to civil lawsuits filed by private individuals. Oklahoma’s criminal abortion laws, [21 O.S. § 861](#) & [63 O.S. § 1-731.4](#), do not contain these exceptions. Therefore, the best practice is to operate as if the only exception under Oklahoma’s abortion laws is to save the life of a pregnant woman in a medical emergency.

Contraception: Oklahoma abortion laws do not prohibit the sale, use, prescription or administration of a contraceptive measure, drug or chemical if the contraceptive is administered before the time when a pregnancy could be determined through conventional testing and is sold, used, prescribed or administered in accordance with manufacturer instructions. [63 O.S. §1-731.4\(B\)\(3\)\(b\)](#). “Abortion” in Oklahoma does not include the use, prescription, administration, procuring, or selling of Plan B, morning-after pills, or any other type of contraception or emergency contraception. [63 O.S. §1-745.51\(1\)](#). The Oklahoma Attorney General in a Memorandum to all Oklahoma Law Enforcement Agencies, dated August 31, 2022, has provided guidance that prosecutions should not be initiated for “in vitro fertilization (IVF) and other fertility treatments”.

Accidental or Unintentional Injury or Death to the Unborn Child: It is at minimum an affirmative defense to criminal prosecution if a licensed physician provides medical treatment to a pregnant woman which results in the accidental or unintentional injury or death to the unborn child. [63 O.S. §1-731.4\(B\)\(4\)](#) An affirmative defense is a defense presented to the Court that if found credible will negate civil or criminal liability. Medications such as chemotherapy, that are for the purpose of treating the mother’s cancer, but may cause unintentional injury or death to the unborn child, would likely fall under this category.

Counseling: A person may bring a civil action against any person who knowingly engages in conduct that aids or abets the performance or inducement of abortion including paying for or reimbursing the costs of an abortion through insurance or otherwise, if the abortion is performed or induced in violation of this act, regardless of whether the person knew or should have known that the abortion would be performed or induced in violation of this act. [63 O.S. §1-745.39\(2\)](#). Moreover, a person may be criminally liable for “advising or procuring” a woman to take an abortion-inducing drug or for employing “other means whatever” with the intent to procure a miscarriage. [21 O.S. § 861](#). The Oklahoma Supreme Court has indicated (in regard to a non-abortion statute) that speech that encourages “imminent lawless action” is not protected constitutionally, but that “mere advocacy” is protected speech. [Edmonson vs. Pearce. 2004 OK 23 ¶ 61](#).

Criminal Enforcement: A person convicted of performing or attempting to perform an abortion shall be guilty of a felony punishable by a fine not to exceed One Hundred Thousand (\$100,000.00) or imprisonment not to exceed ten (10) years. [63 O.S. § 1-731.4\(B\)\(2\)](#) & [21 O.S. § 861](#); & [63 O.S. § 1-732](#) & [63 O.S. § 1-734](#).

Civil Enforcement: Any person may bring a civil action against any person who performs, induces or knowingly engages in conduct that aids and abets the performance of an abortion, resulting in damages not less than Ten Thousand Dollars (\$10,000). [63 O.S. §1-745.39\(A\)\(1\)-\(B\)\(2\)](#).

Disclaimer: The laws of the state of Oklahoma discussed herein only apply to conduct committed or performed within the jurisdiction of the state. Any medical care rendered in a training program of another state or jurisdiction is not implicated by these laws. This document is subject to change without notice and is made available to facilitate understanding of Oklahoma’s abortion prohibitions. These guidelines do not address federal law or its implications on state law. This is not intended to be an official interpretation or commentary on the intent of the law, nor any suggestion of how this law would be applied by citizens, the Attorney General’s Office, district attorneys, or any judge. Approved by the State Board of Osteopathic Examiners at its September 15, 2022, Special Board Meeting.