

## First Session Readings

### I. Abortion statistics (Sources: Center for Disease Control and Guttmacher Institute):

\* 22% of all pregnancies in 2008 (excluding miscarriages) end in abortion

\* 1.21 million abortions performed in 2008

88% at 12 weeks or less.

10.4% at 12-20 weeks.

1.5% performed at 21 weeks or more.

\* Downward trend

Abortions per year first reached about 1.55 million in 1980 and hovered at this level for about ten years. After peaking at 1.6 million in 1980, they fell by about 25%, reaching an annual level of about 1.2 million in 2005.” (National Right to Life)

\*Abortion mortality:

The national legal induced abortion case-fatality rate for 2004-2008 was 0.64 legal induced abortion-related deaths per 100,000 reported legal abortions.”

Number of women who die during pregnancy or childbirth: 21 deaths per 100,000 live births.

“Consider . . . these (contestable but frequently agreed-upon) facts: (1) When abortion was unlawful, several thousand women died per year as a result of illegal abortions; (2) several more thousands of women faced serious health impairment, including emergency hospital admissions, as a result of illegal abortions; (3) the abortion rate before *Roe v. Wade* was somewhere between 20 percent and 25 percent, whereas after *Roe v. Wade* it is somewhere around 27 percent.” Stone et al., *Constitutional Law* (6<sup>th</sup> Ed. 2009) at 854.

## II. Description of abortion procedures

### 1) First trimester

“The most common first trimester abortion method is vacuum aspiration (otherwise known as suction curettage) in which the physician vacuums out the embryonic tissue. Early in this trimester an alternative is to use medication, such as mifepristone (commonly known as RU-486), to terminate the pregnancy.” Gonzalez v. Carhart (Sup. Ct. 2007)

64% of all abortions in 2009 were at 8 weeks or less, the period in which RU-486 can be used. Some 17% of all abortions in 2008 were medical

abortions (defined as use of chemicals rather than surgery).

2) Second and third trimesters

“The surgical procedure referred to as “dilation and evacuation” or “D & E” is the usual abortion method in this trimester. . . . The doctor, often guided by ultrasound, inserts grasping forceps through the woman’s cervix and into the uterus to grab the fetus. The doctor grips a fetal part with the forceps and pulls it back through the cervix and vagina, continuing to pull even after meeting resistance from the cervix. The friction causes the fetus to tear apart. For example, a leg might be ripped off the fetus as it is pulled through the cervix and out of the woman. The process of evacuating the fetus piece by piece continues until it has been completely removed. A doctor may make 10 to 15 passes with the forceps to evacuate the fetus in its entirety, though sometimes removal is completed with fewer passes.”

Gonzalez v. Carhart (Sup. Ct. 2007)

### III. Common law of abortion

“The court are of the opinion that, at common law, no indictment [may be brought], for attempts to procure abortion with the consent of the mother, until she is quick with child. It was only considered by the ancient common law that the child had a separate and independent existence, when the embryo had advanced to that degree of maturity designated by the terms “quick with child.” . . . “Life,” says Blackstone [authority on English common law], ‘begins, in contemplation of law, as soon as an infant is able to stir in the mother’s womb.’ . . . The words “quick with child” must be taken to be according to the common understanding, which was proved to be this; that a woman is not considered to be quick with child, till she has herself felt the child alive and quick within her.” Commonwealth v. Luceba Parker (Mass. Superior Judicial Court, 1845).

#### IV. Current state laws restricting abortions.

1. Use of licensed physicians.

39 states require licensed physicians; 21 states require hospital after specified point; 20 states require involvement of second physician after specified point.

2. Late-term abortions.

41 states prohibit abortions after specified point (typically viability, estimated to be 22-24 weeks) except where necessary to protect mother's life or health.

3. Government funding.

17 states use their own funds to pay for all or most medically necessary abortions for Medicaid enrollees. 32 states prohibit use of state funds except when federal funds are available (i.e., where woman's life would be endangered if carried to term).

4. Conscience clauses.

46 states allow individual providers to refuse to participate. 43 states

allow institutions to refuse to perform  
(16 states limit refusal to private or  
religious institutions)

5. Waiting periods.

17 states mandate pre-abortion  
counseling; 26 states require a  
waiting period (usually 24 hours)

V. Sample State Statutes

Virginia

1. General Rule: abortion is a Class 4 felony, unless otherwise permitted. 2-10 years, \$100,000 penalty. 18.2-71
2. Abortion lawful during first trimester, if performed by licensed physician. 18.2-72
3. Also lawful during second trimester if performed in a State licensed or State run hospital. 18.2-73
4. Lawful in third trimester if woman's doctor and two consulting physicians certify that continuation of pregnancy "is likely to result in the death of the woman or substantially and irremediably impair her

mental or physical health.” Measures for support of the life of the fetus must be available and utilized if there is any “clearly visible evidence of viability.”

5. Abortion always lawful if “necessary . . . in order to save her [woman’s] life.” 18.2-74-1
6. “Partial birth infanticide” always illegal: ‘A human infant who has been born alive, but who has not been completely extracted from its mother.’ Unless necessary to prevent the death of the mother, and you can’t complete the live birth. 18.2-71.1
7. Conscience clause. No hospital or person shall suffer any adverse consequences for refusal “on personal, ethical, moral or religious grounds” to admit a patient for abortion, or participate in the procedure. 18.2-75.
8. At least 24 hours before procedure (unless there’s a health emergency, or there was rape or incest), woman must be offered chance to view an ultra sound image. 18.2-76. Consent may be given after that by pregnant woman “of any age.”

## Maryland

1. Abortion is lawful “before the fetus is viable,” or “at any time to protect the life or health of the mother,” or if the fetus is affected by “genetic defect or serious deformity or abnormality.” 20-209  
“Viable” defined as “reasonable likelihood of the fetus’s sustained survival outside the womb.”
2. Notice to parent or guardian not required if woman doesn’t live with a parent or guardian and a reasonable effort to give notice is not successful, or if notice might lead to physical or emotional abuse of the minor, or if the minor is mature and capable of giving informed consent, or “notification would not be in the best interests of the minor.” 20-103



