

U.S.

When Can Fetuses Feel Pain? Utah Abortion Law and Doctors Are at Odds

By JACK HEALY MAY 4, 2016

SALT LAKE CITY — Starting later this month, women in Utah seeking an abortion 20 weeks or more into a pregnancy will first have to be given anesthesia or painkillers — drugs that are intended not for them, but for the fetus.

Those are the terms of a new law that has made Utah the first state in the country to require what doctors here are calling “fetal anesthesia” for the small percentage of abortions that occur at this point in a pregnancy. The law, passed by the Republican-controlled State Legislature and signed in late March by Gov. Gary R. Herbert, a Republican, has opened a new front in the heated debate over fetal pain.

The science examining when a fetus begins to feel pain is complex. Most scientists who have expressed views on the issue have said they do not think the neurological wiring to feel pain is in place until a fetus is further along in a pregnancy, past the point when nearly all abortions occur.

But in recent years the issue has become political fodder in legislative battles over restricting abortions later in a pregnancy.

Anti-abortion groups and lawmakers in Utah said they were acting out of concern for the fetus. But abortion rights activists and some obstetricians and maternal care doctors in Utah said the law was bafflingly vague and scientifically unsound. They said that it intruded into confidential decisions between doctors and patients, and that it could put women’s health at risk by creating a broad requirement for them to take unspecified painkillers.

“You’re asking me to invent a procedure that doesn’t have any research to back it up,” said Dr. Leah Torres, an obstetrician-gynecologist who spends half of a Saturday each month working in Salt Lake City at one of Utah’s two licensed abortion clinics. “You want me to experiment on my patients.”

In recent years, abortion opponents have cited concerns over fetal pain to pass state-level restrictions on abortions occurring at 20 weeks or later — or to pass laws requiring doctors to tell women that a fetus may feel pain at that stage of development.

But many doctors reject those claims, saying a fetus’s brain and nervous system are not developed at 20 weeks to feel pain. They cite a wide-ranging 2005 study that found a fetus was unlikely to feel pain until the third trimester of a pregnancy, or about 27 weeks. The American Congress of Obstetricians and Gynecologists said in 2013 that no subsequent research had contradicted that study.

Curt Bramble, a Republican state senator in Utah who is also a certified public accountant, said he had sponsored the anesthesia law to extend “common decency” to a procedure he would rather outlaw altogether. He said an outright ban on abortions, or on those at 20 weeks, was unlikely to survive a legal challenge. Instead, he said he hoped Utah’s law would shift

the focus of the abortion debate onto the fetus.

“Who’s making the decisions for the child?” he said. “Who’s the doctor for the baby? It’s not the woman’s body we’re talking about. It’s a separate person.”

The law, which takes effect on May 10, contains exceptions for cases of rape and incest or if two doctors agree in writing that the fetus has a condition that is “uniformly lethal.” It also exempts cases when a woman would die or have major, irreversible health problems without terminating the pregnancy.

Mary Taylor, the president of **Pro-Life Utah**, who testified in support of the law, said she appreciated its focus on the condition of the fetus and on surgical abortions that she called “barbaric and horrific.”

Dr. Torres and other critics argued that the law was unworkable and made no medical sense. They said it offered no definition of what, in Utah’s view, legally constitutes a fetal anesthetic. Many women already receive anesthesia or painkillers if they have surgical abortions, and those drugs naturally pass to the fetus. Dr. Torres asked if that would be enough — if Motrin would suffice. And other doctors asked if they would have to specifically inject a fetus with an anesthetic through a woman’s abdominal wall.

“We don’t know what to do,” Dr. Torres said. “What does it mean? How do we not break this law?”

The law says that doctors who perform abortions at this stage of pregnancy — a rarity, according to a **2012 tally** by the Centers for Disease Control and Prevention — must provide “anesthetic or analgesic to alleviate organic pain to the unborn child.” It also requires doctors to tell women that “substantial medical evidence” shows that a **20-week fetus** may feel pain during an abortion. Critics said scientific research did not prove that statement.

A spokesman for Utah’s Health Department said it was leaving decisions about anesthetics and analgesics up to individual doctors. But the doctors are required to issue the warning about fetal pain as part of a long list of notifications women must be given before having an abortion.

Doctors found guilty of violating the law could lose their licenses or face **thousands of dollars in fines**.

People on both sides of the debate said it was likely to affect only a handful of women. In **2014**, there were 17 abortions in Utah at or beyond 20 weeks, according to Karrie Galloway, the chief executive of Utah’s Planned Parenthood chapter.

Abortions that late in a pregnancy often occur after doctors discover severe or lethal problems with how a fetus is developing, or after a pregnancy begins to pose a health risk to the mother, said Dr. Alexandra Grosvenor Eller, a physician in Salt Lake City specializing in maternal fetal medicine and an assistant professor at the University of Utah.

Dr. Eller was among 24 physicians who wrote to the Legislature objecting to the law, citing the scientific research suggesting that pain could not be felt until later in a pregnancy.

The physicians who objected to the law said doctors often induced labor to terminate pregnancies after 20 weeks. They said they did not administer intravenous painkillers or anesthesia to mothers to anesthetize a fetus during normal deliveries, and asked why they should do so during an abortion, or during the delivery of a fetus with profound problems that was expected to die outside the womb.

“This is an egregious attempt to tell us how to practice medicine,” Dr. Eller said. “I can’t think of any other area where the Legislature tells us what medications to give to patients.”

Like more than a dozen other states, Utah prohibits any state money for abortions and has placed strict limits on what kinds of clinics and facilities can provide abortions, as well as the types of abortions they can perform. In her practice, Dr. Eller said she was limited to terminating pregnancies in which there was a lethal or severe problem with a fetus’s development.

The conversations with couples can be wrenching, she said. They sometimes come into the office hoping to find out

whether they are having a boy or a girl, and discover there is an untreatable problem with how its heart or brain is developing.

“We make this devastating diagnosis,” she said. “You walk into that room and you’re going to change someone’s life forever. For the Legislature to tell me how to counsel that woman — these conversations are hard enough.”

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