

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION**

PLANNED PARENTHOOD SOUTHWEST
OHIO REGION, PLANNED PARENTHOOD
OF GREATER OHIO, SHARON LINER,
M.D., and WOMEN'S MED GROUP
PROFESSIONAL CORPORATION

Plaintiffs,

v.

DAVID YOST, Attorney General of Ohio;
MICHAEL O'MALLEY, Cuyahoga County
Prosecutor; RONALD O'BRIEN, Franklin
County Prosecutor; JOSEPH DETERS,
Hamilton County Prosecutor; and MATHIAS
HECK Jr., Montgomery County Prosecutor,
each in their official capacities, as well as their
employees, agents, and successors,

Defendants.

Case No. 1:19-cv-118

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

Plaintiffs Planned Parenthood Southwest Ohio Region (PPSWO); Planned Parenthood of Greater Ohio (PPGOH); Sharon Liner, M.D.; and Women's Med Group Professional Corporation (WMGPC), by and through their attorneys, hereby allege the following:

INTRODUCTION

1. Plaintiffs bring this action under 42 U.S.C. § 1983 to enjoin and declare unconstitutional Ohio Rev. Code Section 2919.15 ("the Act" or "the D&E Ban"), Ohio's latest attempt at preventing women from exercising their constitutional right to abortion. The Act is scheduled to take effect on March 22, 2019.

2. The Act bans the dilation and evacuation abortion procedure (D&E), the safest and most common method of abortion after approximately 15 weeks of pregnancy, and the only

method that is provided in outpatient facilities. Under the Act, physicians who perform D&Es face severe criminal and civil penalties for providing lawful, pre-viability abortion care. A copy of the Act is attached hereto as Exhibit A.

3. Should the Act be allowed to take effect, Plaintiffs' patients' health and access to abortion care will be threatened, and their constitutional rights will be violated. Specifically, a ban on D&E procedures imposes an undue burden on women seeking abortions after approximately 15 weeks of pregnancy. In addition, to the extent that physicians can continue performing D&E procedures by causing fetal demise prior to evacuation, the D&E Ban violates Plaintiffs' patients' right both to choose abortion and to bodily integrity by requiring them to undergo an additional, unnecessary, and invasive medical procedure that provides no attendant benefit in order to access abortion.

4. The D&E Ban is plainly contrary to Supreme Court and Sixth Circuit precedent barring restrictions that impose an undue burden on a woman's right to choose an abortion. Indeed, the Sixth Circuit has already specifically considered and invalidated a statute that banned D&Es (*Northland Family Planning Clinic, Inc. v. Cox*, 487 F.3d 323, 337 (6th Cir. 2007)), holding that such a statute imposes an unconstitutional undue burden, and *every* court to recently consider similar laws—including in Alabama, Arkansas, Kansas, Kentucky, and Texas—has blocked them from taking effect.

5. To safeguard their patients from these constitutional violations and to avoid irreparable harm, Plaintiffs seek declaratory and injunctive relief to prevent against enforcement of Section 2919.15.

JURISDICTION AND VENUE

6. The court has subject matter jurisdiction over Plaintiffs' claims under 28 U.S.C. §§ 1331 and 1343(a)(3) and (a)(4).

7. Plaintiffs' action for declaratory and injunctive relief is authorized by 28 U.S.C. §§ 2201 and 2202, by Rules 57 and 65 of the Federal Rules of Civil Procedure, and by the general legal and equitable powers of this Court.

8. Venue is proper under 28 U.S.C. § 1391 because a substantial part of the events or omissions giving rise to the claims occurred in this district and because Defendant Joseph Deters resides in this district.

PARTIES

9. PPSWO is a non-profit corporation organized under the laws of the state of Ohio. PPSWO and its predecessor organizations have provided a broad range of high-quality reproductive health care to patients in Southwest Ohio since 1929. PPSWO provides medical services to women and men at seven health centers in Southwest Ohio, including: birth control, annual gynecological examinations, cervical pap smears, diagnosis and treatment of vaginal infections, testing and treatment for certain sexually transmitted diseases, HIV testing, and pregnancy testing. PPSWO's surgery center, located in Cincinnati, provides abortion services through 21 weeks 6 days of pregnancy as measured from the first day of the woman's last menstrual period (LMP), including D&Es. Physicians who perform abortions at PPSWO are threatened with criminal penalties, civil liability, and resulting potential loss of their medical license, if they violate Section 2919.15. PPSWO is likewise threatened with criminal liability by the Act. PPSWO is suing on behalf of itself; its current and future medical staff, officers, and agents; and its patients.

10. PPGOH is a non-profit corporation organized under the laws of the state of Ohio. PPGOH was formed in 2012 through a merger of several local and regional Planned Parenthood affiliates that had served patients in Ohio for decades. PPGOH serves patients in northern, eastern, and central Ohio, and provides a range of medical services to women and men at its

nineteen health centers, including birth control, annual gynecological examinations, cervical pap smears, diagnosis and treatment of vaginal infections, testing and treatment for certain sexually transmitted diseases, HIV testing, and pregnancy testing. Two PPGOH health centers, located in East Columbus and Bedford Heights, provide abortion services through 19 weeks 6 days LMP and 18 weeks 6 days of pregnancy LMP, respectively, including D&Es. Physicians who perform abortions at PPGOH are threatened with criminal penalties, civil liability, and resulting potential loss of their medical license, if they violate Section 2919.15. PPGOH is likewise threatened with criminal liability by the Act. PPGOH is suing on behalf of itself; its current and future medical staff, officers, and agents; and its patients.

11. WMGPC owns and operates Women's Med Center of Dayton (WMCD) at 1401 E. Stroop Road in Kettering, Ohio. WMGPC and its predecessors have been providing abortions to women in the Dayton area since 1975, soon after *Roe v. Wade*, 410 U.S. 113 (1973), was decided. WMCD's physicians provide healthcare services to women, including surgical abortions, pregnancy testing, and birth control. WMCD provides approximately 2,800 abortions per year. WMCD provides abortions to women to 21 weeks 6 days of pregnancy LMP or to 450 grams estimated fetal weight, whichever is less. WMGPC is suing on behalf of itself; its current and future medical staff, officers, and agents; and its patients.

12. Plaintiff Sharon Liner, M.D., is a physician licensed to practice medicine in Ohio with 15 years of experience in women's healthcare. For the last 12 years, Dr. Liner has served as Director of Surgical Services of PPSWO in Cincinnati, where she supervises physicians practicing in PPSWO's surgical center, develops PPSWO policies and procedures, and provides health care services to women. She has served as Medical Director since October 2018. Dr.

Liner has been performing abortions since 2002, and provides medication abortions up to 10 weeks LMP and surgical abortions, including D&Es, to women through 21 weeks 6 days LMP.

13. Defendant David Yost is the Attorney General of the State of Ohio. He is responsible for the enforcement of all laws, including Section 2919.15. Yost is sued in his official capacity.

14. Defendant Michael O'Malley is the Cuyahoga County Prosecutor, where PPGOH's Bedford Heights health center is located. He is responsible for the enforcement of all laws in Cuyahoga County, including Section 2919.15. O'Malley is sued in his official capacity.

15. Defendant Ronald O'Brien is the Franklin County Prosecutor, where PPGOH's East Columbus health center is located. He is responsible for the enforcement of all laws in Franklin County, including Section 2919.15. O'Brien is sued in his official capacity.

16. Defendant Joseph Deters is the Hamilton County Prosecutor, where PPSWO's Mt. Auburn surgery center is located in Cincinnati. He is responsible for the enforcement of all laws in Hamilton County, including Section 2919.15. Deters is sued in his official capacity.

17. Defendant Mathias Heck Jr. is the Montgomery County Prosecutor, where WMGPC's Women's Med Center of Dayton is located in Kettering, Ohio. He is responsible for the enforcement of all laws in Montgomery County, including Section 2919.15. Heck is sued in his official capacity.

FACTUAL ALLEGATIONS

I. ABORTION CARE IN OHIO

18. Legal abortion is one of the safest medical procedures in the United States and is markedly safer for women than carrying a pregnancy to term and giving birth. It is also common; approximately one-quarter of women will have an abortion at some point in their lifetime.

19. As in the nation as a whole, the vast majority of abortions in Ohio—over 85%—are performed during the first trimester of pregnancy, up to approximately 13 weeks 6 days LMP.¹ Nevertheless, a significant number of women in Ohio seek abortions between 14 and 21 weeks 6 days LMP.

20. Women seek abortion throughout pregnancy for a variety of personal and medical reasons, including poverty, youth, and having completed their family. Women may also need to seek abortion during the second trimester due to delays in suspecting and testing for pregnancy; delays in obtaining funds necessary for the procedure and related expenses (travel, childcare, lost wages); a medical condition requiring hospital referral, and delay in obtaining a referral; as well as difficulties locating and travelling to a provider. In addition, the identification of most major anatomic or genetic anomalies in the fetus occurs in the second trimester, and women may choose to terminate a pregnancy for that reason.²

21. During the first trimester of pregnancy, there are two types of abortion: medication and surgical. A medication abortion, which is only available up to 10 weeks LMP in Ohio, involves taking two types of medication (pills) usually one day apart. Surgical abortions in the first trimester are performed by dilating (opening) the woman's cervix and using suction to remove the uterine contents.

¹ See Ohio Dep't of Health, *Induced Abortions in Ohio* (2017). The typical pregnancy is three trimesters long and lasts approximately 40 weeks. While there is no hard and fast medical cutoff, the first trimester is typically understood to be the first 13 weeks LMP. See Am. Coll. of Obstetricians & Gynecologists, *How Your Fetus Grows During Pregnancy* (Apr. 2018). The second trimester spans approximately 14 through 27 weeks LMP, and the third trimester then runs from 28 weeks to delivery, which typically happens around week 40. *Id.*

² Am. Coll. of Obstetricians & Gynecologists, *Practice Bulletin Number 135: Second Trimester Abortion*, 121 *Obstetrics & Gynecology* 1394 (2013).

22. Starting at approximately 15 weeks LMP, suction alone may no longer be sufficient to perform the procedure. Physicians thus begin using the D&E method, which involves the removal of the fetus and other products of conception from the uterus using instruments, such as forceps, and sometimes suction. Because the cervical opening is narrower than the fetal parts, some separation of fetal tissues often occurs as the physician withdraws the uterine contents through the cervix. As a final step, a physician may use suction to ensure that the uterus is completely evacuated. This process generally takes approximately 10 minutes. Starting at approximately 15 weeks LMP, D&E is the only abortion method available in an outpatient setting in Ohio.

23. The only alternative to D&E for women in their second trimester is an inpatient induction abortion procedure, in which physicians use medications to induce labor and delivery of a non-viable fetus. Induction abortions must be performed in a hospital or similar facility that has the capacity to monitor a patient overnight and are thus not performed in outpatient facilities in Ohio. Because induction abortions are expensive and involve going through labor, along with all the pain and potential for complications that it entails, very few women choose an induction abortion over D&E. Induction of labor accounts for only about 5% of second-trimester abortions nationally.

II. OHIO'S EXISTING RESTRICTIONS ON ABORTION ACCESS

24. The D&E Ban is the latest in a long string of attempts by Ohio to place burdensome, medically unnecessary restrictions on women's access to abortion, exacerbating the burdens women already face in accessing care. For example, under Ohio law, women must make an additional "informed consent" trip to a physician at least 24 hours in advance of their procedure to receive a state-mandated ultrasound and counseling. Ohio Rev. Code §§ 2317.56, 2919.191, 2919.192. Ohio also prohibits performing an abortion when the "probable post-

fertilization age” is twenty weeks or greater. *Id.* § 2919.201. Further, Ohio law requires physicians to determine whether there is a detectable fetal heartbeat prior to providing an abortion, and to inform the pregnant woman in writing when a fetal heartbeat is detected. *Id.* §§ 2919.191-192. Clinics performing surgical abortions must be licensed as an ambulatory surgical facility and must secure a written transfer agreement with certain hospitals within 30 miles of their location. *Id.* §§ 3702.30, 3702.303, 3727.60(B)(1). In 2018, Ohio passed a law prohibiting abortion if one reason for a woman’s decision to terminate her pregnancy is a fetal indication of Down syndrome. *Id.* § 2919.10.

25. The D&E ban is Ohio’s most recent attempt to restrict access to second-trimester abortions. Ohio law already bans dilation and extraction (D&X) abortion procedures, referred to by opponents of abortion as “partial-birth” abortions. Until the passage of the Act, Ohio’s ban on D&X procedures specifically exempted D&E abortions.³ Ohio Rev. Code § 2919.151. The Act amends Section 2919.151 to include a prohibition on D&E abortions, threatening to turn Ohio’s restrictions into an outright elimination of access to second-trimester abortion in Ohio.

26. Even without the Act taking effect, Ohio’s legal restrictions have led to greatly reduced abortion access in Ohio. The number of clinics performing abortions in Ohio has decreased from 18 in 2011 to just 12 by 2014. In the last four years, three of those 12 clinics have closed, leaving just nine that offer abortion services and only six that perform surgical abortions.

27. This compounds the raft of obstacles Plaintiffs’ patients already face in obtaining abortion care. The majority of their patients are low-income, and many struggle to afford the

³ Indeed, the D&X ban was upheld in part because it exempted D&E abortions. *See Women’s Med. Prof’l Corp. v. Taft*, 353 F.3d 436, 451, 453 (6th Cir. 2003).

costs associated with the procedure, including missed work, childcare, transportation to and from the clinic, and hotel stays.

III. OHIO'S BAN ON D&E PROCEDURES

28. The D&E Ban criminalizes the performance of what Ohio calls a “dismemberment abortion.” Although it does not use medical terms, the definition in the statute makes clear that it prohibits what medical professionals commonly refer to as D&E. D&E is the safest and most common abortion method starting in the early second trimester, accounting for approximately 95% of second-trimester abortions nationally.

29. The D&E Ban defines “dismemberment abortion” as follows:

“Dismemberment abortion” means, with the purpose of causing the death of an unborn child, to dismember a living unborn child and extract the unborn child one piece at a time from the uterus through use of clamps, grasping forceps, tongs, scissors, or similar instruments that, through the convergence of two rigid levers, slice, crush, or grasp a portion of the unborn child’s body to cut or rip it off. “Dismemberment abortion” does not include a procedure performed after the death of the unborn child to extract any remaining parts of the unborn child.

Ohio Rev. Code § 2919.15(A).

30. Violating the D&E Ban constitutes a fourth-degree felony, with potential jail time, significant fines, and/or loss of the physician’s medical license. Ohio Rev. Code § 2919.15(C); *see also id.* § 4731.01(B)(10) (commission of an act that constitutes a felony in Ohio may lead to the limitation, revocation, or suspension of physician’s license to practice). It also subjects physicians to civil liability. *Id.* § 2307.53(A).

31. The D&E Ban contains a narrow exception for instances in which a woman’s life is in danger or there is a “serious risk [to the woman] of the *substantial* and *irreversible* physical impairment of a major bodily function.” Ohio Rev. Code § 2919.15(B) (emphases supplied).

32. The D&E Ban does not apply in instances where the physician—through a separate, invasive procedure—causes fetal demise prior to starting the evacuation phase of the D&E. This does not, however, materially narrow the scope of the Ban or lessen its impact.

IV. DEMISE PROCEDURES DO NOT SAVE THE ACT

33. There are three potential demise procedures that could be undertaken prior to a D&E procedure: an injection of digoxin into the fetus or amniotic fluid, an injection of potassium chloride (KCl) into the fetal heart, or umbilical cord transection. However, none of these procedures is consistently safe and reliable at all stages of pregnancy. A minority of physicians use a hypodermic needle to inject a drug called digoxin transabdominally (through the abdomen into the uterus) or transvaginally (through the vaginal wall or the cervix) into the fetus or amniotic sac to attempt to cause fetal demise prior to performing a D&E. The physicians who use digoxin do so primarily out of fear of prosecution under federal and state laws banning D&X abortions. *See* Ohio Rev. Code § 2919.151; 18 U.S.C. § 1531.

34. Injection of digoxin is medically unnecessary and published data show that it provides no medical benefits. Indeed, according to the American College of Obstetricians and Gynecologists: “No evidence currently supports the use of induced fetal demise to increase the safety of second-trimester medical or surgical abortion.”⁴

35. On the contrary, digoxin carries health risks for the patient. Risks associated with digoxin include extramural delivery (delivery outside a medical facility), infection, and increased risk of hospitalization. For patients with certain cardiac conditions, like arrhythmia, digoxin may be contraindicated, as digoxin can be life threatening for these patients if it enters the maternal circulation. In addition, digoxin can be difficult or impossible to administer for some patients,

⁴ Am. Coll. Obstetricians & Gynecologists, *Practice Bulletin Number 135: Second-Trimester Abortion* (June 2013).

including those with obesity, fibroids, or cesarean scars from previous deliveries. Some patients may find the procedure painful or stressful as it requires injecting patients with a long needle. For women before 18 weeks LMP, administering digoxin is untested and unproven as a method of demise, as such early usage is virtually unstudied. Injecting women at that stage of pregnancy with digoxin would subject them to an experimental and medically unnecessary procedure.

36. Use of digoxin alone cannot guarantee fetal demise will occur before a D&E is performed. Digoxin takes up to 24 hours to cause fetal demise when it works, but medical literature on the use of digoxin at or after 18 weeks estimates that digoxin fails to cause demise in 5 to 10% of patients. If the D&E Ban goes into effect, a second injection (or other means of demise) would be necessary in these cases. Second digoxin injections are unstudied and are not used in Ohio abortion practice. Patients would already have had their cervix dilated and thus face an increased risk of extramural delivery or infection following a second injection. At the very least, a second injection would prolong the procedure by another day while waiting to ensure the second injection was effective.

37. The D&E Ban's exception to protect the health of the patient does not provide physicians with protection from criminal prosecution if they are faced with a scenario in which digoxin has failed to cause demise, but it is in the patient's best medical interest to complete the procedure. In such cases, it is unlikely that a physician could certify, on pain of criminal penalty, that the patient's condition falls within the Act's extremely narrow health exception, even though it is important to complete the D&E procedure at that point for her health. Ohio Rev. Code § 2919.15(B).

38. An injection of KCl directly into the fetal heart does effectively cause demise, but such an injection is extremely difficult to administer. It requires extensive training typically

provided only to sub-specialists in high-risk obstetrics, known as maternal-fetal medicine (MFM). Moreover, inadvertent injection of KCl into the woman's bloodstream carries the serious risk of cardiac arrest and fatality. Abortion providers in outpatient clinics in Ohio do not use KCl for these reasons.

39. Nor would umbilical cord transection (UCT)—which requires inserting an instrument or suction tube into the uterus, locating and securing the umbilical cord, and then transecting (dividing) it—allow physicians to comply with the statute. UCT is difficult to perform, particularly in earlier pregnancies when the cord is small and difficult to locate via ultrasound. In other cases, access to the cord may be blocked by the fetus. For some physicians who do not have specialized training, UCT may be difficult to perform.

40. Performing a UCT procedure also adds risks to the D&E procedure. Physicians must make additional passes of instruments into the woman's uterus to locate and transect the cord, which increases the risk of uterine perforation, cervical injury, heavy bleeding, and infection. If the physician is able to locate and transect the cord, she must wait for fetal demise to occur, which can take approximately 10 minutes. UCT therefore would significantly prolong the D&E process, potentially taking as long as the D&E procedure itself. If a physician is unable to locate the cord and complete transection, it is very unlikely that the D&E Ban's exception to protect the health of the patient would allow the physician to proceed with the D&E. This is despite the fact that it would be necessary for the safety of the patient to complete the procedure at that point.

41. Further, while attempting to perform a UCT, physicians may accidentally grab fetal tissue instead of the cord, as the cord and tissue are difficult to distinguish on ultrasound once the amniotic fluid has been drained. This would constitute a D&E without demise—a

violation of the Act. A physician's intent to cause demise is not an exception to liability under the Act. Thus, with each attempted UCT, Plaintiffs' physicians would risk unintentionally violating the statute.

V. UNDUE BURDEN

42. The Act would unduly burden women's constitutional right to choose an abortion by barring D&E, the safest and most common method of abortion beginning at approximately 15 weeks of pregnancy. The Act's fetal demise requirement does not ease that burden. To the contrary, a requirement that every woman endure a separate, invasive procedure that introduces additional risks before obtaining a lawful, pre-viability abortion itself constitutes a substantial burden, because the additional procedures offer no medical benefit to the patient but carry health risks. And for women for whom possible demise methods are contraindicated, their access to abortion after approximately 15 weeks of pregnancy would disappear.

43. Moreover, physicians who want to continue providing D&Es would risk violating the Act—and facing prosecution—with every D&E procedure they attempt. The Act provides no safe harbor for physicians who intend to comply with the Act's fetal demise requirement but are unable to do so. It is impossible for a physician to know upon starting a D&E whether demise can be safely achieved before the doctor believes it is necessary to complete the procedure to protect the patient's health (although the patient's condition does not fall within the Act's narrow health exception). In other words, were a demise attempt to fail, Plaintiffs would be put in the impossible position of choosing between facing prosecution or jeopardizing their patients' health. Thus, the D&E Ban may prevent physicians from starting any D&E procedure.

CLAIMS FOR RELIEF

COUNT I

(Due Process—Right to Liberty and Privacy)

44. The allegations of paragraphs 1 through 43 are incorporated as though fully set forth herein.

45. Ohio Rev. Code Section 2919.15 violates the right of Plaintiffs' patients to liberty and privacy as guaranteed by the Due Process Clause of the Fourteenth Amendment to the United States Constitution, imposing an undue burden on women seeking to terminate a pregnancy before viability.

COUNT II

(Due Process—Right to Bodily Integrity)

46. The allegations of paragraphs 1 through 43 are incorporated as though fully set forth herein.

47. Ohio Rev. Code Section 2919.15 violates the right of Plaintiffs' patients to bodily integrity as guaranteed by the Due Process Clause of the Fourteenth Amendment to the United States Constitution by, inter alia, forcing women to undergo a separate, invasive and painful procedure that introduces health risks in order to obtain a second-trimester abortion, without adequate justification.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs request that this Court:

A. Issue a preliminary injunction and permanent injunction restraining Defendants and their successors in office from enforcing Ohio Rev. Code Section 2919.15.

B. Issue a judgment declaring that Ohio Rev. Code Section 2919.15 violates the Fourteenth Amendment to the United States Constitution.

- C. Award to Plaintiffs their attorneys' fees and costs pursuant to 42 U.S.C. § 1988.
- D. Award such other and further relief as this Court shall deem just and reasonable.

February 14, 2019

Respectfully submitted,

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CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS
Planned Parenthood, Southwest Ohio Region, et al.
(b) County of Residence of First Listed Plaintiff Hamilton
(c) Attorneys (Firm Name, Address, and Telephone Number)
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DEFENDANTS
David Yost, et al.
County of Residence of First Listed Defendant
NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.
Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)
1 U.S. Government Plaintiff
2 U.S. Government Defendant
3 Federal Question (U.S. Government Not a Party)
4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)
PTF DEF
Citizen of This State
Citizen of Another State
Citizen or Subject of a Foreign Country

Table with 5 columns: CONTRACT, REAL PROPERTY, TORTS, CIVIL RIGHTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES. Contains various legal categories and checkboxes.

V. ORIGIN (Place an "X" in One Box Only)
1 Original Proceeding
2 Removed from State Court
3 Remanded from Appellate Court
4 Reinstated or Reopened
5 Transferred from Another District (specify)
6 Multidistrict Litigation - Transfer
8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION
Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
42 U.S.C. § 1983
Brief description of cause:
Violation of 14th Amendment Due Process Clause to the U.S. Constitution

VII. REQUESTED IN COMPLAINT:
CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$
CHECK YES only if demanded in complaint: JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY (See instructions): JUDGE DOCKET NUMBER

DATE 02/14/2019
FOR OFFICE USE ONLY
RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE
SIGNATURE OF ATTORNEY OF RECORD (Handwritten signature)

EXHIBIT A

(132nd General Assembly)
(Substitute Senate Bill Number 145)

AN ACT

To amend sections 2305.114, 2307.53, 2901.01, 2903.09, 2919.123, 2919.151, and 2967.193 and to enact section 2919.15 of the Revised Code to criminalize and create a civil action for dismemberment abortions.

Be it enacted by the General Assembly of the State of Ohio:

SECTION 1. That sections 2305.114, 2307.53, 2901.01, 2903.09, 2919.123, 2919.151, and 2967.193 be amended and section 2919.15 of the Revised Code be enacted to read as follows:

Sec. 2305.114. A civil action pursuant to section 2307.53 of the Revised Code for partial birth feticide or dismemberment feticide shall be commenced within one year after the commission of ~~that~~ the offense.

Sec. 2307.53. (A) As used in this section:

(1) "Dismemberment abortion" has the same meaning as in section 2919.15 of the Revised Code.

(2) "Frivolous conduct" has the same meaning as in section 2323.51 of the Revised Code.

~~(2)-(3)~~ "Partial birth procedure" has the same meaning as in section 2919.151 of the Revised Code.

(B) A woman upon whom a partial birth procedure is performed in violation of division (B) or (C) of section 2919.151 of the Revised Code, a woman upon whom a dismemberment abortion is performed in violation of division (B) of section 2919.15 of the Revised Code, the father of the child if the child was not conceived by rape, or the parent of the woman if the woman is not eighteen years of age or older at the time of the violation has and may commence a civil action for compensatory damages, punitive or exemplary damages if authorized by section 2315.21 of the Revised Code, and court costs and reasonable attorney's fees against the person who committed the violation.

(C) If a judgment is rendered in favor of the defendant in a civil action commenced pursuant to division (B) of this section and the court finds, upon the filing of a motion under section 2323.51 of the Revised Code, that the commencement of the civil action constitutes frivolous conduct and that the defendant was adversely affected by the frivolous conduct, the court shall award in accordance with section 2323.51 of the Revised Code reasonable attorney's fees to the defendant.

Sec. 2901.01. (A) As used in the Revised Code:

(1) "Force" means any violence, compulsion, or constraint physically exerted by any means upon or against a person or thing.

(2) "Deadly force" means any force that carries a substantial risk that it will proximately result in the death of any person.

(3) "Physical harm to persons" means any injury, illness, or other physiological impairment, regardless of its gravity or duration.

Sub. S. B. No. 145

132nd G.A.

2

(4) "Physical harm to property" means any tangible or intangible damage to property that, in any degree, results in loss to its value or interferes with its use or enjoyment. "Physical harm to property" does not include wear and tear occasioned by normal use.

(5) "Serious physical harm to persons" means any of the following:

(a) Any mental illness or condition of such gravity as would normally require hospitalization or prolonged psychiatric treatment;

(b) Any physical harm that carries a substantial risk of death;

(c) Any physical harm that involves some permanent incapacity, whether partial or total, or that involves some temporary, substantial incapacity;

(d) Any physical harm that involves some permanent disfigurement or that involves some temporary, serious disfigurement;

(e) Any physical harm that involves acute pain of such duration as to result in substantial suffering or that involves any degree of prolonged or intractable pain.

(6) "Serious physical harm to property" means any physical harm to property that does either of the following:

(a) Results in substantial loss to the value of the property or requires a substantial amount of time, effort, or money to repair or replace;

(b) Temporarily prevents the use or enjoyment of the property or substantially interferes with its use or enjoyment for an extended period of time.

(7) "Risk" means a significant possibility, as contrasted with a remote possibility, that a certain result may occur or that certain circumstances may exist.

(8) "Substantial risk" means a strong possibility, as contrasted with a remote or significant possibility, that a certain result may occur or that certain circumstances may exist.

(9) "Offense of violence" means any of the following:

(a) A violation of section 2903.01, 2903.02, 2903.03, 2903.04, 2903.11, 2903.12, 2903.13, 2903.15, 2903.21, 2903.211, 2903.22, 2905.01, 2905.02, 2905.11, 2905.32, 2907.02, 2907.03, 2907.05, 2909.02, 2909.03, 2909.24, 2911.01, 2911.02, 2911.11, 2917.01, 2917.02, 2917.03, 2917.31, 2919.25, 2921.03, 2921.04, 2921.34, or 2923.161, of division (A)(1) of section 2903.34, of division (A)(1), (2), or (3) of section 2911.12, or of division (B)(1), (2), (3), or (4) of section 2919.22 of the Revised Code or felonious sexual penetration in violation of former section 2907.12 of the Revised Code;

(b) A violation of an existing or former municipal ordinance or law of this or any other state or the United States, substantially equivalent to any section, division, or offense listed in division (A) (9)(a) of this section;

(c) An offense, other than a traffic offense, under an existing or former municipal ordinance or law of this or any other state or the United States, committed purposely or knowingly, and involving physical harm to persons or a risk of serious physical harm to persons;

(d) A conspiracy or attempt to commit, or complicity in committing, any offense under division (A)(9)(a), (b), or (c) of this section.

(10)(a) "Property" means any property, real or personal, tangible or intangible, and any interest or license in that property. "Property" includes, but is not limited to, cable television service, other telecommunications service, telecommunications devices, information service, computers, data,

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computer software, financial instruments associated with computers, other documents associated with computers, or copies of the documents, whether in machine or human readable form, trade secrets, trademarks, copyrights, patents, and property protected by a trademark, copyright, or patent. "Financial instruments associated with computers" include, but are not limited to, checks, drafts, warrants, money orders, notes of indebtedness, certificates of deposit, letters of credit, bills of credit or debit cards, financial transaction authorization mechanisms, marketable securities, or any computer system representations of any of them.

(b) As used in division (A)(10) of this section, "trade secret" has the same meaning as in section 1333.61 of the Revised Code, and "telecommunications service" and "information service" have the same meanings as in section 2913.01 of the Revised Code.

(c) As used in divisions (A)(10) and (13) of this section, "cable television service," "computer," "computer software," "computer system," "computer network," "data," and "telecommunications device" have the same meanings as in section 2913.01 of the Revised Code.

(11) "Law enforcement officer" means any of the following:

(a) A sheriff, deputy sheriff, constable, police officer of a township or joint police district, marshal, deputy marshal, municipal police officer, member of a police force employed by a metropolitan housing authority under division (D) of section 3735.31 of the Revised Code, or state highway patrol trooper;

(b) An officer, agent, or employee of the state or any of its agencies, instrumentalities, or political subdivisions, upon whom, by statute, a duty to conserve the peace or to enforce all or certain laws is imposed and the authority to arrest violators is conferred, within the limits of that statutory duty and authority;

(c) A mayor, in the mayor's capacity as chief conservator of the peace within the mayor's municipal corporation;

(d) A member of an auxiliary police force organized by county, township, or municipal law enforcement authorities, within the scope of the member's appointment or commission;

(e) A person lawfully called pursuant to section 311.07 of the Revised Code to aid a sheriff in keeping the peace, for the purposes and during the time when the person is called;

(f) A person appointed by a mayor pursuant to section 737.01 of the Revised Code as a special patrolling officer during riot or emergency, for the purposes and during the time when the person is appointed;

(g) A member of the organized militia of this state or the armed forces of the United States, lawfully called to duty to aid civil authorities in keeping the peace or protect against domestic violence;

(h) A prosecuting attorney, assistant prosecuting attorney, secret service officer, or municipal prosecutor;

(i) A veterans' home police officer appointed under section 5907.02 of the Revised Code;

(j) A member of a police force employed by a regional transit authority under division (Y) of section 306.35 of the Revised Code;

(k) A special police officer employed by a port authority under section 4582.04 or 4582.28 of the Revised Code;

(l) The house of representatives sergeant at arms if the house of representatives sergeant at

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arms has arrest authority pursuant to division (E)(1) of section 101.311 of the Revised Code and an assistant house of representatives sergeant at arms;

(m) The senate sergeant at arms and an assistant senate sergeant at arms;

(n) A special police officer employed by a municipal corporation at a municipal airport, or other municipal air navigation facility, that has scheduled operations, as defined in section 119.3 of Title 14 of the Code of Federal Regulations, 14 C.F.R. 119.3, as amended, and that is required to be under a security program and is governed by aviation security rules of the transportation security administration of the United States department of transportation as provided in Parts 1542. and 1544. of Title 49 of the Code of Federal Regulations, as amended.

(12) "Privilege" means an immunity, license, or right conferred by law, bestowed by express or implied grant, arising out of status, position, office, or relationship, or growing out of necessity.

(13) "Contraband" means any property that is illegal for a person to acquire or possess under a statute, ordinance, or rule, or that a trier of fact lawfully determines to be illegal to possess by reason of the property's involvement in an offense. "Contraband" includes, but is not limited to, all of the following:

(a) Any controlled substance, as defined in section 3719.01 of the Revised Code, or any device or paraphernalia;

(b) Any unlawful gambling device or paraphernalia;

(c) Any dangerous ordnance or obscene material.

(14) A person is "not guilty by reason of insanity" relative to a charge of an offense only if the person proves, in the manner specified in section 2901.05 of the Revised Code, that at the time of the commission of the offense, the person did not know, as a result of a severe mental disease or defect, the wrongfulness of the person's acts.

(B)(1)(a) Subject to division (B)(2) of this section, as used in any section contained in Title XXIX of the Revised Code that sets forth a criminal offense, "person" includes all of the following:

(i) An individual, corporation, business trust, estate, trust, partnership, and association;

(ii) An unborn human who is viable.

(b) As used in any section contained in Title XXIX of the Revised Code that does not set forth a criminal offense, "person" includes an individual, corporation, business trust, estate, trust, partnership, and association.

(c) As used in division (B)(1)(a) of this section:

(i) "Unborn human" means an individual organism of the species *Homo sapiens* from fertilization until live birth.

(ii) "Viable" means the stage of development of a human fetus at which there is a realistic possibility of maintaining and nourishing of a life outside the womb with or without temporary artificial life-sustaining support.

(2) Notwithstanding division (B)(1)(a) of this section, in no case shall the portion of the definition of the term "person" that is set forth in division (B)(1)(a)(ii) of this section be applied or construed in any section contained in Title XXIX of the Revised Code that sets forth a criminal offense in any of the following manners:

(a) Except as otherwise provided in division (B)(2)(a) of this section, in a manner so that the offense prohibits or is construed as prohibiting any pregnant woman or her physician from

performing an abortion with the consent of the pregnant woman, with the consent of the pregnant woman implied by law in a medical emergency, or with the approval of one otherwise authorized by law to consent to medical treatment on behalf of the pregnant woman. An abortion that violates the conditions described in the immediately preceding sentence may be punished as a violation of section 2903.01, 2903.02, 2903.03, 2903.04, 2903.05, 2903.06, 2903.08, 2903.11, 2903.12, 2903.13, 2903.14, 2903.21, or 2903.22 of the Revised Code, as applicable. An abortion that does not violate the conditions described in the second immediately preceding sentence, but that does violate section 2919.12, division (B) of section 2919.13, or section 2919.15, 2919.151, 2919.17, or 2919.18 of the Revised Code, may be punished as a violation of section 2919.12, division (B) of section 2919.13, or section 2919.15, 2919.151, 2919.17, or 2919.18 of the Revised Code, as applicable. Consent is sufficient under this division if it is of the type otherwise adequate to permit medical treatment to the pregnant woman, even if it does not comply with section 2919.12 of the Revised Code.

(b) In a manner so that the offense is applied or is construed as applying to a woman based on an act or omission of the woman that occurs while she is or was pregnant and that results in any of the following:

- (i) Her delivery of a stillborn baby;
- (ii) Her causing, in any other manner, the death in utero of a viable, unborn human that she is carrying;
- (iii) Her causing the death of her child who is born alive but who dies from one or more injuries that are sustained while the child is a viable, unborn human;
- (iv) Her causing her child who is born alive to sustain one or more injuries while the child is a viable, unborn human;
- (v) Her causing, threatening to cause, or attempting to cause, in any other manner, an injury, illness, or other physiological impairment, regardless of its duration or gravity, or a mental illness or condition, regardless of its duration or gravity, to a viable, unborn human that she is carrying.

(C) As used in Title XXIX of the Revised Code:

(1) "School safety zone" consists of a school, school building, school premises, school activity, and school bus.

(2) "School," "school building," and "school premises" have the same meanings as in section 2925.01 of the Revised Code.

(3) "School activity" means any activity held under the auspices of a board of education of a city, local, exempted village, joint vocational, or cooperative education school district; a governing authority of a community school established under Chapter 3314. of the Revised Code; a governing board of an educational service center, or the governing body of a school for which the state board of education prescribes minimum standards under section 3301.07 of the Revised Code.

(4) "School bus" has the same meaning as in section 4511.01 of the Revised Code.

Sec. 2903.09. As used in sections 2903.01 to 2903.08, 2903.11 to 2903.14, 2903.21, and 2903.22 of the Revised Code:

(A) "Unlawful termination of another's pregnancy" means causing the death of an unborn member of the species homo sapiens, who is or was carried in the womb of another, as a result of injuries inflicted during the period that begins with fertilization and that continues unless and until live birth occurs.

(B) "Another's unborn" or "such other person's unborn" means a member of the species homo sapiens, who is or was carried in the womb of another, during a period that begins with fertilization and that continues unless and until live birth occurs.

(C) Notwithstanding divisions (A) and (B) of this section, in no case shall the definitions of the terms "unlawful termination of another's pregnancy," "another's unborn," and "such other person's unborn" that are set forth in division (A) of this section be applied or construed in any of the following manners:

(1) Except as otherwise provided in division (C)(1) of this section, in a manner so that the offense prohibits or is construed as prohibiting any pregnant woman or her physician from performing an abortion with the actual consent of the pregnant woman, with the consent of the pregnant woman implied by law in a medical emergency, or with the approval of one otherwise authorized by law to consent to medical treatment on behalf of the pregnant woman. An abortion that violates the conditions described in the immediately preceding sentence may be punished as a violation of section 2903.01, 2903.02, 2903.03, 2903.04, 2903.05, 2903.06, 2903.08, 2903.11, 2903.12, 2903.13, 2903.14, 2903.21, or 2903.22 of the Revised Code, as applicable. An abortion that does not violate the conditions described in the second immediately preceding sentence, but that does violate section 2919.12, division (B) of section 2919.13, or section 2919.15, 2919.151, 2919.17, or 2919.18 of the Revised Code, may be punished as a violation of section 2919.12, division (B) of section 2919.13, or section 2919.15, 2919.151, 2919.17, or 2919.18 of the Revised Code, as applicable.

(2) In a manner so that the offense is applied or is construed as applying to a woman based on an act or omission of the woman that occurs while she is or was pregnant and that results in any of the following:

(a) Her delivery of a stillborn baby;

(b) Her causing, in any other manner, the death in utero of an unborn that she is carrying;

(c) Her causing the death of her child who is born alive but who dies from one or more injuries that are sustained while the child is an unborn;

(d) Her causing her child who is born alive to sustain one or more injuries while the child is an unborn;

(e) Her causing, threatening to cause, or attempting to cause, in any other manner, an injury, illness, or other physiological impairment, regardless of its duration or gravity, or a mental illness or condition, regardless of its duration or gravity, to an unborn that she is carrying.

Sec. 2919.123. (A) No person shall knowingly give, sell, dispense, administer, otherwise provide, or prescribe RU-486 (mifepristone) to another for the purpose of inducing an abortion in any person or enabling the other person to induce an abortion in any person, unless the person who gives, sells, dispenses, administers, or otherwise provides or prescribes the RU-486 (mifepristone) is a physician, the physician satisfies all the criteria established by federal law that a physician must satisfy in order to provide RU-486 (mifepristone) for inducing abortions, and the physician provides the RU-486 (mifepristone) to the other person for the purpose of inducing an abortion in accordance with all provisions of federal law that govern the use of RU-486 (mifepristone) for inducing abortions. A person who gives, sells, dispenses, administers, otherwise provides, or prescribes RU-486 (mifepristone) to another as described in division (A) of this section shall not be prosecuted

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based on a violation of the criteria contained in this division unless the person knows that the person is not a physician, that the person did not satisfy all the specified criteria established by federal law, or that the person did not provide the RU-486 (mifepristone) in accordance with the specified provisions of federal law, whichever is applicable.

(B) No physician who provides RU-486 (mifepristone) to another for the purpose of inducing an abortion as authorized under division (A) of this section shall knowingly fail to comply with the applicable requirements of any federal law that pertain to follow-up examinations or care for persons to whom or for whom RU-486 (mifepristone) is provided for the purpose of inducing an abortion.

(C)(1) If a physician provides RU-486 (mifepristone) to another for the purpose of inducing an abortion as authorized under division (A) of this section and if the physician knows that the person who uses the RU-486 (mifepristone) for the purpose of inducing an abortion experiences during or after the use an incomplete abortion, severe bleeding, or an adverse reaction to the RU-486 (mifepristone) or is hospitalized, receives a transfusion, or experiences any other serious event, the physician promptly must provide a written report of the incomplete abortion, severe bleeding, adverse reaction, hospitalization, transfusion, or serious event to the state medical board. The board shall compile and retain all reports it receives under this division. Except as otherwise provided in this division, all reports the board receives under this division are public records open to inspection under section 149.43 of the Revised Code. In no case shall the board release to any person the name or any other personal identifying information regarding a person who uses RU-486 (mifepristone) for the purpose of inducing an abortion and who is the subject of a report the board receives under this division.

(2) No physician who provides RU-486 (mifepristone) to another for the purpose of inducing an abortion as authorized under division (A) of this section shall knowingly fail to file a report required under division (C)(1) of this section.

(D) Division (A) of this section does not apply to any of the following:

(1) A pregnant woman who obtains or possesses RU-486 (mifepristone) for the purpose of inducing an abortion to terminate her own pregnancy;

(2) The legal transport of RU-486 (mifepristone) by any person or entity and the legal delivery of the RU-486 (mifepristone) by any person to the recipient, provided that this division does not apply regarding any conduct related to the RU-486 (mifepristone) other than its transport and delivery to the recipient;

(3) The distribution, provision, or sale of RU-486 (mifepristone) by any legal manufacturer or distributor of RU-486 (mifepristone), provided the manufacturer or distributor made a good faith effort to comply with any applicable requirements of federal law regarding the distribution, provision, or sale.

(E) Whoever violates this section is guilty of unlawful distribution of an abortion-inducing drug, a felony of the fourth degree. If the offender previously has been convicted of or pleaded guilty to a violation of this section or of section 2919.12, 2919.121, 2919.13, 2919.14, 2919.15, 2919.151, 2919.17, or 2919.18 of the Revised Code, unlawful distribution of an abortion-inducing drug is a felony of the third degree.

If the offender is a professionally licensed person, in addition to any other sanction imposed by law for the offense, the offender is subject to sanctioning as provided by law by the regulatory or

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licensing board or agency that has the administrative authority to suspend or revoke the offender's professional license, including the sanctioning provided in section 4731.22 of the Revised Code for offenders who have a certificate to practice or certificate of registration issued under that chapter.

(F) As used in this section:

(1) "Federal law" means any law, rule, or regulation of the United States or any drug approval letter of the food and drug administration of the United States that governs or regulates the use of RU-486 (mifepristone) for the purpose of inducing abortions.

(2) "Personal identifying information" has the same meaning as in section 2913.49 of the Revised Code.

(3) "Physician" has the same meaning as in section 2305.113 of the Revised Code.

(4) "Professionally licensed person" has the same meaning as in section 2925.01 of the Revised Code.

Sec. 2919.15. (A) As used in this section:

"Dismemberment abortion" means, with the purpose of causing the death of an unborn child, to dismember a living unborn child and extract the unborn child one piece at a time from the uterus through use of clamps, grasping forceps, tongs, scissors, or similar instruments that, through the convergence of two rigid levers, slice, crush, or grasp a portion of the unborn child's body to cut or rip it off. "Dismemberment abortion" does not include a procedure performed after the death of the unborn child to extract any remaining parts of the unborn child.

"Serious risk of the substantial and irreversible impairment of a major bodily function" has the same meaning as in section 2919.151 of the Revised Code.

"Unborn child" has the same meaning as in section 2919.16 of the Revised Code.

(B) No person shall knowingly perform or attempt to perform a dismemberment abortion when the dismemberment abortion is not necessary, in reasonable medical judgment, to preserve the life or physical health of the mother as a result of the mother's life or physical health being endangered by a serious risk of the substantial and irreversible physical impairment of a major bodily function.

(C) Whoever violates division (B) of this section is guilty of dismemberment feticide, a felony of the fourth degree.

(D) None of the following are guilty of committing, attempting to commit, complicity in the commission of, or conspiracy in the commission of a violation of division (B) of this section:

(1) A pregnant woman upon whom a dismemberment abortion is performed in violation of division (B) of this section;

(2) An individual who is employed by the person who violates division (B) of this section and who acts at the direction of the person who violates division (B) of this section;

(3) A pharmacist or other individual who fills a prescription or provides instruments or materials used in violating division (B) of this section.

(E) This section does not prohibit the suction curettage procedure of abortion or the suction aspiration procedure of abortion.

Sec. 2919.151. (A) As used in this section:

(1) "Dilation and evacuation procedure of abortion" does not include the dilation and extraction procedure of abortion.

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~~(2)~~ "From the body of the mother" means that the portion of the fetus' body in question is beyond the mother's vaginal introitus in a vaginal delivery.

~~(3)~~ ~~(2)~~ "Partial birth procedure" means the medical procedure that includes all of the following elements in sequence:

(a) Intentional dilation of the cervix of a pregnant woman, usually over a sequence of days;

(b) In a breech presentation, intentional extraction of at least the lower torso to the navel, but not the entire body, of an intact fetus from the body of the mother, or in a cephalic presentation, intentional extraction of at least the complete head, but not the entire body, of an intact fetus from the body of the mother;

(c) Intentional partial evacuation of the intracranial contents of the fetus, which procedure the person performing the procedure knows will cause the death of the fetus, intentional compression of the head of the fetus, which procedure the person performing the procedure knows will cause the death of the fetus, or performance of another intentional act that the person performing the procedure knows will cause the death of the fetus;

(d) Completion of the vaginal delivery of the fetus.

~~(4)~~ ~~(3)~~ "Partially born" means that the portion of the body of an intact fetus described in division (A)(3)(b) of this section has been intentionally extracted from the body of the mother.

~~(5)~~ ~~(4)~~ "Serious risk of the substantial and irreversible impairment of a major bodily function" means any medically diagnosed condition that so complicates the pregnancy of the woman as to directly or indirectly cause the substantial and irreversible impairment of a major bodily function.

~~(6)~~ ~~(5)~~ "Viable" has the same meaning as in section 2901.01 of the Revised Code.

(B) When the fetus that is the subject of the procedure is viable, no person shall knowingly perform a partial birth procedure on a pregnant woman when the procedure is not necessary, in reasonable medical judgment, to preserve the life or health of the mother as a result of the mother's life or health being endangered by a serious risk of the substantial and irreversible impairment of a major bodily function.

(C) When the fetus that is the subject of the procedure is not viable, no person shall knowingly perform a partial birth procedure on a pregnant woman when the procedure is not necessary, in reasonable medical judgment, to preserve the life or health of the mother as a result of the mother's life or health being endangered by a serious risk of the substantial and irreversible impairment of a major bodily function.

(D) Whoever violates division (B) or (C) of this section is guilty of partial birth feticide, a felony of the second degree.

(E) A pregnant woman upon whom a partial birth procedure is performed in violation of division (B) or (C) of this section is not guilty of committing, attempting to commit, complicity in the commission of, or conspiracy in the commission of a violation of those divisions.

(F) This section does not prohibit the suction curettage procedure of abortion, or the suction aspiration procedure of abortion, ~~or the dilation and evacuation procedure of abortion.~~

(G) This section does not apply to any person who performs or attempts to perform a legal abortion if the act that causes the death of the fetus is performed prior to the fetus being partially born even though the death of the fetus occurs after it is partially born.

Sec. 2967.193. (A)(1) Except as provided in division (C) of this section and subject to the maximum aggregate total specified in division (A)(3) of this section, a person confined in a state correctional institution or placed in the substance use disorder treatment program may provisionally earn one day or five days of credit, based on the category set forth in division (D)(1), (2), (3), (4), or (5) of this section in which the person is included, toward satisfaction of the person's stated prison term for each completed month during which the person, if confined in a state correctional institution, productively participates in an education program, vocational training, employment in prison industries, treatment for substance abuse, or any other constructive program developed by the department with specific standards for performance by prisoners or during which the person, if placed in the substance use disorder treatment program, productively participates in the program. Except as provided in division (C) of this section and subject to the maximum aggregate total specified in division (A)(3) of this section, a person so confined in a state correctional institution who successfully completes two programs or activities of that type may, in addition, provisionally earn up to five days of credit toward satisfaction of the person's stated prison term for the successful completion of the second program or activity. The person shall not be awarded any provisional days of credit for the successful completion of the first program or activity or for the successful completion of any program or activity that is completed after the second program or activity. At the end of each calendar month in which a person productively participates in a program or activity listed in this division or successfully completes a program or activity listed in this division, the department of rehabilitation and correction shall determine and record the total number of days credit that the person provisionally earned in that calendar month. If the person in a state correctional institution violates prison rules or the person in the substance use disorder treatment program violates program or department rules, the department may deny the person a credit that otherwise could have been provisionally awarded to the person or may withdraw one or more credits previously provisionally earned by the person. Days of credit provisionally earned by a person shall be finalized and awarded by the department subject to administrative review by the department of the person's conduct.

(2) Unless a person is serving a mandatory prison term or a prison term for an offense of violence or a sexually oriented offense, and notwithstanding the maximum aggregate total specified in division (A)(3) of this section, a person who successfully completes any of the following shall earn ninety days of credit toward satisfaction of the person's stated prison term or a ten per cent reduction of the person's stated prison term, whichever is less:

(a) An Ohio high school diploma or Ohio certificate of high school equivalence certified by the Ohio central school system;

(b) A therapeutic drug community program;

(c) All three phases of the department of rehabilitation and correction's intensive outpatient drug treatment program;

(d) A career technical vocational school program;

(e) A college certification program;

(f) The criteria for a certificate of achievement and employability as specified in division (A)(1) of section 2961.22 of the Revised Code.

(3) Except for persons described in division (A)(2) of this section, the aggregate days of credit provisionally earned by a person for program or activity participation and program and activity

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completion under this section and the aggregate days of credit finally credited to a person under this section shall not exceed eight per cent of the total number of days in the person's stated prison term.

(B) The department of rehabilitation and correction shall adopt rules that specify the programs or activities for which credit may be earned under this section, the criteria for determining productive participation in, or completion of, the programs or activities and the criteria for awarding credit, including criteria for awarding additional credit for successful program or activity completion, and the criteria for denying or withdrawing previously provisionally earned credit as a result of a violation of prison rules, or program or department rules, whichever is applicable.

(C) No person confined in a state correctional institution or placed in a substance use disorder treatment program to whom any of the following applies shall be awarded any days of credit under division (A) of this section:

(1) The person is serving a prison term that section 2929.13 or section 2929.14 of the Revised Code specifies cannot be reduced pursuant to this section or this chapter or is serving a sentence for which section 2967.13 or division (B) of section 2929.143 of the Revised Code specifies that the person is not entitled to any earned credit under this section.

(2) The person is sentenced to death or is serving a prison term or a term of life imprisonment for aggravated murder, murder, or a conspiracy or attempt to commit, or complicity in committing, aggravated murder or murder.

(3) The person is serving a sentence of life imprisonment without parole imposed pursuant to section 2929.03 or 2929.06 of the Revised Code, a prison term or a term of life imprisonment without parole imposed pursuant to section 2971.03 of the Revised Code, or a sentence for a sexually oriented offense that was committed on or after September 30, 2011.

(D) This division does not apply to a determination of whether a person confined in a state correctional institution or placed in a substance use disorder treatment program may earn any days of credit under division (A) of this section for successful completion of a second program or activity. The determination of whether a person confined in a state correctional institution may earn one day of credit or five days of credit under division (A) of this section for each completed month during which the person productively participates in a program or activity specified under that division shall be made in accordance with the following:

(1) The offender may earn one day of credit under division (A) of this section, except as provided in division (C) of this section, if the most serious offense for which the offender is confined is any of the following that is a felony of the first or second degree:

(a) A violation of division (A) of section 2903.04 or of section 2903.03, 2903.11, 2903.15, 2905.01, 2907.24, 2907.25, 2909.02, 2909.09, 2909.10, 2909.101, 2909.26, 2909.27, 2909.29, 2911.01, 2911.02, 2911.11, 2911.12, 2919.13, 2919.15, 2919.151, 2919.22, 2921.34, 2923.01, 2923.131, 2923.162, 2923.32, 2925.24, or 2927.24 of the Revised Code;

(b) A conspiracy or attempt to commit, or complicity in committing, any other offense for which the maximum penalty is imprisonment for life or any offense listed in division (D)(1)(a) of this section.

(2) The offender may earn one day of credit under division (A) of this section, except as provided in division (C) of this section, if the offender is serving a stated prison term that includes a prison term imposed for a sexually oriented offense that the offender committed prior to September

30, 2011.

(3) The offender may earn one day of credit under division (A) of this section, except as provided in division (C) of this section, if the offender is serving a stated prison term that includes a prison term imposed for a felony other than carrying a concealed weapon an essential element of which is any conduct or failure to act expressly involving any deadly weapon or dangerous ordnance.

(4) Except as provided in division (C) of this section, if the most serious offense for which the offender is confined is a felony of the first or second degree and divisions (D)(1), (2), and (3) of this section do not apply to the offender, the offender may earn one day of credit under division (A) of this section if the offender committed that offense prior to September 30, 2011, and the offender may earn five days of credit under division (A) of this section if the offender committed that offense on or after September 30, 2011.

(5) Except as provided in division (C) of this section, if the most serious offense for which the offender is confined is a felony of the third, fourth, or fifth degree or an unclassified felony and neither division (D)(2) nor (3) of this section applies to the offender, the offender may earn one day of credit under division (A) of this section if the offender committed that offense prior to September 30, 2011, and the offender may earn five days of credit under division (A) of this section if the offender committed that offense on or after September 30, 2011.

(E) The department annually shall seek and consider the written feedback of the Ohio prosecuting attorneys association, the Ohio judicial conference, the Ohio public defender, the Ohio association of criminal defense lawyers, and other organizations and associations that have an interest in the operation of the corrections system and the earned credits program under this section as part of its evaluation of the program and in determining whether to modify the program.

(F) As used in this section:

(1) "Sexually oriented offense" has the same meaning as in section 2950.01 of the Revised Code.

(2) "Substance use disorder treatment program" means the substance use disorder treatment program established by the department of rehabilitation and correction under section 5120.035 of the Revised Code.

SECTION 2. That existing sections 2305.114, 2307.53, 2901.01, 2903.09, 2919.123, 2919.151, and 2967.193 of the Revised Code are hereby repealed.

Sub. S. B. No. 145

132nd G.A.

Speaker _____ *of the House of Representatives.*

President _____ *of the Senate.*

Passed _____, 20____

Approved _____, 20____

Governor.

Sub. S. B. No. 145

132nd G.A.

The section numbering of law of a general and permanent nature is complete and in conformity with the Revised Code.

Director, Legislative Service Commission.

Filed in the office of the Secretary of State at Columbus, Ohio, on the ____ day of _____, A. D. 20 ____.

Secretary of State.

File No. _____ Effective Date _____