

## **SECTION 1. SHORT TITLE**

This ordinance may be cited as the “Pain Capable Unborn Child Protection Ordinance.”

## **SECTION 2. FINDINGS AND AUTHORITIES IN SUPPORT**

The Citizens of Albuquerque declare the following:

- (1) Pain receptors are present throughout the unborn child's entire body and nerves link these receptors to the brain's thalamus and subcorical plate by no later than 20 weeks after fertilization.
- (2) By 8 weeks after fertilization, the unborn child reacts to touch. After 20 weeks, the unborn child reacts to stimuli that would be recognized as painful if applied to an adult human.
- (3) In the unborn child, application of such painful stimuli is associated with significant increases in stress hormones known as the stress response.
- (4) For the purposes of surgery on unborn children, fetal anesthesia is routinely administered and is associated with a decrease in stress hormones compared to their level when painful stimuli are applied without such anesthesia. In the United States, surgery of this type is being performed by 20 weeks after fertilization and earlier in specialized units affiliated with children's hospitals.
- (5) Recent medical research and analysis, especially since 2007, provides strong evidence for the conclusion that a functioning cortex is not necessary to experience pain.
- (6) Substantial evidence indicates that children born missing the bulk of the cerebral cortex, those with hydranencephaly, nevertheless experience pain.
- (7) In adult humans and in animals, stimulation or ablation of the cerebral cortex does not alter pain perception, while stimulation or ablation of the thalamus does.
- (8) The position, asserted by some commentators, that the unborn child remains in a coma-like sleep state that precludes the unborn child experiencing pain is inconsistent with the documented reaction of unborn children to painful stimuli and with the experience of fetal surgeons who had found it necessary to sedate the unborn child with anesthesia to prevent the unborn child from engaging in vigorous movement in reaction to invasive surgery.
- (9) Consequently, there is substantial medical evidence that an unborn child is capable of experiencing pain at least by 20 weeks after fertilization, if not earlier.
- (10) The Citizens of Albuquerque assert a compelling governmental interest in protecting the lives of unborn children from the stage at which substantial medical evidence indicates that they are capable of feeling pain.
- (11) The compelling governmental interest in protecting the lives of unborn children from the stage at which substantial medical evidence indicates that they are capable of feeling pain is asserted *in addition* to the compelling interest in protecting the lives of unborn children from the stage of viability. Neither governmental interest is intended to replace the other.
- (12) The Citizens of Albuquerque are empowered by Chapter Three of New Mexico Statutes Annotated and Article Three of the Charter of the City of Albuquerque to affirmatively act to secure health and safety within its geographical borders.

## **SECTION 3. PAIN-CAPABLE UNBORN CHILD PROTECTION.**

(a) **IN GENERAL.** - Chapter 12, Article 2, Albuquerque Code of Ordinances, is amended by inserting after section twenty-eight the following:

### **“§12-2-29. PAIN-CAPABLE UNBORN CHILD PROTECTION.**

(a) **UNLAWFUL CONDUCT.** - Notwithstanding any other provision of law, it shall be unlawful for any person to perform an abortion or attempt to do so, unless in conformity with the requirements set

forth in subsection (b).

**(b) REQUIREMENTS FOR ABORTIONS. -**

(1) The physician performing or attempting the abortion shall first make a determination of the probable post-fertilization age of the unborn child or reasonably rely upon such a determination made by another physician. In making such a determination, the physician shall make such inquiries of the pregnant woman and perform or cause to be performed such medical examinations and tests as a reasonably prudent physician, knowledgeable about the case and the medical conditions involved, would consider necessary to make an accurate determination of post-fertilization age.

(2) (A) Except as provided in subparagraph (B), the abortion shall not be performed or attempted, if the probable post-fertilization age, as determined under paragraph (1), of the unborn child is 20 weeks or greater.

(B) Subject to subparagraph (C), subparagraph (A) does not apply if -

(i) in reasonable medical judgment, the abortion is necessary to save 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, but not including psychological or emotional conditions.

(C) Notwithstanding the definitions of 'abortion' and 'attempt an abortion' in this section, a physician terminating or attempting to terminate a pregnancy under an exception provided by subparagraph (B) may do so only in the manner which, in reasonable medical judgment, provides the best opportunity for the unborn child to survive, unless, in reasonable medical judgment, termination of the pregnancy in that manner would pose a greater risk of -

(i) the death of the pregnant woman; or

(ii) the substantial and irreversible physical impairment of a major bodily function, not including psychological or emotional conditions, of the pregnant woman;

than would other available methods.

**(c) BAR TO PROSECUTION. -** A woman upon whom an abortion in violation of subsection (a) is performed or attempted may not be prosecuted under, or for a conspiracy to violate, subsection (a), or for an offense under section 2, 3, or 4 of this title based on such a violation.

**(d) DEFINITIONS. -** In this section the following definitions apply:

1. **ABORTION. -** The term 'abortion' means the use or prescription of any instrument, medicine, drug, or any other substance or device -

(A) to intentionally kill the unborn child of a woman known to be pregnant; or

(B) to intentionally terminate the pregnancy of a woman known to be pregnant, with an intention other than -

(i) after viability to produce a live birth and preserve the life and health of the child born alive; or

(ii) to remove a dead unborn child.

2. **ATTEMPT AN ABORTION -** The term 'attempt', with respect to an abortion, means conduct that, under the circumstances as the actor believes them to be, constitutes a

substantial step in a course of conduct planned to culminate in performing an abortion.

- (2) **FERTILIZATION.** - The term 'fertilization' means the fusion of human spermatozoon with a human ovum.
- (3) **PERFORM.** - The term 'perform', with respect to an abortion, includes induce an abortion through a medical or chemical intervention including writing a prescription for a drug or device intended to result in an abortion.
- (4) **PHYSICIAN.** - The term 'physician' means a person licensed to practice medicine and surgery or osteopathic medicine and surgery, or otherwise legally authorized to perform an abortion.
- (5) **POST-FERTILIZATION AGE.** - The term 'post-fertilization age' means the age of the unborn child as calculated from the fusion of a human spermatozoon with a human ovum.
- (6) **PROBABLE POST-FERTILIZATION AGE OF THE UNBORN CHILD.** - The term 'probable post-fertilization age of the unborn child' means what, in reasonable medical judgment, will with reasonable probability be the post-fertilization age of the unborn child at the time the abortion is planned to be performed or induced.
- (7) **REASONABLE MEDICAL JUDGMENT.** - The term 'reasonable medical judgment' means a medical judgment that would be made by a reasonably prudent physician, knowledgeable about the case and the treatment possibilities with respect to the medical conditions involved.
- (8) **UNBORN CHILD.** - The term 'unborn child' means an individual organism of the species homo sapiens, beginning at fertilization, until the point of being born alive as defined in the section 8(b) of title 1.
- (9) **WOMAN.** - The term 'woman' means a female human being whether she has reached the age of majority.

(e) **SEVERABILITY.** - If any part or application of the Pain-Capable Unborn Protection Ordinance is held invalid, the remainder or application to other situations or persons shall not be affected.”