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## Bans on Specific Abortion Methods Used After the First Trimester

### Background

For decades, states have attempted to limit access to abortion after the first trimester by enacting restrictions on specific abortion methods. In the 1990s and early 2000s, most of the attention focused on attempts to ban “partial-birth” abortion. Although they used varying definitions of “partial-birth” abortion, the laws all banned the procedure except in the rarest circumstances. Many, but not all, of these state-level restrictions were struck down in courts. However, the U.S. Supreme Court upheld a federal version in 2007 in *Gonzales v. Carhart*. That law, which applies across the country, bans “partial-birth” abortion except when the woman’s life is endangered and does not contain an exception to protect the woman’s health. Moreover, although the law does not include a precise medical definition of what is banned, the Court found the federal law’s definition sufficient to pass constitutional muster and applied it to the dilation and extraction (D&X) abortion method. The federal law is currently in effect, along with several state laws that allow for state and local law enforcement of the method ban and, potentially, stiffer penalties for violations.

More recently, states began enacting laws banning the abortion method most commonly used in the second trimester, dilation and evacuation (D&E). So far, all of these laws have very limited exceptions; they allow a woman to obtain an abortion using this method only when necessary to protect her life or in case of a “serious risk of substantial and irreversible physical impairment of a major bodily function.” The laws do not make an exception for serious mental health conditions.

### Highlights

- 2 states have bans on the most commonly used method of abortion in the second trimester, standard dilation and evacuation (D&E). These bans only allow the use of the method when necessary to protect a woman’s life or when her physical health is severely compromised.
- 20 states ban the provision of “partial-birth” abortion.
  - 13 of the laws are similar to the federal version that was upheld by the U.S. Supreme Court.
  - 7 of them remain unchallenged but, because of the broad nature of their language, are presumably unenforceable under the Supreme Court’s 2000 decision in *Stenberg v. Carhart*, which struck down a Nebraska ban.
  - All 20 state laws include some sort of exception.
    - 3 states have bans that include a health exception.
      - 1 state allows use of the procedure when the woman’s health is at risk.
      - 2 states allow use of the procedure only when the woman’s physical health is severely compromised.
    - 16 states have bans that allow for an exception only when a woman’s life is in danger.

## Bans On Specific Abortion Methods After 1st Trimester

STATE	DILATION & EVACUATION ABORTION		"PARTIAL-BIRTH" ABORTION		
	Procedure Banned	Exceptions In Cases Of Life Or Severe Physical Health	Procedure Banned	Exception In Cases Of Life Or Health	Exception Only In Case Of Life Endangerment
Alabama	§	§	▼		
Alaska			▼		
Arizona			X		X
Arkansas	§	§	X		X
Florida			▼		
Georgia			X*	X*	
Idaho			▼		
Illinois			▼		
Indiana			†		†
Iowa			▼		
Kansas	§	§	X		X
Kentucky			▼		
Louisiana	§	§	X		X
Michigan			X		X
Mississippi	X	X	†		
Missouri			§		
Montana			†*		†*
Nebraska			▼		
New Hampshire			X		X
New Jersey			▼		
New Mexico			X*	X*,†	
North Dakota			X		X
Ohio			X	X†	
Oklahoma	§	§	†		†
Rhode Island			▼		
South Carolina			†		†
South Dakota			†		†
Tennessee			†		†
Texas	§	§	X		X
Utah			X		X
Virginia			X		X
West Virginia	X	X	▼		
Wisconsin			▼		
<b>TOTAL</b>	<b>2</b>	<b>2</b>	<b>20</b>	<b>3</b>	<b>16</b>

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- ▼ Enforcement Permanently Enjoined By Court Order; Policy Not In Effect.
  - § This Law Is Temporarily Enjoined Pending A Final Decision In The Courts.
  - X Policy Is Currently In Effect.
  - \* Law Applies After Viability.
  - † This Policy Is Presumably Unenforceable Under The Terms Set Out In *Stenberg V. Carhart*; However, It Has Not Been Challenged In Court.
  - ‡ The Health Exception Only Applies To Severe Physical Health Conditions.

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