

## PROHIBIT CERTAIN ABORTION PROCEDURES

Phone: (517) 373-8080  
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**House Bill 4320 as reported from committee**  
**Sponsor: Rep. Pamela Hornberger**

Analysis available at  
<http://www.legislature.mi.gov>

**House Bill 4321 as reported from committee**  
**Sponsor: Rep. Lynn Afendoulis**

**1st Committee: Families, Children and Seniors**  
**2nd Committee: Judiciary**  
**Complete to 7-24-19**

### SUMMARY:

House Bill 4320 would define the term *dismemberment abortion*, prohibit such a procedure, and apply to a violation the same criminal penalty and civil remedies as currently provided for a partial-birth abortion. House Bill 4321 would revise the sentencing guidelines for a violation of the prohibition on partial-birth abortions to also include a dismemberment abortion.

Currently, section 90h of the Michigan Penal Code, entitled the “Partial-birth Abortion Ban Act,” does all of the following:

- Provides that a person who performs a partial-birth abortion is guilty of a felony punishable by imprisonment for up to two years and/or a fine of up to \$50,000.
- Makes an exception for a partial-birth abortion that is necessary to save the mother’s life.
- Provides that a woman who obtains a partial-birth abortion is not guilty of a violation.
- Allows the mother’s spouse or, if the mother is a minor, her parents, to bring a civil action against the person who performed a partial-birth abortion.

House Bill 4320 would rename the section as the “Partial-birth Abortion and Dismemberment Abortion Ban Act.” The bill would apply all of the above provisions to both a dismemberment abortion and a partial-birth abortion.

*Dismemberment abortion* would mean an abortion in which the physician, an individual acting under the delegatory authority of the physician, or any other individual performing the abortion deliberately and intentionally uses any instrument, device, or object to dismember a living fetus by disarticulating limbs or decapitating the head from the fetal torso and removing the dismembered fetal body parts from the uterus regardless of whether the fetal body parts are removed by the same instrument, device, or object or by suction or other means. It would not include an abortion that uses suction to dismember and remove the body of a fetus from the uterus.

The bill also contains language regarding the severability and construction of its provisions.<sup>1</sup>

MCL 750.90h

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<sup>1</sup> All Michigan statutes are severable. See MCL 8.5: <http://legislature.mi.gov/doc.aspx?mcl-8-5>

**House Bill 4321** amends the sentencing guidelines chapter of the Code of Criminal Procedure to specify that performing or assisting in performance of a partial-birth abortion or dismemberment abortion is a Class G felony against a person with a maximum term of imprisonment of two years.

House Bill 4321 is tie-barred to House Bill 4320, which means that it could not take effect unless House Bill 4320 were also enacted.

MCL 777.16d

The bills would take effect January 1, 2021.

## **BACKGROUND INFORMATION:**

The procedure the bills would prohibit is generally known as a dilation and evacuation or D&E. It is a surgical procedure typically used in the second trimester of pregnancy (between 13 and 24 weeks); it is the most commonly performed second trimester procedure. According to the Michigan Department of Health and Human Services, there were 1,777 such procedures performed in Michigan in 2017, accounting for 6.7% of all abortions, 50.6% of those performed between 13 and 24 weeks of pregnancy, and 78.3% of those performed between 17 and 24 weeks. The majority of abortions in Michigan in 2017—86.6%—were performed during the first trimester either medically (using medication) or using suction curettage.

The bills are identical to Senate Bills 229 and 230, which passed the Senate on May 15, 2019, and were referred to the House Committee on Judiciary.

The bills are a reintroduction of House Bills 4833 and 4834 of the 2015-16 legislative session, which were reported from committee but failed to pass the House.

## **BRIEF DISCUSSION:**

Supporters of the bills liken the procedure the bills would prohibit to that used in the now-banned partial-birth abortion procedure (dilation and extraction). With some studies suggesting that a fetus may feel pain as early as 20 weeks, critics of the procedure say it is too brutal a method for a still-living fetus. In addition, supporters argue that there are alternatives to the procedure and note that, under the bills, the procedure would still be allowed if necessary to save the life of the mother or if the fetus were no longer living when it was performed.

Opponents of the bills note that, although most abortions are performed in the first trimester of pregnancy, women with irregular menstrual cycles may not realize they are pregnant until several months have passed, and some complications and fetal birth defects do not present until later in the pregnancy. The procedure the bills would prohibit is considered the safest procedure for second trimester abortions for most women and for some, due to other medical conditions, may be the only option. To legislate the type of abortion procedure that a doctor may recommend to a patient violates tenets of the doctor/patient relationship and would interfere with the medical community's ability to recommend, on a case-by-case basis, the best and safest procedure for a particular patient. In addition, opponents argue, a review of the fetal

nervous system published in the medical journal *JAMA* found that “fetal perception of pain is unlikely before the third trimester.”<sup>2</sup>

### **FISCAL IMPACT:**

House Bill 4320 would have an indeterminate fiscal impact on the state and on local units of government. The number of persons who might be convicted under provisions of the bill is unknown. New felony convictions would result in increased costs related to state prisons and state probation supervision. In fiscal year 2018, the average cost of prison incarceration in a state facility was roughly \$38,000 per prisoner, a figure that includes various fixed administrative and operational costs. State costs for parole and felony probation supervision averaged about \$3,700 per supervised offender in the same year. Those costs are financed with state general fund/general purpose revenue. Any fiscal impact on the judiciary and local court systems would depend on how provisions of the bill affected caseloads and related administrative costs. Any increase in penal fine revenue would increase funding for local libraries, which are the constitutionally designated recipients of those revenues.

House Bill 4321 is a companion bill to HB 4320 and amends sentencing guidelines. The bill would not have a direct fiscal impact on the state or on local units of government.

### **POSITIONS:**

Representatives of the following entities testified in support of the bills (4-24-19):

- American Association of Pro-Life Obstetricians and Gynecologists
- Citizens for a Pro-life Society
- Save the 1
- Right to Life of Michigan
- Michigan Catholic Conference

The Michigan Family Forum indicated support for the bill. (5-7-19)

Representatives of the following entities testified in opposition to the bills (5-7-19):

- American College of Obstetricians and Gynecologists
- Planned Parenthood of Michigan
- ACLU of Michigan

The following entities indicated opposition to the bills (5-7-19):

- The American Association of University Women of Michigan
- Northland Family Planning Centers
- Progressive Women’s Caucus

Legislative Analysts: E. Best  
Susan Stutzky  
Fiscal Analyst: Robin Risko

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■ This analysis was prepared by nonpartisan House Fiscal Agency staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.

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<sup>2</sup> Lee, S.J., et al. 2005. “Fetal Pain: A Systematic Multidisciplinary Review of the Evidence.” *JAMA* 294, no. 8 (August): 947-54.