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UNREPORTED ABORTIONS: HOW A LEGAL LOOPHOLE SKEWS IDAHO ABORTION STATS

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In the State of Idaho, preborn human life is protected by two abortion bans: the Heartbeat law¹ and the Defense of Life Act² (often referred to as the Trigger law).

Operating together, these complementary measures have effectively eliminated access to elective, in-state abortions by imposing civil and criminal penalties on medical professionals who unlawfully terminate a pregnancy. Both of these laws allow abortions in cases of rape, incest, and either a medical emergency or when the life of the mother is threatened.

Healthcare providers who perform abortions within the scope of these three exceptions are exempted from both criminal and civil liability; however, they are still obligated to report legally induced abortions to the Idaho Department of Health and Welfare

KEY POINTS:

- *Because of an existing loophole in Idaho abortion reporting requirements, some hospitals currently do not report every abortion to the Idaho Department of Health and Welfare*
- *This loophole creates the potential for significantly undercounting the number of abortions performed in the state*
- *Legislative reform is necessary so that the state can keep an accurate record of the number of abortions performed in Idaho*

in accordance with the Idaho Vital Statistics Act.³

Intended to “maintain an accurate database of factual information regarding births, deaths, and other vital events,” state vital statistics equip policymakers with information they need to assess public health

trends and make informed policy decisions.

But a currently existing loophole in the induced abortion reporting requirement of the Vital Statistics Act creates the potential for significantly undercounting the number of abortions—thereby distorting the statewide abortion rate and misleading policymakers about abortion trends.

SOME ABORTIONS ARE CURRENTLY LEFT UNREPORTED

According to preliminary data from the Idaho Department of Health and Welfare, medical professionals reported zero abortions in the first six months following the Heartbeat law taking effect on August 18, 2022. During the following six months, from March to August 2023, only five abortions were reported.⁴

Based on these numbers, state policymakers would reasonably conclude that virtually no abortions have been performed over the last year. But such a conclusion would be erroneous—as evidenced by court documents filed in the recent *Adkins v. State of Idaho* case challenging the scope of the medical emergency exceptions under both the Heartbeat and Trigger laws.

In a legal pleading filed by the plaintiffs in that case, a Boise-based OB-GYN employed by the St. Alphonsus hospital network



Court documents reveal that Idaho hospitals performed abortions during the timeframe (August 18, 2022 to February 28, 2023) that no abortions were reported to IDHW.

Source: Idaho Department of Health and Welfare

admitted that one or more of her colleagues induced at least two abortions at their hospital between August 18, 2022, and February 28, 2023—during the timeframe that no abortions were reported to the Idaho Department of Health and Welfare.⁵

These court documents indicate that at least one Idaho hospital is not reporting every abortion to the Idaho Department of Health and Welfare, raising questions about the reliability of abortion data included in state vital statistics.

This is not the first time that policymakers have had reason to suspect problems with our current abortion reporting system. In June 2023, a group of Idaho legislators sent a letter to every hospital in Idaho, explaining their concerns that hospitals may be underreporting induced abortions and encouraging compliance with state reporting requirements.

UNDER CURRENT LAW, NOT ALL ABORTIONS ARE REPORTABLE

The Idaho Vital Statistics Act requires attending physicians to report “induced abortions” to the Department of Health and Welfare within fifteen days of the end of the reporting month. The law defines induced abortions as “the purposeful interruption of pregnancy with an intention other than to produce a live-born infant or to remove a dead fetus and which does not result in a live birth.”⁶

Unfortunately, this insufficient definition excludes induction abortions, a common abortion method that falls within the legal scope of abortion as defined elsewhere in state code.⁷

In an induction abortion, medical professionals artificially induce labor preterm and deliver a live baby that is developmentally too young to survive outside the womb.

Like chemical and surgical abortions, induction abortions almost always result in the death of the preborn baby and thus fall under the prohibitions of both the Heartbeat and Trigger laws. However, induction abortions do not trigger the reporting requirements because the intention is to “produce a live-born infant,” even though the physician reasonably expects that the baby will die shortly thereafter.

Because of this loophole, induction abortions aren't included in state vital statistics data. This means that the official number of abortions performed in Idaho is undercounted, creating challenges for policy-makers and others who rely on these statistics to analyze abortion trends and make informed decisions regarding abortion policy.

ENSURING ALL ABORTIONS ARE REPORTABLE

To improve the accuracy of state abortion data, lawmakers must modify the Idaho Vital Statistics Act to clarify that all abortions, including induction abortions, must be reported to the Department of Health and Welfare.

One easy way to achieve this objective would involve replacing the current definition of “induced abortion” in the Idaho Vital Statistics Act with the more comprehensive definition of “abortion” that is already utilized in both the Heartbeat and Trigger laws:

‘Abortion’ means the use of any means to intentionally terminate the clinically diagnosable pregnancy of a woman with knowledge that the termination by those means will, with reasonable likelihood, cause the death of the unborn child...⁸

Amending the abortion reporting statute by

adopting this definition would achieve two goals. First, it would ensure that induction abortions currently excluded from the reporting requirements are accurately recorded with the Idaho Department of Health and Welfare. After all, induction abortions “will, with reasonable likelihood, cause the death” of the preborn child—and thus should be included in our vital statistics just like any other abortion.

Second, creating greater consistency within Idaho code by utilizing a uniform definition for abortion would make it easier for medical practitioners to understand and

comply with the requirements of state law. Doing this would alleviate the concerns of some physicians who have expressed confusion in navigating the currently existing conflict in definitions between the Idaho Vital Statistics Act on the one hand and the Heartbeat and Trigger laws on the other.

Making this straightforward change to the Idaho Vital Statistics Act would close the loophole that currently allows induction abortions to go unreported, resulting in more accurate state vital statistics.

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1. Fetal Heartbeat Preborn Child Protection Act, tit. 18, ch. 88, Idaho Code (2022).
2. Defense of Life Act, Idaho Code § 18-622 (2023).
3. Idaho Vital Statistics Act, Idaho Code § 39-261 (1977).
4. Email from Pam Harder, Research Analyst Supervisor, Idaho Department of Health and Welfare, to Grace Howat, Policy and Research Assistant, Idaho Family Policy Center (Sept. 20, 2023).
5. Complaint at 63-67, Adkins v. Idaho, No. CV01-23-14744 (Idaho Dist. Sept. 11, 2023), <https://reproductiverights.org/wp-content/uploads/2023/09/ID-Complaint-Final-9-12.pdf>.
6. Idaho Vital Statistics Act, Idaho Code § 39-241.
7. Fetal Heartbeat Preborn Child Protection Act, Idaho Code § 18-8801 (2022); Idaho Code § 18-604 (2006).
8. Ibid.