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ABORTION LAW IN IDAHO: WHAT IS WORKING AND RECOMMENDED IMPROVEMENTS

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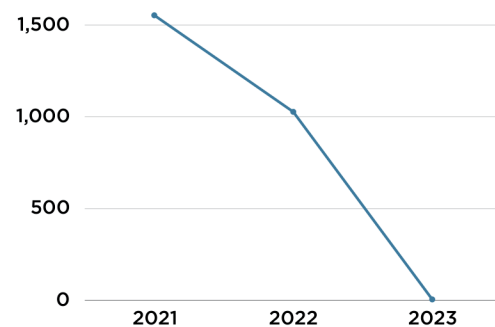
In the State of Idaho, preborn human life is protected by two abortion bans: the Heartbeat law¹ and the Defense of Life Act² (often referred to as the Trigger law).

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 abortion in cases of rape, incest, and when the life of the mother is threatened.

IDAHO ABORTION LAWS ARE WORKING

One indicator that these laws are working is the steep reduction in the number of abortions performed in Idaho during the last eighteen months.

According to preliminary data from the Idaho



Abortions reported to Idaho Department of Health and Welfare during calendar years 2021, 2022, and 2023. Both the Heartbeat law and Defense of Life Act went into effect in August 2022.

Source: Idaho Department of Health and Welfare

Department of Health and Welfare, only five abortions have been reported in calendar year 2023.³ This represents a drastic decline (approx. 99.7%) from calendar year 2021, when 1,553 abortions were reported to state officials.⁴

The evidence that these laws are working was seen in real time during calendar year 2022. Once the criminal penalties of

the Heartbeat law went into effect on August 18, 2022, the abortion rate immediately dropped to zero. And although five abortions were reported during the following year, it is likely that each of the five were legal abortions intended to save the life of the mother.

DO IDAHO ABORTION LAWS NEED MORE CLARITY?

Idaho abortion laws provide ample clarity and latitude for physicians who offer medically necessary care to pregnant women.

Under current law, physicians may perform an abortion when “necessary to prevent the death of the pregnant woman.”⁵ This ‘life of the mother’ exception is vital: When the choice is between saving one life or risking the loss of both lives – and when the intent is to save the life of the mother, not destroy the life of the preborn child – an abortion may be morally justified.

Additionally, the statutory language of state abortion laws also unambiguously affirm that treatments for ectopic pregnancies, treatments for molar pregnancies, and miscarriage care do not fall within the legal definition of abortion and thus are exempt from legal scrutiny.⁶



Reduction in Idaho abortion rate following the implementation of pro-life state laws in Aug. 2022

Even still, some critics have claimed that it’s unclear how sick or near-death a patient must be before a physician can provide a legal abortion. Notably, the Idaho Supreme Court considered this claim when abortionists argued that state abortion laws were unconstitutionally vague and failed to give adequate guidance for physicians. In its landmark decision in Planned Parenthood v. State (2023), the Idaho Supreme Court insisted that any physician—and even any “person of ordinary intelligence”—would “unquestionably understand” when the law allows medically necessary abortion procedures.⁷

In summary, our laws are clear and legally sound, all the while ensuring that pregnant women can still receive medically necessary care for themselves and their babies.

POLICY RECOMMENDATIONS

Even though we've made large strides to protect preborn children, there are still changes that can be made to save even more lives:

1. Remove rape and incest exceptions

While the current state abortion law allows for termination in cases of documented rape and incest with a police report, there has not been one single documented abortion under these exceptions in Idaho to date. This is unsurprising; after all, abortions in cases of rape and incest are incredibly rare, with the leading study finding that less than 0.5% of women seeking an abortion report that the pregnancy was a result of rape.⁸

Regardless, rape and incest exceptions should still be eliminated. While communities should rally around and support women in these tragic situations, it's never morally appropriate to end the life of an innocent preborn child due to the circumstances of their conception. Every living person deserves equal protection of the law—and that means preborn children shouldn't be excluded from these fundamental rights due to the sins of their fathers.⁹

Another consideration is that rape and incest exceptions also produce long-term

psychological harm for another victim—the mother. In fact, this trauma is so bad that 78% of the women who chose abortion after rape feel regret and now believe that abortion was not the right solution.¹⁰

2. Restrict abortifacients

Now that we've successfully eliminated elective abortion, we also need to tackle long-neglected issues like abortifacients that can end a pregnancy after fertilization.

Pharmaceutical abortifacients like Julie, ella, and Plan B—which are misleadingly classified as “emergency contraception” by the FDA—can be legally obtained over-the-counter at pharmacies, clothing boutiques, tattoo parlors, and coffee shops throughout the state.¹¹

But depending on the specific mechanism of action used, each of these abortifacients can destroy developing human life:

- Plan B and Julie (which are colloquially known as the ‘morning after pill’) can prevent the implantation of a zygote—a living human being in the earliest stage of the development¹²
- ella can cause an abortion by depriving a developing baby of the pregnancy hormone progesterone; moreover,

researchers have also found that ella is embryotoxic even at low doses and may cause some birth defects¹³

In addition, some contraceptive medical devices can also act as abortifacients. Hormonal intrauterine devices (IUDs) cause the lining of the uterus to thin, thereby greatly reducing the chances of implantation after fertilization.¹⁴ Alternatively, copper IUDs create a toxic environment in the womb that can result in the death of an embryo.¹⁵

Put simply, our state will not fulfill its promise of guaranteeing the right to life for every child until abortifacient drugs and devices are prohibited.

CONCLUSION

Thousands of babies have been saved from abortion violence as a result of the protections implemented by both the Heartbeat law and Defense of Life Act.

ABORTIFACIENTS VS. CHEMICAL ABORTION PILLS

It's important to note the distinction between emergency contraception and chemical abortion pills.

Emergency contraception is used in the first several days or first couple weeks of pregnancy. Chemical abortion pills like mifepristone and misoprostol are routinely used through 13 weeks of pregnancy.

It is currently illegal in the State of Idaho for medical professionals to prescribe or administer chemical abortion pills for elective abortions.

These laws are working for preborn babies, for mothers, for families, and for physicians. That being said, policymakers can continue building on this remarkable success by restricting abortifacients and removing rape and incest exceptions.

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1. Fetal Heartbeat Preborn Child Protection Act, tit. 18, ch. 88, Idaho Code.
2. Defense of Life Act, Idaho Code § 18-622.
3. Email from Pam Harder, Research Analyst Supervisor, Idaho Department of Health and Welfare, to Grace Howat, Policy and Research Assistant, Idaho Family Policy Center (Dec. 15, 2023).
4. Bureau of Vital Records and Health Statistics, Idaho Vital Statistics: Induced Abortion 2021 (Sept. 2022), <https://publicdocuments.dhw.idaho.gov/WebLink/DocView.aspx?id=23524&dbid=0&repo=public-documents>.
5. Defense of Life Act, Idaho Code § 18-622(2).
6. Idaho Code § 18-604(1).
7. *Planned Parenthood v. Idaho*, Nos. 49615, 49817, 49899 (Idaho Jan. 5, 2023) at 95; see also 85-97.
8. Lawrence B. Finer et al., *Reasons U.S. Women Have Abortions: Quantitative and Qualitative Perspectives, Perspectives on Sexual and Reproductive Health* (Sept. 2005) at 114, <https://www.guttmacher.org/journals/psrh/2005/reasons-us-women-have-abortions-quantitative-and-qualitative-perspectives>.
9. Deut. 24:16 (ESV): “Fathers shall not be put to death because of their children, nor shall children be put to death because of their fathers. Each one shall be put to death for his own sin.”
10. Elliot Institute, *The Hard Cases: New Facts. New Answers*, <https://www.theunchoice.com/pdf/OnePageFactSheets/HardCasesSheet1.pdf>.
11. Idaho Abortion Rights, *Get Plan B, Julie Emergency Contraceptives, condoms, or pregnancy tests, for FREE at our Reproductive Health Distro Boxes inside of local businesses* (Jan. 2, 2024, 2:55pm), <https://idahoabortionrights.com/birth-control-ec>.
12. Family Research Council, *Myth And Fact: The Truth About Ella and How It Works*, <https://downloads.frc.org/EF/EF10G28.pdf> (last visited Jan. 2, 2024).
13. *Ibid.*
14. Healthline, *Choosing Between Intrauterine Device Types* (Oct. 26, 2023), <https://www.healthline.com/health/birth-control/iud-types>.
15. Susan Wills, *New Studies Show All Emergency Contraceptives Can Cause Early Abortion*, Charlotte Lozier Institute (Jan. 4, 2014), <https://lozierinstitute.org/emergencycontraceptives>.

ABOUT IDAHO FAMILY POLICY CENTER

Idaho Family Policy Center is a ministry that advances the lordship of Christ in the public square through engaging the church, promoting God-honoring public policy, and training statesmen.

As the premier conservative Christian policy research and educational organization in the state, IFPC is working to promote biblically sound public policy that protects the sanctity of life, safeguards religious freedom, strengthens parental rights, recognizes biblical truths in sexuality and gender, and stimulates economic opportunity.

Only the gospel can transform the culture, but the Great Commission involves a cultural mandate to prophetically point people back to God's good design by teaching the nations to obey everything Jesus has commanded. IFPC engages the church, discipling Christians in biblical worldview so that they can stand winsomely for truth and make a positive impact for God's kingdom in their communities.

A member of the nationwide family policy council movement, IFPC works closely with an alliance of pro-family groups in other states, as well as national groups including Family Research Council, Focus on the Family, Family Policy Alliance, and Alliance Defending Freedom.



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