



Commonwealth of Kentucky
Office of the Attorney General

Daniel Cameron
Attorney General

Capitol Building, Suite 118
700 Capital Avenue
Frankfort, Kentucky 40601
(502) 696-5300
Fax: (502) 564-2894

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***Attorney General Advisory:
The effect and scope of the
Human Life Protection Act in light of
Dobbs v. Jackson Women's Health Organization***

This Advisory provides an overview of the effect and scope of the Human Life Protection Act in light of the United States Supreme Court's decision in *Dobbs v. Jackson Women's Health Organization*, No. 19-1392, which overturned *Roe v. Wade*, 410 U.S. 113 (1973), and returned the right to regulate abortion to the states.

Human Life Protection Act

Kentucky enacted the Human Life Protection Act, now codified at KRS 311.772, in March 2019. The Kentucky General Assembly passed the law by a bipartisan vote in both chambers. The Act prohibits abortion in most circumstances. Generally speaking, it states that no person may knowingly cause or aid in "the termination of the life of an unborn human being." KRS 311.772(3). Performing a prohibited abortion is a Class D felony, but pregnant mothers who receive an abortion are not subject to any criminal liability. KRS 311.772(3)(b), (5).

The Human Life Protection Act does not prohibit abortion when a licensed physician determines in his or her "reasonable medical judgment" that such a procedure is necessary to protect the life of a pregnant mother. KRS 311.772(4)(a). More specifically, a licensed physician can knowingly perform an abortion to prevent a pregnant mother's death, substantial risk of death due to a physical condition, or a serious, permanent impairment to a life-sustaining organ. *Id.* A licensed physician

must make reasonable medical efforts under the circumstances to preserve both the life of the mother and the life of the unborn child “in a manner consistent with reasonable practice.” *Id.*

The restrictions on abortion in the Human Life Protection Act did not become operative upon the law’s enactment. Rather, the restrictions were to become effective immediately in one of two circumstances. First, the restrictions become effective upon a decision from the Supreme Court overruling *Roe v. Wade*. KRS 311.772(2)(a). Second, the restrictions become effective upon the adoption of an amendment to the United States Constitution that “restores to the Commonwealth of Kentucky the authority to prohibit abortion.” KRS 311.772(2)(b).

Dobbs v. Jackson Women’s Health Organization

The United States Supreme Court issued its decision in *Dobbs v. Jackson Women’s Health Organization*, No. 19-1392, on June 24, 2022. The decision expressly overrules *Roe v. Wade* and returns “the issue of abortion to the people’s elected representatives.” *Dobbs*, No. 19-1392, slip op. at 6 (June 24, 2022). This decision satisfies KRS 311.772(2)(a), and so the Human Life Protection Act’s restrictions on abortion became operative immediately upon the issuance of *Dobbs*.

Additional Guidance

Recognizing that the effective date and scope of the Human Life Protection Act are important issues of public interest, Attorney General Daniel Cameron provides the following guidance:

1. When did the restrictions in the Human Life Protection Act become effective?

The prohibition on performing abortions in KRS 311.772 became effective on June 24, 2022, the date on which the Supreme Court issued its decision in *Dobbs*.

2. Does the Human Life Protection Act contain an exception for the health of the pregnant mother?

Yes. KRS 311.772(4) provides that a licensed physician may knowingly perform an abortion to prevent a pregnant mother’s death, substantial risk of death due to a physical condition, or serious and permanent impairment to a life-sustaining organ.

3. Does the Human Life Protection Act prohibit contraceptives?

No. KRS 311.772(6) provides that the Act does not prohibit the proper use of contraceptives to prevent pregnancy or before a pregnancy can be determined through conventional medical testing.

4. Can a pregnant mother be penalized for receiving an abortion?

No. KRS 311.772(5) provides that a pregnant mother who receives an abortion cannot be subjected to “any criminal conviction and penalty.”

5. Does the Human Life Protection Act apply in the case of a miscarriage?

No. The Human Life Protection Act has no application when a pregnant mother suffers a miscarriage. Nor does it prohibit medical treatment to help a mother in this circumstance.