WEST VIRGINIA CODE: §16-2M-1

§16-2M-1. Legislative findings.

The Legislature makes the following findings:

(1) Pain receptors (unborn child's entire body nociceptors) are present no later than sixteen weeks after fertilization and nerves link these receptors to the brain's thalamus and subcortical plate by no later than twenty weeks.

(2) By eight weeks after fertilization, the unborn child reacts to stimuli that would be recognized as painful if applied to an adult human, for example, by recoiling.

(3) In the unborn child, application of painful stimuli is associated with significant increases in stress hormones known as the stress response.

(4) Subjection to painful stimuli is associated with long- term harmful neuro developmental effects, such as altered pain sensitivity and, possibly, emotional, behavioral and learning disabilities later in life.

(5) For the purposes of surgery on unborn children, fetal anesthesia is routinely administered and is associated with a decrease in stress hormones compared to their level when painful stimuli is applied without the anesthesia.

(6) The position, asserted by some medical experts, that the unborn child is incapable of experiencing pain until a point later in pregnancy than twenty weeks after fertilization, which point in the pregnancy is generally consistent with twenty-two weeks following the woman's last menstrual cycle, predominately rests on the assumption that the ability to experience pain depends on the cerebral cortex and requires nerve connections between the thalamus and the cortex. However, recent medical research and analysis, especially since 2007, provides strong evidence for the conclusion that a functioning cortex is not necessary to experience pain.

(7) Substantial evidence indicates that children born missing the bulk of the cerebral cortex, those with hydranencephaly, nevertheless experience pain.

(8) In adults, stimulation or ablation of the cerebral cortex does not alter pain perception while stimulation or ablation of the thalamus does.

(9) Substantial evidence indicates that structures used for pain processing in early development differ from those of adults, using different neural elements available at specific times during development, such as the subcortical plate, to fulfill the role of pain processing.

(10) Consequently, there is substantial medical evidence that an unborn child is capable of experiencing pain by pain capable gestational age as defined in subsection (7), section two,

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article two-m of this chapter.

(11) It is the purpose of the state to assert a compelling state interest in protecting the lives of unborn children from the stage at which substantial medical evidence indicates that they are capable of feeling pain.

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