



STATE OF INDIANA  
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June 4, 2013

The Honorable Bob Goodlatte  
The Honorable Trent Franks  
Committee on the Judiciary  
2138 Rayburn House Office Building  
Washington, D.C. 20515-6216

Dear Representatives Goodlatte and Franks,

I am writing in response to your May 7<sup>th</sup> correspondence to Indiana Attorney General Greg Zoeller seeking data on the prosecutions and criminal statutes relating to abortion and newborn deaths as a result of abortions.

With respect to matters specified in your correspondence, the Indiana Attorney General's Office does not have criminal jurisdiction or participation in criminal investigations or prosecutions of defendants. Therefore we do not have any responsive information to your request for criminal law analysis or prosecutorial outcomes in questions 1, 2, 4, and 5.

However we can direct you to certain Indiana Code provisions that are responsive to some of your inquiries in questions 2 and 3. Full text of the following Indiana Code sections is available on the Indiana General Assembly's website at <http://www.in.gov/legislative/ic/code/>.

Question #2: You specifically ask if the Legislature has enacted laws, in addition to general laws against homicide or requiring ordinary medical treatment, specifically to protect newborns delivered alive in the process of abortions.

Yes, Indiana has enacted laws specifically to protect fetuses delivered alive in the process of abortions. The relevant statutes you may find helpful are:

1. IC 16-34-2-3 and particularly subsection (c): Conditions for abortion after viability or 20 weeks; attendance of physician for preservation of life and health of viable unborn child; certificates of birth or death; offense for violation; ward

(c) Any fetus born alive shall be treated as a person under the law, and a birth certificate shall be issued certifying the child's birth even though the child may subsequently die, in which event a death certificate shall be issued. Failure to take all reasonable steps, in keeping with good medical practice, to preserve the life and health of the live born person shall subject the responsible persons to Indiana laws governing homicide, manslaughter, and civil liability for wrongful death and medical malpractice.

2. IC 16-18-2-205 Live birth or birth "Live birth" or "birth", for purposes of IC 16-37, means the birth of a child who shows evidence of life after the child is entirely outside of the mother.

3. IC 16-18-2-365 Viability "Viability," for purposes of IC 16-34, means the ability of a fetus to live outside the mother's womb.

As noted above, IC 16-34-2-3(c) references the Indiana criminal code, which has been specifically amended to provide for the protection of a viable fetus, in addition to other humans. Indiana's criminal code does not distinguish between fetuses born alive during abortions and other human beings, as it does for viable fetuses. See, for example, the following code sections:

- a. IC 35-42-1-0.5 Abortions exempt
- b. IC 35-42-1-1 Murder
- c. IC 35-42-1-3 Voluntary manslaughter
- d. IC 35-42-1-4 Involuntary manslaughter
- e. IC 35-42-1-6 Feticide

The Indiana Attorney General's office does not have direct prosecutorial jurisdiction over prosecution of these types of cases and does not have responsive data to your question regarding any change in prosecutorial practices.

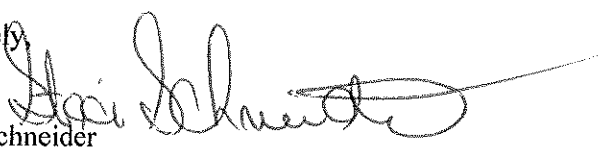
Question #3: You ask if Indiana has different statutes of limitations for culpability in the death of an infant and culpability in the death of human beings in later stages of development?

No, Indiana does not have different statutes of limitations for culpability in the death of any human being for any reason.

The Indiana criminal code's "periods of limitation" are found at IC 35-41-4-2. Generally, Indiana's periods of limitation are controlled by the severity or level of the crime, and not the specific type of crime: prosecutions must be initiated within five years of the crime for Class B, C, and D felonies, and within two years of the crime for misdemeanors, etc. IC 35-41-4-2(a)(1)-(2). Murders and Class A felonies may be prosecuted at any time. IC 35-41-4-2(c)-(d). Exceptions of note can be found at IC 35-41-4-2(b) and IC 35-41-4-2(e).

In Indiana the State Department of Health is the repository for certain medical data and reporting that may be responsive to your inquiry. In addition, the Indiana Prosecuting Attorneys Council (IPAC) works directly with each county prosecutor engaged in criminal prosecutions.

Sincerely,

  
Staci Schneider  
Chief of Staff

cc: Indiana Prosecuting Attorneys Council  
Indiana State Department of Health