

STATE OF UTAH
OFFICE OF THE ATTORNEY GENERAL



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Bob Goodlatte
Trent Franks
House of Representatives
2138 Rayburn House Office Building
Washington DC 20515-6216

RE: Information on Utah's Abortion Laws

Dear Chairmen Goodlatte and Franks,

This letter is in response to your request for information related to the matter involving Kermit Gosnell. Under Utah law, the deliberate killing of a newborn, including a newborn delivered alive in the process of an abortion would be a criminal offense. Utah Code Ann. §76-5-201(1)(a) provides that "a person commits criminal homicide if the person intentionally, knowingly, recklessly, with criminal negligence...causes the death of another human being, including an unborn child at any stage of its development." However, there is no specific cause of action for criminal homicide for the death of an unborn child caused by an abortion. U.C.A. §76-5-201(1)(b). In Utah, an abortion is defined as:

- (i) the intentional termination or attempted termination of human pregnancy after implantation of a fertilized ovum through a medical procedure carried out by a physician or through a substance used under the direction of a physician;
- (ii) the intentional killing or attempted killing of a live unborn child through a medical procedure carried out by a physician or through a substance used under the direction of a physician; or
- (iii) the intentional causing or attempted causing of a miscarriage through a medical procedure carried out by a physician or through a substance used under the direction of a physician.

U.C.A. § 76-7-301(1)(a). Because Utah law defines an abortion as the killing of an *unborn* child, a person who deliberately killed a newborn that was delivered alive would be liable for

criminal homicide pursuant to Utah Code Ann. §76-5-201(1)(a). Furthermore, Utah prohibits partial birth abortions in which a live fetus is partially delivered and then terminated unless it is necessary to save the life of the mother. U.C.A. § 76-7-326. In sum, it is a criminal offense in Utah to kill a newborn, including a newborn who was delivered alive in the process of an abortion.

The Utah legislature has not enacted any laws specifically to protect newborns delivered alive in the process of abortions. However, as indicated above, Utah law prohibits partial birth abortions in which a live fetus is partially delivered and then terminated. U.C.A. § 76-7-326. Utah law also prohibits abortions of viable fetuses unless it is necessary to prevent grave damage to the woman's health or if the woman is pregnant as a result of rape or incest. U.C.A. § 76-7-302(3)(b). Utah law mandates that when an abortion is performed to prevent grave damage to the woman's health and the unborn child is sufficiently developed to have a possibility of survival outside of the woman's womb, "the medical procedure used must...give the unborn child the best chance of survival. U.C.A. § 76-7-307. The physician performing the abortion must "use all of his medical skills to attempt to promote, preserve and maintain the life of any unborn child..." U.C.A. § 76-7-308. In sum, the Utah Legislature has passed several laws to protect the life of unborn children, but has not enacted any laws specifically to protect newborns delivered alive in the process of abortions.

Utah does not have 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. Utah Code Ann. § 76-1-302(1) stipulates the time in which prosecution shall be commenced for felonies, negligent homicide, forcible sexual abuse, incest, misdemeanors and infractions. Utah Code Ann. § 76-1-301(2) allows prosecution for certain offenses, including murder and child abuse homicide, to be commenced at any time. Utah does not have statutes of limitations that distinguish between culpability for the death of an infant and culpability for the death of a human being in later stages of development.

Utah prohibits abortions after viability. U.C.A. §76-7-302(3)(b). An abortion may only be performed after viability if it is necessary to prevent death or serious risk of substantial and irreversible impairment of a major bodily function of the woman. U.C.A. §76-7-302(b)(i). A woman can also have an abortion after viability if she is pregnant as a result of rape or incest. U.C.A. §76-7-302(b)(iii).

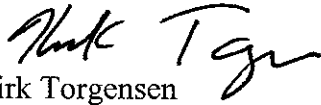
It is a criminal offense in Utah to kill a newborn, including newborns delivered alive during an abortion. Utah prohibits partial birth abortions, but has not enacted any laws specifically to protect newborns delivered alive in the process of abortions. Utah does not have different statutes of limitations for culpability in the death of an infant and culpability in the death of human beings in later stages of development. Under Utah law an abortion cannot be performed if the unborn child is viable unless the abortion is necessary to avoid grave harm to health of the mother or if the woman is pregnant as a result of rape or incest.

In researching these issues, we contacted prosecutors in Utah to find out how these laws have been applied. However, we did not find any cases in which a person was prosecuted for the deliberate killing of a newborn who was delivered alive in the process of an abortion. Similarly,

prosecutors did not indicate that they had prosecuted any criminal cases because a woman died or suffered serious complications as a result of an abortion. Finally, we did not find any cases in which a person was prosecuted for performing abortions after the statutory period.

I hope this information is responsive to your inquiry. If you need any further information, please feel free to contact me directly.

Sincerely,

A handwritten signature in black ink, appearing to read "Kirk Torgensen". The signature is written in a cursive, flowing style.

Kirk Torgensen
Chief Deputy
Utah Attorney General's Office