



Colorado
Legislative
Council
Staff

Room 029 State Capitol, Denver, CO 80203-1784
(303) 866-3521 FAX: 866-3855 TDD: 866-3472

MEMORANDUM

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March 26, 2008

TO: Senator David Schultheis

FROM: Elizabeth Burger, Senior Analyst, 303-866-6272

SUBJECT: Abortion Laws

This memorandum responds to your request for a description of Colorado's abortion laws. Table 1 lists nine statutes and one Colorado Constitutional provision that address abortion. A summary of current law and the year the provisions were originally enacted are also provided. Notations in the far right column include considerations relevant to the law (e.g., court cases).

Table 1
Colorado Abortion Law

Subject	Summary	Citation	Originally Enacted	Notes
Unprofessional Conduct, Podiatrists	Procuring, or aiding or abetting in procuring, criminal abortion is one among a variety of actions determined to be unprofessional conduct. The Colorado Podiatry Board may refuse to issue or may revoke, suspend, or refuse to renew the license to practice podiatry of anyone found guilty of unprofessional conduct. The board may also issue a letter of admonition or a letter of concern or place a podiatrist on probation.	Section 12-32-107, C.R.S.	1983	—
Unprofessional Conduct, Physicians	Procuring, or aiding or abetting in procuring, criminal abortion is one among a variety of actions determined to be unprofessional conduct. The Board of Medical Examiners may deny a license or may grant a probationary license if an applicant has engaged in unprofessional conduct.	Sections 12-36-116 and 12-36-117, C.R.S.	1951	—
Parental Notification	At least one parent or relative with whom a minor resides must be notified no less than 48 hours before an abortion is performed on the minor. No notice is required in specific circumstances, including when a judge determines that giving notice is not in the minor's best interest, the court finds the minor is mature enough to decide to have an abortion, a medical emergency exists, or the minor is a victim of child abuse or neglect. Persons who perform an abortion in violation of the law are liable for damages. Persons who counsel minors to provide false information to a physician commit a class 5 felony. ¹	Section 12-37.5-101, C.R.S., et seq.	1998 citizen initiative	In 2002, the Tenth Circuit Court of Appeals upheld the U.S. District Court for the District of Colorado's decision that the Colorado Parental Notification Act is unconstitutional. The act was amended by the General Assembly in 2003 to address the constitutional defects cited by the courts as well as other constitutional concerns raised by the litigation. The courts have not ruled on the act since that time.

¹ A class 5 felony is punishable by 1 to 3 years incarceration and/or a \$1,000 to \$100,000 fine.

Colorado Abortion Law (continued)

Subject	Summary	Citation	Originally Enacted	Notes
Criminal Abortion	Pregnancy is defined as the implantation of an embryo in the uterus. A person commits criminal abortion if he or she is not a licensed physician using accepted medical procedures and intentionally terminates a woman's pregnancy without her consent. Criminal abortion is a class 4 felony. ² It becomes a class 2 felony if the woman dies as a result of the abortion. ³ A person who "pretends" to end a woman's pregnancy commits a class 5 felony. If the woman dies as a result of the pretended abortion, it is a class 2 felony. Any hospital staff member who objects to abortion on moral or religious grounds is not required to participate in the procedure and cannot be subjected to disciplinary actions or recrimination. Distributing or selling abortifacients to someone who is not a licensed physician is a class 1 misdemeanor. ⁴	Section 18-6-101, C.R.S., et seq.	1967	A significant portion of the criminal abortion statute was held unconstitutional in a 1973 Colorado Supreme Court decision. The summary provided here gives an overview of the provisions that were <i>not</i> struck down. Although the statute still requires a married woman seeking an abortion to have her husband's consent, the provision is considered effectively overruled by <i>Planned Parenthood of Southeastern Pennsylvania v. Casey</i> , 112 S. Ct. 2791 (1992). In that case, the U.S. Supreme Court rejected a spousal notification requirement as creating an undue burden on the pregnant woman.
Clinic Access	A person commits a class 3 misdemeanor if he or she obstructs, detains, hinders, impedes, or blocks another person's entry to or exit from a health care facility. ⁵ Within a 100-foot radius of a facility's entrance door, no one may approach another person within 8 feet to distribute a leaflet, display a sign, or engage in oral protest, education, or counseling without the person's consent. To do so is a class 3 misdemeanor. Persons violating this section of law are also subject to civil liability.	Section 18-9-122, C.R.S.	1993	—
Sale or Advertisement of Abortifacients	No one can advertise any pills, powders, or drugs designed for use as abortifacients. The sale of any such products may be made only upon the written prescription of a practicing physician located in the city, village, or county in which the sale is made. The druggist or dealer selling the prescribed drug must record specific information about the sale. Persons violating the law must be fined \$25 to \$100.	Section 25-1-665, C.R.S., et seq.	1893	—

² A class 4 felony is punishable by 2 to 6 years incarceration and/or a \$2,000 to \$500,000 fine.

³ A class 2 felony is punishable by 8 to 24 years incarceration and/or a \$5,000 to \$1 million fine.

⁴ An abortifacient is something (e.g., drug, instrument) that induces abortion. A class 1 misdemeanor is punishable by 6 to 18 months in jail and/or a \$500 to \$5,000 fine.

⁵ A class 3 misdemeanor is punishable by up to 6 months in jail and/or a \$50 to \$750 fine.

Colorado Abortion Law (continued)

Subject	Summary	Citation	Originally Enacted	Notes
Transfer of Fetal Tissue	No one who performs abortions can transfer fetal tissue for valuable consideration to anyone who conducts research using fetal tissue or transplants fetal tissue for therapeutic purposes. "Valuable consideration" is defined to include money, gifts, barter arrangements, exchange of services, and lease-sharing agreements. Violation of the law is punishable by a fine of up to \$10,000.	Section 25-2-111.5, C.R.S.	2000	—
Public Funding	If every reasonable effort has been made to preserve the lives of a pregnant woman and her fetus, public funds may be used to pay a provider for necessary medical services, including abortion. Necessary medical services are defined as procedures deemed necessary to prevent the death of a pregnant woman or her fetus due to life-endangering circumstances. Life-endangering circumstances are defined to include a lethal medical condition in the fetus and a medical or psychiatric condition which is a serious and substantial threat to the life of the woman. A physician who performs medical services under this law must report specific information to the Department of Health Care Policy and Financing, including the condition which necessitated the services.	Sections 25.5-4-415, and 25.5-3-106, C.R.S.	1985 1985	The purpose of these identical sections of law is to implement the provisions of Colo. Const., Art.V, Sec. 50. Section 25.5-4-415, C.R.S., applies to the Medicaid program, and Section 25.5-3-106, C.R.S., applies to the Colorado Indigent Care Program. A 1995 decision by the 10 th Circuit Court of Appeals held that Section 25.5-4-415, C.R.S., violates federal Medicaid law requiring abortion coverage in cases of rape, incest, or to save the woman's life. The Department of Health Care Policy and Financing is therefore enjoined from applying the state law to Medicaid enrollees.
Public Funding	No public funds can be used to pay or reimburse, directly or indirectly, any person, agency, or facility for the performance of an abortion. The General Assembly, however, may authorize and appropriate funds to be used for medical services necessary to prevent the death of either the pregnant woman or her fetus under circumstances where every reasonable effort is made to preserve the life of each.	Colo. Const., Art. V, Sec. 50	1984 citizen initiative	Sections 25.5-4-415 and 25.5-3-106, C.R.S. implement the Constitutional provisions. As noted above, the state's prohibition on public funding for abortion was found to violate federal Medicaid law by the 10 th Circuit Court of Appeals.
Coroners and Criminal Abortion	The law authorizes county coroners to take specific actions and requires them to take other actions when a death occurs due to certain causes. Criminal abortion, including any situation where the abortion may have been self-induced, is among that list of causes. A coroner must immediately notify the district attorney, proceed to view the body, and make all proper inquiry regarding the cause of death. The person who discovers the death must immediately report it to law enforcement or the coroner. The coroner may call for a post-mortem examination of the body by a licensed physician to determine the cause of death. When the coroner knows that someone has died from one of the specified causes, he or she may conduct an inquest. A coroner who does so, has the authority to receive a copy of any of the decedent's relevant medical or psychological records.	Section 30-10-606, C.R.S.	1981	—