



*Elections & Laws for Life*

# Born-Alive Abortion Survivors Protection Act

[S. 130 introduced by Sen. Ben Sasse \(R-Neb.\)](#)

[H.R. 962 introduced by Rep. Ann Wagner \(R-Mo.\)](#)

[H. Res. 102 Introduced by Rep. Steve Scalise \(R-La.\)](#)

## Talking Points

- This bill is about infanticide. All Members of Congress should be able to agree that, once born, all children deserve protection.
- Any so-called “right to abortion” does not extend to children born alive in the course of an attempted abortion. A “right to an abortion” should not translate to a right to a dead child no matter what. If a child survives an abortion, he or she should be treated with the same degree of medical concern and attention as any other child born prematurely at the same stage of development.
- In the late summer of 2015, the U.S. House of Representatives passed the Born-Alive Abortion Survivors Protection Act by a vote of 248-177.
- In the fall of 2017, the House passed the Pain-Capable Unborn Child Protection Act by a vote of [237-189](#). For those who voted against protecting pain-capable unborn children halfway through pregnancy, we ask, can you at least agree that a child who survives an attempted abortion should be given equal life-saving care?

## Background

- In 2002, President Bush signed the [Born-Alive Infants Protection Act](#) into law after it passed the House by voice vote and the Senate by unanimous consent. The legislation had previously passed the House in 2000 by a vote of [380-15](#). The 2002 bill clarified that if an abortion results in the live birth of an infant, the infant is a legal person for all purposes under the laws of the United States and is entitled to all the protections of such laws. However, it did not create additional, specific protections for children who survive an abortion.
- S. 130/H.R. 962 builds on the 2002 law by creating specific requirements for the treatment of abortion survivors. These requirements are:
  1. In the case of an attempted abortion that results in a child born alive, the health care practitioner must exercise the same degree of professional skill, care, and diligence to preserve the life and health of the child as a reasonably diligent and conscientious health care practitioner would render to any other child born alive at the same gestational age; and
  2. ensure that the child born alive is immediately transported and admitted to a hospital.

- These federal protections are necessary because the federal Supreme Court decision *Roe v. Wade* and its companion case *Doe v. Bolton* have rendered unborn children uniquely vulnerable. Furthermore, abortionists have an incentive to ensure infant survivors do not leave the abortion center alive.
- The Born-Alive Abortion Survivors Protection Act also establishes federal penalties on any health care practitioner for failure to comply with these reasonable requirements. Penalties include fines and/or imprisonment. In addition, a woman on whom an abortion was performed or attempted is not subject to any penalty and is given the right to sue for civil remedies.

## Do Late-Term Abortions Really Happen in the U.S.?

Yes. The definition of a late-term abortion is imprecise – and shifting. The gestational age at which an unborn child can survive outside the womb, with medical support, is decreasing, with instances of survival occurring at 22 weeks’ gestation or slightly less. While most states report a gestational age range at which abortions are performed, several jurisdictions that are hospitable to late-term abortions do not collect or publish such data nor do they transmit it to the U.S. Centers for Disease Control (CDC). Nonetheless, [reports by the CDC](#) suggest that roughly 1.3% of all U.S. abortions are carried out at or after 21 weeks of gestation. At [862,320 abortions in 2017](#) estimated by the Guttmacher Institute, a total of well over 11,000 late-term abortions occurred that year, exceeding the number of people killed in assaults by firearm that year.

Unlike assaults by firearm, late-term abortions are perfectly legal in most of the United States. Abortion advocates argue, in fact, that the limits imposed on late-term abortion by more than 20 states violate the terms of *Roe v. Wade* and *Doe v. Bolton*, which require a “health exception” all the way to birth. This exception, spelled out in the *Doe v. Bolton* ruling, defines “health” as including mental health, financial concerns, and familial circumstances – in short, abortion on demand. In nearly 30 states current law either includes such a wide-open health exception or mentions no limit whatsoever. On January 22, 2019, New York State, which until recently had a 24-week limit in effect, lifted that limit and affirmed what amounts to elective abortion until birth. A 2014 [study](#) by the Charlotte Lozier Institute found that the United States is one of just seven nations in the world – including North Korea and the People’s Republic of China – to allow elective abortion after 20 weeks of pregnancy. A 2017 Fact Check by *The Washington Post* [rated](#) this finding “true.”

## Aren’t Late-Term Abortions Only Performed When the Baby Can’t Survive Anyway?

Relatively few late-term abortions are performed on babies who have fatal birth defects. According to a [study](#) in 2013 (Foster, Kimport) published in *Perspectives on Sexual and Reproductive Health*, a journal of the pro-choice Guttmacher Institute, “data suggests that most women seeking later terminations are not doing so for reasons of fetal anomaly or life endangerment.” The women undergoing late-term abortions offered the same reasons as their counterparts who were seeking earlier abortions. Although the study did not include women undergoing abortions due to fetal anomaly or risk to their own lives, a significant limitation, one of the study’s authors is [quoted](#) as stating “that abortions for fetal anomaly ‘make up a small minority of later abortion.’” Most late-term abortions are performed on healthy babies who could survive outside the womb with proper care.

# Are Abortion Survivors a Myth Made Up by Pro-Life Politicians?

Late-term procedures are carried out via methods intended to ensure fetal demise prior to delivery, primarily through the administration of a lethal injection into the baby's head or heart or severing the umbilical cord so that the unborn child will bleed to death. The survival of a baby intended for abortion creates a host of potential legal and medical problems for the abortion practitioner. A watershed [article](#) that appeared in the *Philadelphia Inquirer* in 1981 referred to the survival of a baby after abortion as the "dreaded complication."

The *Inquirer* article quoted Dr. Willard Cates, then-director of abortion surveillance at the CDC, as estimating "that 400 to 500 abortion live births" occurred every year in the United States. These numbers "are little known," the article stated, "because organized medicine, from fear of public clamor and legal action, treats them more as an embarrassment to be hushed up than a problem to be solved." The numbers were also likely low. Cates added, "It's like turning yourself in to the IRS for an audit. What is there to gain? The tendency is not to report because there are only negative incentives."

In the years since Dr. Cates' admission, more recent testimony to the accidental birth of babies during abortions has come to light, acknowledged by abortion providers, alluded to by abortion advocates, reported by a handful of states, and sometimes shared by the survivors themselves.

- In an [undercover video](#) released in April 2013, a D.C. abortionist [admitted](#) he would not intervene to save an abortion survivor. When asked about a baby being born alive during an attempted abortion, he said, "usually, at this point in your pregnancy, it's too early to survive, usually. It will expire shortly after birth...it's all in how vigorously you do things to help a fetus survive at this point." Later he said, "we would not help it [the baby]. Let's say. We wouldn't—we wouldn't—uh, intubate, let's say."
- In another undercover video released in March 2017, a former [Planned Parenthood medical director](#) said that in order to determine whether to provide medical intervention for these babies, "You need to pay attention to who's in the room."
- A [Planned Parenthood lobbyist](#) opposed the Infants Born Alive Act in Florida, saying, "We believe that, you know, any decision that's made should be left up to the woman, her family, and the physician." [Abortion advocates](#) leapt to the lobbyist's defense, targeting the Infants Born Alive Act's "fundamentally flawed assumption that this type of situation is a real risk" and asserting that born-alive infants were "incredibly unlikely." However, since 2013 when the Act was signed into law, 23 babies have been born alive during abortions in Florida.
- In an [interview with WTOP](#) in Washington, D.C., in which he endorsed a permissive late-term abortion bill, Virginia Governor Ralph Northam dismissed concerns about abortions performed while a woman is giving birth, explaining, "The infant would be delivered; the infant would be kept comfortable; the infant would be resuscitated if that's what the mother and the family desire, and then a discussion would ensue between the physicians and the mother."
- Abortion survivor Melissa Ohden [testified](#) to the House Judiciary Committee, "You wouldn't know it by looking at me today, but in August of 1977, I survived a failed saline infusion abortion.... I know where children like me were left to die at St. Luke's Hospital—a utility closet. In 2014, I met a nurse who assisted in a saline infusion abortion there in 1976, and delivered a

living baby boy. After he was delivered alive, she followed her superior's orders and placed him in the utility closet in a bucket of formaldehyde to be picked up later as medical waste after he died there, alone."

- Gianna Jessen, another adult survivor of abortion, also [testified](#) to the House Judiciary Committee, stating, "I was delivered alive in an abortion clinic in Los Angeles on April the 6th, 1977. My medical records state: 'Born alive during saline abortion' at 6 am. Thankfully, the abortionist was not at work yet. Had he been there, he would have ended my life with strangulation, suffocation, or leaving me there to die."
- Many young survivors have grown up and chosen to go public with their stories. The testimonies of six individuals who were born alive during abortions, including Ohden and Jessen, are featured on <https://theabortionsurvivors.com/>. A Fox News interview with Ohden and two other abortion survivors, one of whom testifies he lost an arm in the process, [aired](#) on February 11, 2019.
- Late-term abortionist Kermit Gosnell flouted Pennsylvania law for years before suspicion of the illegal sale of drugs caused the FBI and the Drug Enforcement Administration to raid his "House of Horrors" in 2010. Most disturbing among what they found was evidence of the intentional killing of babies who had survived Gosnell's abortion procedures. These "snippings," as he called them, involved using a scissors to sever the spine of babies who survived his brutal abortions.
- In 2005, a mother [delivered her 23-week-old baby](#) in the toilet at EPOC Clinic in Orlando, Florida, and was shocked to see him move. Abortion staff not only refused to help but turned away paramedics, whom her friend had notified by [calling 911](#). Angele could do no more than helplessly sit on the floor rocking and singing to her baby for 11 minutes until he died.
- In 2006, Sycloria Williams [delivered her 23-week-old baby boy](#) on a recliner at A Gyn Diagnostic Center in Hialeah, Florida. When he began breathing and moving, abortion clinic owner Belkis Gonzalez cut the umbilical cord and zipped him into a biohazard bag, still alive.
- Jill Stanek [testified](#) before the House Judiciary Committee about her experience as a registered nurse in the labor and delivery department at Christ Hospital in Oak Lawn, Illinois, where she discovered babies being aborted alive and shelved to die in the department's soiled utility closet. She said, "I was traumatized and changed forever by my experience of holding a little abortion survivor for 45 minutes until he died, a 21/22-week-old baby who had been aborted because he had Down syndrome."

## How Often Do Late-Term Abortions Result in Live Births?

Because of gaps in national and state abortion reporting, and the continued opposition of abortion advocacy groups to more accurate and detailed reporting, relatively little is known about how often survival now occurs after abortion. The number is certainly not zero. The Charlotte Lozier Institute has engaged in a multi-year effort to obtain abortion data from the 49 jurisdictions that voluntarily provide annual summaries of abortion incidence to the CDC. Only seven states have publicly reported or responded to requests for statistics on children marked for abortion who were born alive during abortion procedures ([Arizona](#), [Florida](#), Indiana, [Michigan](#), [Minnesota](#), [Oklahoma](#), and [Texas](#)). In just four of these states, at least 25 children were born alive during attempted abortions in 2017.

The [CDC estimates](#) that between 2003 and 2014, at least 143 babies died after being born alive during abortions, and it is very possible that this undercounts the actual number. Additionally, the CDC report counts only babies who were born alive during abortions and then later passed away – it does not include babies who survived attempted abortions and are still alive.

Babies who survive abortions are not unique to the United States. The Canadian Institute for Health Information (CIHI) [has released reports](#) showing that [766 babies](#) were born alive during late-term abortions between 2013 and 2018. CIHI has confirmed for CLI and other researchers that these babies were born alive during induced abortions. In fact, Canadian researchers [caution](#) that babies who are born during abortions and then die are increasing Canada's infant mortality rate.

## **Don't State Laws Already Protect Babies Born Alive During Abortions?**

[Only 15 states](#) have laws offering robust protections to babies who survive abortions. However, many of the states with the most extreme abortion laws do not afford such protection to born-alive babies. Alaska, Colorado, New Jersey, New Mexico, Oregon, Vermont, and the District of Columbia all permit abortion at any time for any reason, yet none of these states has established legal protections for born-alive infants. Some states like [New York](#) and [Illinois](#) have even enacted laws that eliminate protections for babies born alive. A federal law is necessary to ensure that all infants who survive abortions are protected, not just those born in certain states.

As Melissa Ohden, abortion survivor and long-time advocate of the Born Alive Infants Protection Act, wrote to the [Daily Signal](#), “No one’s life, no survivor’s care, should be dependent upon who is working that day. A law that clearly states that abortion survivors have equal protection and that there are legal consequences for abortionist’s failing to do so is important and necessary.”

## **Don't Children Rescued After Abortion Do Poorly – at Great Medical Cost?**

Objections to saving the life of any person, particularly a child victimized by abortion, are cruel and ultimately an argument against inducing the abortion in the first place. The intrinsic value of human beings of all abilities is a key American ideal, enshrined into law in the Americans with Disabilities Act, and babies who survive abortions are just as much a part of the human family.

Babies continue to be saved at earlier gestational ages, and medical specialists are continuing to improve treatment protocols and to save lives with lower rates of impairment. Over the last few years, doctors report increasing rates of survival of very pre-term babies at 22-23 weeks of gestation and younger. Now, 60% of infants born at 22 weeks who receive active hospital treatment will survive, and if properly cared for, these babies not only survive but thrive, without neurological impairment. Little [Micah Pickering](#), who was born in 2012 at 22 weeks of gestation, received national attention when he traveled to Washington as a five-year-old to advocate for the Pain-Capable Unborn Child Protection Act to safeguard 20-week-old unborn babies. In 2014, [Lyla Stensrud](#) became one of the earliest premature babies ever to survive when she was born at 21 weeks of gestation. Today she is a healthy preschooler.

Advances in science and medicine do not occur when judgments are made that pre-emptively consign certain children to medical neglect when the prospect of survival exists with aggressive treatment by life-

affirming neonatal medical teams. Babies who survive abortions can defy the odds – if they are only given a chance.

**“Horrific crimes are taking place in abortion facilities around the country. Children born alive are denied medical care and left to die – cold, alone, abandoned and discarded like medical waste.”**

**SBA List’s National Campaign Chair Jill Stanek**, a former nurse who witnessed late-term babies born alive during abortion procedures and left to die