

No. 1982-138

AN ACT

SB 439

Amending Title 18 (Crimes and Offenses) of the Pennsylvania Consolidated Statutes, further providing for criminal history record information, prohibiting certain paramilitary training, regulating matters relating to the performance and funding of abortions, the protection of women who undergo abortion and children subject to abortion, prescribing penalties and making repeals.

The General Assembly of the Commonwealth of Pennsylvania hereby enacts as follows:

Section 1. Title 18, act of November 25, 1970 (P.L.707, No.230), known as the Pennsylvania Consolidated Statutes, is amended by adding a chapter to read:

**CHAPTER 32
ABORTION**

Sec.

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§ 3201. Short title of chapter.

This chapter shall be known and may be cited as the "Abortion Control Act."

§ 3202. Legislative intent.

(a) Rights and interests.—It is the intention of the General Assembly of the Commonwealth of Pennsylvania to protect hereby the life and

health of the woman subject to abortion and to protect the life and health of the child subject to abortion. It is the further intention of the General Assembly to foster the development of standards of professional conduct in a critical area of medical practice, to provide for development of statistical data and to protect the right of the minor woman voluntarily to decide to submit to abortion or to carry her child to term. The General Assembly finds as fact that the rights and interests furthered by this chapter are not secure in the context in which abortion is presently performed.

(b) **Conclusions.**—Reliable and convincing evidence has compelled the General Assembly to conclude and the General Assembly does hereby solemnly declare and find that:

(1) Many women now seek or are encouraged to undergo abortions without full knowledge of the development of the unborn child or of alternatives to abortion.

(2) The gestational age at which viability of an unborn child occurs has been lowering substantially and steadily as advances in neonatal medical care continue to be made.

(3) A significant number of late-term abortions result in live births, or in delivery of children who could survive if measures were taken to bring about breathing. Some physicians have been allowing these children to die or have been failing to induce breathing.

(4) Because the Commonwealth places a supreme value upon protecting human life, it is necessary that those physicians which it permits to practice medicine be held to precise standards of care in cases where their actions do or may result in the death of an unborn child.

(5) A reasonable waiting period, as contained in this chapter, is critical to the assurance that a woman elect to undergo an abortion procedure only after having the fullest opportunity to give her informed consent thereto.

(c) **Construction.**—In every relevant civil or criminal proceeding in which it is possible to do so without violating the Federal Constitution, the common and statutory law of Pennsylvania shall be construed so as to extend to the unborn the equal protection of the laws and to further the public policy of this Commonwealth encouraging childbirth over abortion.

(d) **Right of conscience.**—It is the further public policy of the Commonwealth of Pennsylvania to respect and protect the right of conscience of all persons who refuse to obtain, receive, subsidize, accept or provide abortions including those persons who are engaged in the delivery of medical services and medical care whether acting individually, corporately or in association with other persons; and to prohibit all forms of discrimination, disqualification, coercion, disability or imposition of liability or financial burden upon such persons or entities by reason of their refusing to act contrary to their conscience or conscientious convictions in refusing to obtain, receive, subsidize, accept or provide abortions.

§ 3203. Definitions.

The following words and phrases when used in this chapter shall have, unless the context clearly indicates otherwise, the meanings given to them in this section:

“Abortion.” The use of any means to terminate the clinically diagnosable pregnancy of a woman with knowledge that the termination by those means will, with reasonable likelihood, cause the death of the unborn child except that, for the purposes of this chapter, abortion shall not mean the use of an intrauterine device or birth control pill to inhibit or prevent ovulation, fertilization or the implantation of a fertilized ovum within the uterus.

“Born alive.” When used with regard to a human being, means that the human being was completely expelled or extracted from her or his mother and after such separation breathed or showed evidence of any of the following: beating of the heart, pulsation of the umbilical cord, definite movement of voluntary muscles or any brain-wave activity.

“Complication.” Includes but is not limited to hemorrhage, infection, uterine perforation, cervical laceration and retained products. The department may further define complication.

“Conscience.” A sincerely held set of moral convictions arising from belief in and relation to a deity or which, though not so derived, obtains from a place in the life of its possessor parallel to that filled by a deity among adherents to religious faiths.

“Department.” The Department of Health of the Commonwealth of Pennsylvania.

“Facility” or “medical facility.” Any public or private hospital, clinic, center, medical school, medical training institution, health care facility, physician’s office, infirmary, dispensary, ambulatory surgical treatment center or other institution or location wherein medical care is provided to any person.

“Fertilization.” The fertilization of an ovum by a sperm, which shall be deemed to have occurred when the head of the sperm has penetrated the cell membrane of the ovum and the process of development, differentiation, cell mitosis and replication begins and shall be synonymous with the term conception.

“First trimester.” The first 12 weeks of gestation.

“Hospital.” An institution licensed pursuant to the provisions of the law of this Commonwealth.

“In vitro fertilization.” The purposeful fertilization of a human ovum outside the body of a living human female.

“Medical emergency.” That condition which, on the basis of the physician’s best clinical judgment, so complicates a pregnancy as to necessitate the immediate abortion of same to avert the death of the mother or for which a 24-hour delay will create grave peril of immediate and irreversible loss of major bodily function.

“Medical personnel.” Any nurse, nurse’s aide, medical school student, professional or any other person who furnishes, or assists in the furnishing of, medical care.

“Physician.” Any person licensed to practice medicine in this Commonwealth.

“Pregnancy.” That female reproductive condition caused by and commencing with fertilization.

“Probable gestational age of the unborn child.” What, in the judgment of the attending physician, will with reasonable probability be the gestational age of the unborn child at the time the abortion is planned to be performed.

“Unborn child.” For purposes of this chapter, a human being from fertilization until birth and includes a fetus.

“Viability.” That stage of fetal development when, in the judgment of the physician based on the particular facts of the case before him and in light of the most advanced medical technology and information available to him, there is a reasonable likelihood of sustained survival of the unborn child outside the body of his or her mother, with or without artificial support.

§ 3204. Medical consultation and judgment.

(a) Abortion prohibited; exceptions.—No abortion shall be performed except by a physician after either:

(1) he determines that, in his best clinical judgment, the abortion is necessary; or

(2) he receives what he reasonably believes to be a written statement signed by another physician, hereinafter called the “referring physician,” certifying that in this referring physician’s best clinical judgment the abortion is necessary.

(b) Requirements.—Except in a medical emergency where there is insufficient time before the abortion is performed, the woman upon whom the abortion is to be performed shall have a private medical consultation either with the physician who is to perform the abortion or with the referring physician. The consultation will be in a place, at a time and of a duration reasonably sufficient to enable the physician to determine whether, based on his best clinical judgment, the abortion is necessary.

(c) Factors.—In determining in accordance with subsection (a) or (b) whether an abortion is necessary, a physician’s best clinical judgment may be exercised in the light of all factors (physical, emotional, psychological, familial and the woman’s age) relevant to the well-being of the woman.

(d) Penalty.—Any physician who violates the provisions of this section is guilty of “unprofessional conduct” and his license for the practice of medicine and surgery shall be subject to suspension or revocation in accordance with procedures provided under the act of July 20, 1974 (P.L. 551, No. 190), known as the “Medical Practice Act of 1974.”

§ 3205. Informed consent.

(a) General rule.—No abortion shall be performed or induced except with the voluntary and informed consent of the woman upon whom the abortion is to be performed or induced. Except in the case of a medical emergency, consent to an abortion is voluntary and informed if and only if:

(1) The woman is provided, at least 24 hours before the abortion, with the following information by the physician who is to perform the abortion or by the referring physician but not by the agent or representative of either.

(i) The name of the physician who will perform the abortion.

(ii) The fact that there may be detrimental physical and psychological effects which are not accurately foreseeable.

(iii) The particular medical risks associated with the particular abortion procedure to be employed including, when medically accurate, the risks of infection, hemorrhage, danger to subsequent pregnancies and infertility.

(iv) The probable gestational age of the unborn child at the time the abortion is to be performed.

(v) The medical risks associated with carrying her child to term.

(2) The woman is informed, by the physician or his agent, at least 24 hours before the abortion:

(i) The fact that medical assistance benefits may be available for prenatal care, childbirth and neonatal care.

(ii) The fact that the father is liable to assist in the support of her child, even in instances where the father has offered to pay for the abortion.

(iii) That she has the right to review the printed materials described in section 3208 (relating to printed information). The physician or his agent shall orally inform the woman that the materials describe the unborn child and list agencies which offer alternatives to abortion. If the woman chooses to view the materials, copies of them shall be furnished to her. If the woman is unable to read the materials furnished her, the materials shall be read to her. If the woman seeks answers to questions concerning any of the information or materials, answers shall be provided her in her own language.

(3) The woman certifies in writing, prior to the abortion, that the information described in paragraphs (1) and (2) has been furnished her, and that she has been informed of her opportunity to review the information referred to in paragraph (2).

(4) Prior to the performance of the abortion, the physician who is to perform or induce the abortion or his agent receives a copy of the written certification prescribed by paragraph (3).

(b) Emergency.—Where a medical emergency compels the performance of an abortion, the physician shall inform the woman, prior to the abortion if possible, of the medical indications supporting his judgment that an abortion is necessary to avert her death.

(c) Penalty.—Any physician who violates the provisions of this section is guilty of “unprofessional conduct” and his license for the practice of medicine and surgery shall be subject to suspension or revocation in accordance with procedures provided under the act of July 20, 1974 (P.L.551, No.190), known as the “Medical Practice Act of 1974.”

Any other person obligated under this chapter to give information relating to informed consent to a woman before an abortion is performed, and who fails to give such information, shall, for the first offense be guilty of a summary offense and, for each subsequent offense, be guilty of a misdemeanor of the third degree.

(d) **Limitation on civil liability.**—Any physician who complies with the provisions of this section may not be held civilly liable to his patient for failure to obtain informed consent to the abortion within the meaning of that term as defined by the act of October 15, 1975 (P.L.390, No.111), known as the “Health Care Services Malpractice Act.”

§ 3206. Parental consent.

(a) **General rule.**—Except in the case of a medical emergency except as provided in this section, if a pregnant woman is less than 18 years of age and not emancipated, or if she has been adjudged an incompetent under 20 Pa.C.S. § 5511 (relating to petition and hearing; examination by court-appointed physician), a physician shall not perform an abortion upon her unless, in the case of a woman who is less than 18 years of age, he first obtains the consent both of the pregnant woman and of one of her parents; or, in the case of a woman who is incompetent, he first obtains the consent of her guardian. In deciding whether to grant such consent, a pregnant woman’s parent or guardian shall consider only their child’s or ward’s best interests. In obtaining the consent of the woman’s parent or guardian, the physician shall provide them the information and materials specified in section 3205 (relating to informed consent), and shall further obtain from them the certification required by section 3205(a)(3). In the case of a pregnancy that is the result of incest where the father is a party to the incestuous act, the pregnant woman need only obtain the consent of her mother.

(b) **Unavailability of parent or guardian.**—If both parents have died or are otherwise unavailable to the physician within a reasonable time and in a reasonable manner, consent of the pregnant woman’s guardian or guardians shall be sufficient. If the pregnant woman’s parents are divorced, consent of the parent having custody shall be sufficient. If neither any parent nor a legal guardian is available to the physician within a reasonable time and in a reasonable manner, consent of any adult person standing in loco parentis shall be sufficient.

(c) **Petition to court for consent.**—If both of the parents or guardians of the pregnant woman refuse to consent to the performance of an abortion or if she elects not to seek the consent of either of her parents or of her guardian, the court of common pleas of the judicial district in which the applicant resides or in which the abortion is sought shall, upon petition or motion, after an appropriate hearing, authorize a physician to perform the abortion if the court determines that the pregnant woman is mature and capable of giving informed consent to the proposed abortion, and has, in fact, given such consent.

(d) **Court order.**—If the court determines that the pregnant woman is not mature and capable of giving informed consent or if the pregnant

woman does not claim to be mature and capable of giving informed consent, the court shall determine whether the performance of an abortion upon her would be in her best interests. If the court determines that the performance of an abortion would be in the best interests of the woman, it shall authorize a physician to perform the abortion.

(e) Representation in proceedings.—The pregnant woman may participate in proceedings in the court on her own behalf and the court may appoint a guardian ad litem for her. The court shall, however, advise her that she has a right to court appointed counsel and shall, upon her request, provide her with such counsel.

(f) Proceedings confidential.—Court proceedings under this section shall be confidential and shall be given such precedence over other pending matters as will ensure that the court may reach a decision promptly and without delay in order to serve the best interests of the pregnant woman, but in no case shall the court fail to rule within three business days of the date of application. A court of common pleas which conducts proceedings under this section shall make in writing specific factual findings and legal conclusions supporting its decision and shall order a sealed record of the evidence to be maintained which shall include its own findings and conclusions.

(g) Coercion prohibited.—Except in a medical emergency, no parent, guardian or other person standing in loco parentis shall coerce a minor or incompetent woman to undergo an abortion. The court shall grant such relief as may be necessary to prevent such coercion. Should a minor be denied the financial support of her parents by reason of her refusal to undergo abortion, she shall be considered emancipated for purposes of eligibility for assistance benefits.

(h) Regulation of proceedings.—No filing fees shall be required of any woman availing herself of the procedures provided by this section. An expedited confidential appeal shall be available to any pregnant woman whom the court denies an order authorizing an abortion. The Supreme Court of Pennsylvania shall issue promptly such rules as may be necessary to assure that the process provided in this section is conducted in such a manner as will ensure confidentiality and sufficient precedence over other pending matters to ensure promptness of disposition.

(i) Penalty.—Any person who performs an abortion upon a woman who is an unemancipated minor or incompetent to whom this section applies either with knowledge that she is a minor or incompetent to whom this section applies, or with reckless disregard or negligence as to whether she is a minor or incompetent to whom this section applies, and who intentionally, knowingly or recklessly fails to conform to any requirement of this section is guilty of “unprofessional conduct” and his license for the practice of medicine and surgery shall be suspended in accordance with procedures provided under the act of July 20, 1974 (P.L.551, No.190), known as the “Medical Practice Act of 1974,” for a period of at least three months. Failure to comply with the requirements of this section is prima facie evidence of failure to obtain informed

consent and of interference with family relations in appropriate civil actions. The law of this Commonwealth shall not be construed to preclude the award of exemplary damages or damages for emotional distress even if unaccompanied by physical complications in any appropriate civil action relevant to violations of this section. Nothing in this section shall be construed to limit the common law rights of parents.

§ 3207. Abortion facilities.

(a) Regulations.—The department shall have power to make rules and regulations pursuant to this chapter, with respect to performance of abortions and with respect to facilities in which abortions are performed, so as to protect the health and safety of women having abortions and of premature infants aborted alive. These rules and regulations shall include, but not be limited to, procedures, staff, equipment and laboratory testing requirements for all facilities offering abortion services.

(b) Reports.—Within 30 days after the effective date of this chapter, every facility at which abortions are performed shall file, and update immediately upon any change, a report with the department, which shall be open to public inspection and copying, containing the following information:

(1) Name and address of the facility.

(2) Name and address of any parent, subsidiary or affiliated organizations, corporations or associations.

(3) Name and address of any parent, subsidiary or affiliated organizations, corporations or associations having contemporaneous commonality of ownership, beneficial interest, directorship or officership with any other facility.

Any facility failing to comply with the provisions of this subsection shall be assessed by the department a fine of \$500 for each day it is in violation hereof.

§ 3208. Printed information.

(a) General rule.—The department shall cause to be published in English, Spanish and Vietnamese, within 60 days after this chapter becomes law, the following easily comprehensible printed materials:

(1) Geographically indexed materials designed to inform the woman of public and private agencies and services available to assist a woman through pregnancy, upon childbirth and while the child is dependent, including adoption agencies, which shall include a comprehensive list of the agencies available, a description of the services they offer and a description of the manner, including telephone numbers, in which they might be contacted, or, at the option of the department, printed materials including a toll-free, 24-hour a day telephone number which may be called to obtain, orally, such a list and description of agencies in the locality of the caller and of the services they offer. The materials shall include the following statement:

“There are many public and private agencies willing and able to help you to carry your child to term, and to assist you and your child after your child is born, whether you choose to keep your child or to

place her or him for adoption. The Commonwealth of Pennsylvania strongly urges you to contact them before making a final decision about abortion. The law requires that your physician or his agent give you the opportunity to call agencies like these before you undergo an abortion.”

(2) Materials designed to inform the woman of the probable anatomical and physiological characteristics of the unborn child at two-week gestational increments from fertilization to full term, including any relevant information on the possibility of the unborn child's survival. The materials shall be objective, nonjudgmental and designed to convey only accurate scientific information about the unborn child at the various gestational ages.

(b) Format.—The materials shall be printed in a typeface large enough to be clearly legible.

(c) Free distribution.—The materials required under this section shall be available at no cost from the department upon request and in appropriate number to any person, facility or hospital.

§ 3209. Abortion after first trimester.

All abortions subsequent to the first trimester of pregnancy shall be performed, induced and completed in a hospital. Except in cases of good faith judgment that a medical emergency exists, any physician who performs such an abortion in a place other than a hospital is guilty of “unprofessional conduct” and his license for the practice of medicine and surgery shall be subject to suspension or revocation in accordance with procedures provided under the act of July 20, 1974 (P.L.551, No.190), known as the “Medical Practice Act of 1974.”

§ 3210. Abortion after viability.

(a) Prohibition; penalty.—Any person who intentionally, knowingly or recklessly performs or induces an abortion when the fetus is viable commits a felony of the third degree. It shall be a complete defense to any charge brought against a physician for violating the requirements of this section that he had concluded in good faith, in his best medical judgment, that the unborn child was not viable at the time the abortion was performed or induced or that the abortion was necessary to preserve maternal life or health.

(b) Degree of care.—Every person who performs or induces an abortion after an unborn child has been determined to be viable shall exercise that degree of professional skill, care and diligence which such person would be required to exercise in order to preserve the life and health of any unborn child intended to be born and not aborted and the abortion technique employed shall be that which would provide the best opportunity for the unborn child to be aborted alive unless, in the good faith judgment of the physician, that method or technique would present a significantly greater medical risk to the life or health of the pregnant woman than would another available method or technique and the physician reports the basis for his judgment. The potential psychological or emotional impact on the mother of the unborn child's survival shall not

be deemed a medical risk to the mother. Any person who intentionally, knowingly or recklessly violates the provisions of this subsection commits a felony of the third degree.

(c) Second physician.—Any person who intends to perform an abortion the method chosen for which, in his good faith judgment, does not preclude the possibility of the child surviving the abortion, shall arrange for the attendance, in the same room in which the abortion is to be completed, of a second physician. Immediately after the complete expulsion or extraction of the child, the second physician shall take control of the child and shall provide immediate medical care for the child, taking all reasonable steps necessary, in his judgment, to preserve the child's life and health. Any person who intentionally, knowingly or recklessly violates the provisions of this subsection commits a felony of the third degree.

§ 3211. Viability.

(a) Determination of viability.—Prior to performing any abortion upon a woman subsequent to her first trimester of pregnancy, the physician shall determine whether, in his good faith judgment, the child is viable. When a physician has determined that a child is viable, he shall report the basis for his determination that the abortion is necessary to preserve maternal life or health. When a physician has determined that a child is not viable, he shall report the basis for such determination.

(b) Unprofessional conduct.—Failure of any physician to conform to any requirement of this section constitutes "unprofessional conduct" within the meaning of the act of July 20, 1974 (P.L.551, No.190), known as the "Medical Practice Act of 1974." Upon a finding by the State Board of Medical Education and Licensure that any physician has failed to conform to any requirement of this section, the board shall not fail to suspend that physician's license for a period of at least three months. Intentional, knowing or reckless falsification of any report required under this section is a misdemeanor of the third degree.

§ 3212. Infanticide.

(a) Status of fetus.—The law of this Commonwealth shall not be construed to imply that any human being born alive in the course of or as a result of an abortion or pregnancy termination, no matter what may be that human being's chance of survival, is not a person under the Constitution and laws of this Commonwealth.

(b) Care required.—All physicians and licensed medical personnel attending a child who is born alive during the course of an abortion or premature delivery, or after being carried to term, shall provide such child that type and degree of care and treatment which, in the good faith judgment of the physician, is commonly and customarily provided to any other person under similar conditions and circumstances. Any individual who knowingly violates the provisions of this subsection commits a felony of the third degree.

(c) Obligation of physician.—Whenever the physician or any other person is prevented by lack of parental or guardian consent from fulfill-

ing his obligations under subsection (b), he shall nonetheless fulfill said obligations and immediately notify the juvenile court of the facts of the case. The juvenile court shall immediately institute an inquiry and, if it finds that the lack of parental or guardian consent is preventing treatment required under subsection (b), it shall immediately grant injunctive relief to require such treatment.

§ 3213. Prohibited acts.

(a) Payment for abortion.—Except in the case of a pregnancy which is not yet clinically diagnosable, any person who intends to perform or induce abortion shall, before accepting payment therefor, make or obtain a determination that the woman is pregnant. Any person who intentionally or knowingly accepts such a payment without first making or obtaining such a determination commits a misdemeanor of the second degree. Any person who makes such a determination erroneously either knowing that it is erroneous or with reckless disregard or negligence as to whether it is erroneous, and who either:

(1) thereupon or thereafter intentionally relies upon that determination in soliciting or obtaining any such payment; or

(2) intentionally conveys that determination to any person or persons with knowledge that, or with reckless disregard as to whether, that determination will be relied upon in any solicitation or obtaining of any such payment;

commits a misdemeanor of the second degree.

(b) Referral fee.—The payment or receipt of a referral fee in connection with the performance of an abortion is a misdemeanor of the first degree. For purposes of this section, “referral fee” means the transfer of anything of value between a physician who performs an abortion or an operator or employee of a clinic at which an abortion is performed and the person who advised the woman receiving the abortion to use the services of that physician or clinic.

(c) Regulations.—The department shall issue regulations to assure that prior to the performance of any abortion, including abortions performed in the first trimester of pregnancy, the maternal Rh status shall be determined and that anti-Rh sensitization prophylaxis shall be provided to each patient at risk of sensitization unless the patient refuses to accept the treatment. Except when there exists a medical emergency or, in the judgment of the physician, there exists no possibility of Rh sensitization, the intentional, knowing, or reckless failure to conform to the regulations issued pursuant to this subsection constitutes “unprofessional conduct” and his license for the practice of medicine and surgery shall be subject to suspension or revocation in accordance with procedures provided under the act of July 20, 1974 (P.L.551, No.190), known as the “Medical Practice Act of 1974.”

(d) Participation in abortion.—Except for a facility devoted exclusively to the performance of abortions, no medical personnel or medical facility, nor any employee, agent or student thereof, shall be required against his or its conscience to aid, abet or facilitate performance of an

abortion or dispensing of an abortifacient and failure or refusal to do so shall not be a basis for any civil, criminal, administrative or disciplinary action, penalty or proceeding, nor may it be the basis for refusing to hire or admit anyone. Nothing herein shall be construed to limit the provisions of the act of October 27, 1955 (P.L.744, No.222), known as the "Pennsylvania Human Relations Act." Any person who knowingly violates the provisions of this subsection shall be civilly liable to the person thereby injured and, in addition, shall be liable to that person for punitive damages in the amount of \$5,000.

(e) *In vitro* fertilization.—All persons conducting, or experimenting in, *in vitro* fertilization shall file quarterly reports with the department, which shall be available for public inspection and copying, containing the following information:

- (1) Names of all persons conducting or assisting in the fertilization or experimentation process.
- (2) Locations where the fertilization or experimentation is conducted.
- (3) Name and address of any person, facility, agency or organization sponsoring the fertilization or experimentation except that names of any persons who are donors or recipients of sperm or eggs shall not be disclosed.
- (4) Number of eggs fertilized.
- (5) Number of fertilized eggs destroyed or discarded.
- (6) Number of women implanted with a fertilized egg.

Any person required under this subsection to file a report, keep records or supply information, who willfully fails to file such report, keep records or supply such information or who submits a false report shall be assessed a fine by the department in the amount of \$50 for each day in which that person is in violation hereof.

§ 3214. Reporting.

(a) *General rule.*—A report of each abortion performed shall be made to the department on forms prescribed by it. The report forms shall not identify the individual patient by name and shall include the following information:

- (1) Identification of the physician who performed the abortion and the facility where the abortion was performed and of the referring physician, agency or service, if any.
- (2) The political subdivision and state in which the woman resides.
- (3) The woman's age, race and marital status.
- (4) The number of prior pregnancies.
- (5) The date of the woman's last menstrual period and the probable gestational age of the unborn child.
- (6) The type of procedure performed or prescribed and the date of the abortion.
- (7) Complications, if any, including but not limited to, rubella disease, hydatid mole, endocervical polyp and malignancies.

(8) The information required to be reported under section 3211(a) (relating to viability).

(9) The length and weight of the aborted unborn child when measurable.

(10) Basis for any medical judgment that a medical emergency existed as required by any part of this chapter.

(11) The date of the medical consultation required by section 3204(b) (relating to medical consultation and judgment).

(12) The date on which any determination of pregnancy was made.

(13) The information required to be reported under section 3210(b) (relating to abortion after viability).

(14) Whether the abortion was paid for by the patient, by medical assistance, or by medical insurance coverage.

(b) Completion of report.—The reports shall be completed by the hospital or other licensed facility, signed by the physician who performed the abortion and transmitted to the department within 15 days after each reporting month.

(c) Pathological examinations.—When there is an abortion performed during the first trimester of pregnancy, the tissue that is removed shall be subjected to a gross or microscopic examination, as needed, by the physician or a qualified person designated by the physician to determine if a pregnancy existed and was terminated. If the examination indicates no fetal remains, that information shall immediately be made known to the physician and sent to the department within 15 days of the analysis. When there is an abortion performed after the first trimester of pregnancy where the physician has certified the unborn child is not viable, the dead unborn child and all tissue removed at the time of the abortion shall be submitted for tissue analysis to a board eligible or certified pathologist. If the report reveals evidence of viability or live birth, the pathologist shall report such findings to the department within 15 days and a copy of the report shall also be sent to the physician performing the abortion. Intentional, knowing, reckless or negligent failure of the physician to submit such an unborn child or such tissue remains to such a pathologist for such a purpose, or intentional, knowing or reckless failure of the pathologist to report any evidence of live birth or viability to the department in the manner and within the time prescribed is a misdemeanor of the third degree.

(d) Form.—The department shall prescribe a form on which pathologists may report any evidence of absence of pregnancy, live birth or viability.

(e) Statistical reports; public availability of reports.—

(1) The department shall prepare an annual statistical report for the General Assembly based upon the data gathered under subsection (a). Such report shall not lead to the disclosure of the identity of any person filing a report or about whom a report is filed, and shall be available for public inspection and copying.

(2) Reports filed pursuant to subsection (a) shall not be deemed public records within the meaning of that term as defined by the act of June 21, 1957 (P.L. 390, No.212), referred to as the Right-to-Know Law, but shall be made available for public inspection and copying within 15 days of receipt in a form which will not lead to the disclosure of the identity of any person filing a report. On those reports available for public inspection and copying, the department shall substitute for the name of any physician which appears on the report, a unique identifying number. The identity of the physician shall constitute a confidential record of the department. The department may set a reasonable per copy fee to cover the cost of making any copies authorized hereunder.

(3) Original copies of all reports filed under subsection (a) shall be available to the State Board of Medical Education and Licensure, and to law enforcement officials, for use in the performance of their official duties.

(4) Any person who willfully discloses any information obtained from reports filed pursuant to subsection (a), other than that disclosure authorized under paragraph (1), (2) or (3) hereof or as otherwise authorized by law, shall commit a misdemeanor of the third degree.

(f) Report by facility.—Every facility in which an abortion is performed within this Commonwealth during any quarter year shall file with the department a report showing the total number of abortions performed within the hospital or other facility during that quarter year. This report shall also show the total abortions performed in each trimester of pregnancy. These reports shall be available for public inspection and copying.

(g) Report of maternal death.—After 30 days' public notice, the department shall henceforth require that all reports of maternal deaths occurring within the Commonwealth arising from pregnancy, childbirth or intentional abortion in every case state the cause of death, the duration of the woman's pregnancy when her death occurred and whether or not the woman was under the care of a physician during her pregnancy prior to her death and shall issue such regulations as are necessary to assure that such information is reported, conducting its own investigation if necessary in order to ascertain such data. A woman shall be deemed to have been under the care of a physician prior to her death for the purpose of this chapter when she had either been examined or treated by a physician, not including any examination or treatment in connection with emergency care for complications of her pregnancy or complications of her abortion, preceding the woman's death at any time which is both 21 or more days after the time she became pregnant and within 60 days prior to her death. Known incidents of maternal mortality of non-resident women arising from induced abortion performed in this Commonwealth shall be included as incidents of maternal mortality arising from induced abortions. Incidents of maternal mortality arising from continued pregnancy or childbirth and occurring after induced abortion

has been attempted but not completed, including deaths occurring after induced abortion has been attempted but not completed as the result of ectopic pregnancy, shall be included as incidents of maternal mortality arising from induced abortion. The department shall annually compile a statistical report for the General Assembly based upon the data gathered under this subsection, and all such statistical reports shall be available for public inspection and copying.

(h) Report of complications.—Every physician who is called upon to provide medical care or treatment to a woman who is in need of medical care because of a complication or complications resulting, in the good faith judgment of the physician, from having undergone an abortion or attempted abortion shall prepare a report thereof and file the report with the department within 30 days of the date of his first examination of the woman, which report shall be open to public inspection and copying and shall be on forms prescribed by the department, which forms shall contain the following information, as received, and such other information except the name of the patient as the department may from time to time require:

(1) Age of patient.

(2) Number of pregnancies patient may have had prior to the abortion.

(3) Number and type of abortions patient may have had prior to this abortion.

(4) Name and address of the facility where the abortion was performed.

(5) Gestational age of the unborn child at the time of the abortion, if known.

(6) Type of abortion performed, if known.

(7) Nature of complication or complications.

(8) Medical treatment given.

(9) The nature and extent, if known, of any permanent condition caused by the complication.

(i) Penalties.—

(1) Any person required under this section to file a report, keep any records or supply any information, who willfully fails to file such report, keep such records or supply such information at the time or times required by law or regulation is guilty of “unprofessional conduct” and his license for the practice of medicine and surgery shall be subject to suspension or revocation in accordance with procedures provided under the act of July 20, 1974 (P.L.551, No.190), known as the “Medical Practice Act of 1974.”

(2) Any person who willfully delivers or discloses to the department any report, record or information known by him to be false commits a misdemeanor of the first degree.

(3) In addition to the above penalties, any person, organization or facility who willfully violates any of the provisions of this section requiring reporting shall upon conviction thereof:

(i) For the first time, have its license suspended for a period of six months.

(ii) For the second time, have its license suspended for a period of one year.

(iii) For the third time, have its license revoked.

§ 3215. Publicly owned facilities; public officials and public funds.

(a) Limitations.—No hospital, clinic or other health facility owned or operated by the Commonwealth, a county, a city or other governmental entity (except the government of the United States, another state or a foreign nation) shall:

(1) Provide, induce, perform or permit its facilities to be used for the provision, inducement or performance of any abortion except where necessary to avert the death of the woman or where necessary to terminate pregnancies initiated by acts of rape or incest if reported in accordance with requirements set forth in subsection (c).

(2) Lease or sell or permit the subleasing of its facilities or property to any physician or health facility for use in the provision, inducement or performance of abortion, except abortion necessary to avert the death of the woman or to terminate pregnancies initiated by acts of rape or incest if reported in accordance with requirements set forth in subsection (c).

(3) Enter into any contract with any physician or health facility under the terms of which such physician or health facility agrees to provide, induce or perform abortions, except abortion necessary to avert the death of the woman or to terminate pregnancies initiated by acts of rape or incest if reported in accordance with requirements set forth in subsection (c).

(b) Permitted treatment.—Nothing in subsection (a) shall be construed to preclude any hospital, clinic or other health facility from providing treatment for post-abortion complications, or from permitting the performance of abortion where no other facility permitting abortion is available within a radius of 20 miles from the facility.

(c) Public funds.—No Commonwealth funds and no Federal funds which are appropriated by the Commonwealth shall be expended by any State or local government agency for the performance of abortion, except:

(1) When abortion is necessary to avert the death of the mother on certification by a physician. When such physician will perform the abortion or has a pecuniary or proprietary interest in the abortion there shall be a separate certification from a physician who has no such interest.

(2) When abortion is performed in the case of pregnancy caused by rape which has been reported within 72 hours of the rape to a law enforcement agency having the requisite jurisdiction and has been personally reported by the victim or her agent.

(3) When abortion is performed in the case of pregnancy caused by incest which has been reported within 72 hours from the date when the female first learns she is pregnant and she has named the other party to the incestuous act. Such information shall be turned over by the department to a law enforcement agency.

(d) Health plans.—No health plan for employees, funded with any Commonwealth funds, shall include coverage for abortion, except under the same conditions and requirements as provided in subsection (c). The prohibition contained herein shall not apply to health plans for which abortion coverage has been expressly bargained for in any collective bargaining agreement presently in effect, but shall be construed to preclude such coverage with respect to any future agreement.

(e) Insurance policies.—All insurers who make available health care and disability insurance policies in this Commonwealth shall make available such policies which contain an express exclusion of coverage for abortion services not necessary to avert the death of the woman or to terminate pregnancies caused by rape or incest. Any such policy shall contain a premium which is lower than that which is contained in policies offering additional abortion coverage.

(f) Public officers; ordering abortions.—Except in the case of a medical emergency, no court, judge, executive officer, administrative agency or public employee of the Commonwealth or of any local governmental body shall have power to issue any order requiring an abortion without the express voluntary consent of the woman upon whom the abortion is to be performed or shall coerce any person to have an abortion.

(g) Public officers; limiting benefits prohibited.—No court, judge, executive officer, administrative agency or public employee of the Commonwealth or of any local governmental body shall withhold, reduce or suspend or threaten to withhold, reduce or suspend any benefits to which a person would otherwise be entitled on the ground that such person chooses not to have an abortion.

(h) Penalty.—Whoever orders an abortion in violation of subsection (f) or withholds, reduces or suspends any benefits or threatens to withhold, reduce or suspend any benefits in violation of subsection (g) commits a misdemeanor of the first degree.

§ 3216. Fetal experimentation.

(a) Unborn or live child.—Any person who knowingly performs any type of nontherapeutic experimentation upon any unborn child, or upon any child born alive during the course of an abortion, commits a felony of the third degree. "Nontherapeutic" means that which is not intended to preserve the child's life or health.

(b) Dead child.—Experimentation upon children who have died during the course of an abortion may be conducted only upon the written consent of the mother: Provided, That no consideration for such consent is offered or given. Any person who knowingly violates this subsection commits a misdemeanor of the first degree.

§ 3217. Civil penalties.

Any physician who knowingly violates any of the provisions of section 3204 (relating to medical consultation and judgment) or 3205 (relating to informed consent) shall, in addition to any other penalty prescribed in this chapter, be civilly liable to his patient for any damages caused thereby and, in addition, shall be liable to his patient for punitive damages in the amount of \$1,000.

§ 3218. Criminal penalties.

Notwithstanding any other provision of this chapter, no criminal penalty shall apply to a woman who violates any provision of this chapter solely in order to perform or induce or attempt to perform or induce an abortion upon herself.

§ 3219. State Board of Medical Education and Licensure.

(a) Enforcement.—It shall be the duty of the State Board of Medical Education and Licensure to vigorously enforce those provisions of this chapter, violation of which constitutes “unprofessional conduct” within the meaning of the act of July 20, 1974 (P.L.551, No.190), known as the “Medical Practice Act of 1974.” The board shall have the power to conduct, and its responsibilities shall include, systematic review of all reports filed under this chapter.

(b) Penalties.—Except as otherwise herein provided, upon a finding of “unprofessional conduct” under the provisions of this chapter, the board shall, for the first such offense, prescribe such penalties as it deems appropriate; for the second such offense, suspend the license of the physician for at least 90 days; and, for the third such offense, revoke the license of the physician.

(c) Reports.—The board shall prepare and submit an annual report of its enforcement efforts under this chapter to the General Assembly, which shall contain the following items:

- (1) number of violations investigated, by section of this chapter;
- (2) number of physicians complained against;
- (3) number of physicians investigated;
- (4) penalties imposed; and
- (5) such other information as any committee of the General Assembly shall require.

Such reports shall be available for public inspection and copying.

§ 3220. Construction.

(a) Referral to coroner.—The provisions of section 503(3) of the act of June 29, 1953 (P.L.304, No.66), known as the “Vital Statistics Law of 1953,” shall not be construed to require referral to the coroner of cases of abortions performed in compliance with this chapter.

(b) Other laws unaffected.—Apart from the provisions of subsection (a) and section 3214 (relating to reporting) nothing in this chapter shall have the effect of modifying or repealing any part of the “Vital Statistics Law of 1953” or section 5.2 of the act of October 27, 1955 (P.L.744, No.222), known as the “Pennsylvania Human Relations Act.”

Section 2. Title 18 is amended by adding a section to read:

§ 5515. Prohibiting of paramilitary training.

(a) *Definitions.*—As used in this section the following words and phrases shall have the meanings given to them in this subsection:

“Civil disorder.” Any public disturbance involving acts of violence by assemblages of three or more persons, which causes an immediate danger of or results in damage or injury to the property or person of any other individual.

“Explosive or incendiary device.” Includes:

(1) dynamite and all other forms of high explosives;

(2) any explosive bomb, grenade, missile or similar device; and

(3) any incendiary bomb or grenade, fire bomb or similar device, including any device which:

(i) consists of or includes a breakable container including a flammable liquid or compound and a wick composed of any material which, when ignited, is capable of igniting such flammable liquid or compound; and

(ii) can be carried or thrown by one individual acting alone.

“Firearm.” Any weapon which is designed to or may readily be converted to expel any projectile by the action of an explosive; or the frame or receiver of any such weapon.

“Law enforcement officer.” Any officer or employee of the United States, any state, any political subdivision of a state or the District of Columbia and such term shall specifically include, but shall not be limited to, members of the National Guard, as defined in 10 U.S.C. § 101(9), members of the organized militia of any state or territory of the United States, the Commonwealth of Puerto Rico or the District of Columbia, not included within the definition of National Guard as defined by 10 U.S.C. § 101(9) and members of the armed forces of the United States.

(b) *Prohibited training.*—

(1) Whoever teaches or demonstrates to any other person the use, application or making of any firearm, explosive or incendiary device or technique capable of causing injury or death to persons, knowing or having reason to know or intending that same will be unlawfully employed for use in, or in furtherance of, a civil disorder commits a misdemeanor of the first degree.

(2) Whoever assembles with one or more persons for the purpose of training with, practicing with or being instructed in the use of any firearm, explosive or incendiary device or technique capable of causing injury or death to persons, said person intending to employ unlawfully the same for use in or in furtherance of a civil disorder commits a misdemeanor of the first degree.

(c) *Exemptions.*—Nothing contained in this section shall make unlawful any act of any law enforcement officer which is performed in the lawful performance of his official duties.

(d) Excluded activities.—Nothing contained in this section shall make unlawful any activity of the Game Commission, Fish Commission, or any law enforcement agency, or any hunting club, rifle club, rifle range, pistol range, shooting range or other program or individual instruction intended to teach the safe handling or use of firearms, archery equipment or other weapons or techniques employed in connection with lawful sports or other lawful activities.

Section 3. The definitions of “criminal justice agency,” “expunge” and “intelligence information” in section 9102 of Title 18 are amended and a definition is added to read:

§ 9102. Definitions.

The following words and phrases when used in this chapter shall have the meanings given to them in this section unless the context clearly indicates otherwise:

* * *

“Criminal justice agency.” Any court, including the minor judiciary, with criminal jurisdiction or any other governmental agency, or subunit thereof, created by statute or by the State or Federal constitutions, specifically authorized to perform as its principal function the administration of criminal justice, and which allocates a substantial portion of its annual budget to such function. Criminal justice agencies include, but are not limited to: organized State and municipal police departments, local detention facilities, county, regional and State correctional facilities, probation agencies, district or prosecuting attorneys, parole boards, [and] pardon boards *and such agencies or subunits thereof, as are declared by the Attorney General to be criminal justice agencies as determined by a review of applicable statutes and the State and Federal Constitutions or both.*

* * *

“Expunge.”

(1) To remove information so that there is no trace or indication that such information existed; [or]

(2) to eliminate all identifiers which may be used to trace the identity of an individual, allowing remaining data to be used for statistical purposes[.]; or

(3) *maintenance of certain information required or authorized under the provisions of section 9122(c) (relating to expungement), when an individual has successfully completed the conditions of any pretrial or posttrial diversion or probation program.*

“Intelligence information.” Information concerning the habits, practices, characteristics, [history,] possessions, associations or financial status of any individual.

* * *

“Police blotter.” *A chronological listing of arrests, usually documented contemporaneous with the incident, which may include, but is not limited to, the name and address of the individual charged and the alleged offenses.*

* * *

Section 4. Subsections (a) and (b) of section 9104, section 9112, subsections (a) and (b) of section 9121, subsection (f) of section 9122, subsection (a) of section 9123, subsection (b) of section 9125 and sections 9131, 9161 and 9181 of Title 18 are amended to read:

§ 9104. Scope.

(a) General rule.—Except for the provisions of Subchapter B (relating to completeness and accuracy), Subchapter D (relating to security) and Subchapter F (relating to individual right of access and review), nothing in this chapter shall be construed to apply to:

(1) Original records of entry compiled chronologically, including, but not limited to, police blotters *and press releases that contain criminal history record information and are disseminated contemporaneous with the incident.*

(2) Any documents, records or indices prepared or maintained by or filed in any court of this Commonwealth, including but not limited to the minor judiciary.

(3) Posters, announcements, or lists for identifying or apprehending fugitives or wanted persons.

(4) Announcements of executive clemency.

(b) Court dockets **[and]**, police blotters *and press releases*.—Court dockets **[and]**, police blotters *and press releases* and information contained therein shall, for the purpose of this chapter, be considered public records.

* * *

§ 9112. Mandatory fingerprinting.

(a) General rule.—Fingerprints of all persons arrested for a felony, misdemeanor or summary offense which becomes a misdemeanor on a second arrest after conviction of that summary offense, shall be taken by the arresting authority, and within 48 hours of the arrest, shall be forwarded to, and in a manner and such a form as provided by, the central repository.

(b) Other cases.—**[Where private complaints for a felony or misdemeanor result in a conviction or where persons are proceeded against by a summons, or for offenses under section 3929 (relating to retail theft), the court of proper jurisdiction shall order the defendant to submit for fingerprinting by the municipal police of the jurisdiction in which the offense allegedly was committed or, in the absence of a police department, the State Police. Fingerprints so obtained shall be forwarded immediately to the central repository.]**

(1) Where private complaints for a felony or misdemeanor result in a conviction, the court of proper jurisdiction shall order the defendant to submit for fingerprinting by the municipal police of the jurisdiction in which the offense was allegedly committed or in the absence of a police department, the State Police. Fingerprints so obtained shall, within 48 hours, be forwarded to the central repository in a manner and in such form as may be provided by the central repository.

(2) *Where defendants named in police complaints are proceeded against by summons, or for offenses under section 3929 (relating to retail theft), the court of proper jurisdiction shall order the defendant to submit within five days of such order for fingerprinting by the municipal police of the jurisdiction in which the offense allegedly was committed or, in the absence of a police department, the State Police. Fingerprints so obtained shall, within 48 hours, be forwarded to the central repository in a manner and in such form as may be provided by the central repository.*

(c) Transmittal of information.—The central repository shall transmit the criminal history record information to the criminal justice agency which submitted **[the fingerprint card]** *a complete, accurate and classifiable fingerprint card.*

§ 9121. General regulations.

(a) Dissemination to criminal justice agencies.—Criminal history record information maintained by any criminal justice agency shall be disseminated *without charge* to any criminal justice agency or **[a]** *to any noncriminal justice agency that is providing a service for which a criminal justice agency is responsible.*

(b) Dissemination to noncriminal justice agencies *and individuals*.—Criminal history record information shall **[only]** be disseminated by a **[law enforcement agency]** *State or local police department* to any individual or *noncriminal justice* agency **[other than a criminal justice agency]** *only* upon request:

(1) A fee may be charged by a **[law enforcement agency]** *State or local police department* for each request for **[the]** criminal history record information by an individual or *noncriminal justice* agency **[other than a criminal justice agency]**.

(2) Before a **[law enforcement agency]** *State or local police department* disseminates criminal history record information to an individual or *noncriminal justice* agency **[other than a criminal justice agency]**, it shall extract from the record all notations of arrests, indictments or other information relating to the initiation of criminal proceedings where: **[there is a disposition of acquittal, charges are dismissed or withdrawn, a nolle prosequi is entered, the proceedings are indefinitely postponed or the individual is otherwise not found guilty of committing an alleged criminal act where three years have elapsed from the time of arrest and no proceedings are pending seeking conviction or where the conviction has occurred.]**

(i) *three years have elapsed from the date of arrest;*

(ii) *no conviction has occurred; and*

(iii) *no proceedings are pending seeking a conviction.*

* * *

§ 9122. Expungement.

* * *

(f) District attorney's notice.—**[No expungement shall be made without ten days prior notice to the district attorney of the county where**

the original charges were filed] *The court shall give ten days prior notice to the district attorney of the county where the original charge was filed of any applications for expungement under the provisions of subsection (a)(2).*

§ 9123. Juvenile records.

(a) Expungement of juvenile records.—Notwithstanding the provisions of section 9105 (relating to other criminal justice information) and except upon cause shown, expungement of records of juvenile delinquency cases wherever kept or retained shall occur after ten days notice to the district attorney, whenever the court upon its motion or upon the motion of a child or the parents or guardian finds:

(1) a complaint is filed which is not substantiated or the petition which is filed as a result of a complaint is dismissed by the court other than as a result of **[an informal adjustment] a consent decree;**

(2) five years have elapsed since the final discharge of the person from commitment, placement, probation or any other disposition and referral and since such final discharge, the person has not been convicted of a felony, misdemeanor or adjudicated delinquent and no proceeding is pending seeking such conviction or adjudication; or

(3) the individual is 21 years of age or older and a court orders the expungement.

* * *

§ 9125. Use of records for employment.

* * *

(b) Use of information.—**[Arrests] Felony** and misdemeanor convictions may be considered by the employer only to the extent to which they relate to the applicant's suitability for employment in the position for which he has applied.

* * *

§ 9131. Security requirements for repositories.

Every criminal justice agency collecting, storing or disseminating criminal history record information shall ensure the confidentiality and security of criminal history record information by providing that wherever such information is maintained, a criminal justice agency must:

(1) Institute procedures to reasonably protect any repository from theft, fire, sabotage, flood, wind or other natural or man-made disasters.

(2) Select, supervise and train all personnel authorized to have access to criminal history record information.

(3) Ensure that, where computerized data processing is employed, the equipment utilized for maintaining criminal history record information is solely dedicated to purposes related to the administration of criminal justice, or, if the equipment is not used solely for the administration of criminal justice, the criminal justice agency shall be accorded equal management participation in computer operations used to maintain the criminal history record information.

[(4) Provide that criminal history record information maintained in a repository is disseminated upon proper validation only to those individuals and agencies authorized to receive the information by the provisions of this chapter.]

§ 9161. Duties of the Attorney General.

The Attorney General shall have the power and authority to:

(1) Establish rules and regulations for criminal history record information with respect to security, completeness, accuracy, individual access and review, quality control and audits of repositories.

(2) Establish **[a uniform schedule of reasonable fees]** *the maximum fees which may be charged* for the costs of reproducing criminal history record information for individual access and review **[and]** for research or statistical purposes and *for* access by noncriminal justice agencies *and individuals*.

(3) Make investigations concerning all matters touching the administration and enforcement of this chapter and the rules and regulations promulgated thereunder.

(4) Institute civil **[and criminal]** proceedings for violations of this chapter and the rules and regulations adopted thereunder.

(5) Conduct annual audits of the central repository and of a representative sample of all repositories within the Commonwealth, collecting, compiling, maintaining and disseminating criminal history record information.

(6) Appoint such employees and agents as it may deem necessary.

§ 9181. General administrative sanctions.

Any person, including any agency or organization, who violates the provisions of this chapter or any regulations or rules promulgated under it may:

(1) Be denied access to specified criminal history record information for such period of time as the Attorney General deems appropriate.

(2) Be subject to civil **[or criminal]** penalties or other remedies as provided for in this chapter.

(3) In the case of an employee of any agency who violates any provision of this chapter, be administratively disciplined by discharge, suspension, reduction in grade, transfer or other formal disciplinary action as the agency deems appropriate.

Section 5. The provisions of this act shall be severable. If any provision of this act, or the application thereof to any person or circumstance, is held invalid, the remainder of this act, and the application of any provision hereof to any other persons or circumstances, shall not be affected thereby.

Section 6. (a) The act of September 10, 1974 (P.L.639, No.209), known as the "Abortion Control Act," is repealed.

(b) All other acts and parts of acts inconsistent with this act are hereby repealed.

Section 7. This act shall take effect in 180 days.

APPROVED—The 11th day of June, A. D. 1982.

DICK THORNBURGH