

CHAPTER 12.1-19.1 ABORTION

12.1-19.1-01. Definitions.

As used in this chapter:

1. "Abortion" means the act of using, selling, or prescribing any instrument, medicine, drug, or any other substance, device, or means with the intent to terminate the clinically diagnosable pregnancy of a woman, including the elimination of one or more unborn children in a multifetal pregnancy, with knowledge the termination by those means will with reasonable likelihood cause the death of the unborn child. The use, sale, prescription, or means is not an abortion if done with the intent to:
 - a. Remove a dead unborn child caused by spontaneous abortion;
 - b. Treat a woman for an ectopic pregnancy; or
 - c. Treat a woman for a molar pregnancy.
2. "Physician" means an individual licensed to practice medicine or osteopathy under chapter 43-17 or a physician who practices in the armed services of the United States or in the employ of the United States.
3. "Probable gestational age of the unborn child" means what, in reasonable medical judgment, will with reasonable probability be the gestational age of the unborn child.
4. "Reasonable medical judgment" means a medical judgment that would be made by a reasonably prudent physician who is knowledgeable about the case and the treatment possibilities with respect to the medical conditions involved.
5. "Serious health risk" means a condition that, in reasonable medical judgment, complicates the medical condition of the pregnant woman so that it necessitates an abortion to prevent substantial physical impairment of a major bodily function, not including any psychological or emotional condition. The term may not be based on a claim or diagnosis that the woman will engage in conduct that will result in her death or in substantial physical impairment of a major bodily function.

12.1-19.1-02. Abortion prohibited - Penalty.

It is a class C felony for a person, other than the pregnant female upon whom the abortion was performed, to perform an abortion.

12.1-19.1-03. Exceptions.

This chapter does not apply to:

1. An abortion deemed necessary based on reasonable medical judgment which was intended to prevent the death or a serious health risk to the pregnant female.
2. An abortion to terminate a pregnancy that based on reasonable medical judgment resulted from gross sexual imposition, sexual imposition, sexual abuse of a ward, or incest, as those offenses are defined in chapter 12.1-20, if the probable gestational age of the unborn child is six weeks or less.
3. An individual assisting in performing an abortion if the individual was acting within the scope of that individual's regulated profession, was under the direction of or at the direction of a physician, and did not know the physician was performing an abortion in violation of this chapter.