



# Protecting Abortion Survivors

*by Chantel Hoyt*

**P**rotecting the lives of born children is basic human decency. Therefore, you'd expect that providing care for babies born alive following an attempted abortion would be a no-brainer. However, as common sense is becoming less common in D.C. (where House Democrats blocked 80 unanimous consent requests to bring even this modest level of protection to the House floor in 2019), state legislators have taken it upon themselves to codify common sense laws. Since 2019, support for state-level Born-Alive Protection Acts has skyrocketed. From 2015-2018, an average of five bills were introduced every year. This jumped to **28** in 2019, **33** in 2020, and **37** in 2021. Over a six-year period, the number of Born-Alive bills introduced in a single year rose by **700 percent**. This year has already set the record for enacted bills with **five (in Alabama, Montana, Wyoming, South Dakota, and Kentucky)**.

These state laws are the result of a growing awareness of abortion's inhumanity. In 2015, the Center for Medical Progress began releasing undercover videos of abortionists and Planned Parenthood directors speaking matter-of-factly about the horrific acts that qualify as business as usual at their facilities.<sup>1</sup> The infamous case of Philadelphia abortionist and convicted murderer Kermit Gosnell in 2013,<sup>2</sup> as well as more recent reports from the CDC,<sup>3</sup> prove infants are sometimes born alive as a result of failed abortions. These reports are most certainly underestimated, as only **nine** states report the number of infants born alive after attempted abortions. Currently, only **18** states have strong born-alive protections for infants who survive abortions.

Born-Alive Infant Protection Acts provide necessary protections for abortion survivors. The particulars of these bills vary, but the strongest versions include five key provisions:

1. Practitioners must exercise professional skill, care, and diligence to preserve the life of infants who survive abortion;
2. Infants who survive abortions have the same right to medical care as any other infant born alive;
3. Hospitalization for the surviving infant and/or the presence of a second physician during the abortion;
4. A penalty for noncompliance (criminal, civil, and/or professional); and
5. A reporting requirement.

Family Research Council has created four interactive pro-life maps that rank each state based on its current pro-life laws.<sup>4</sup> FRC's born-alive map ranks states on a five-tiered scale—ranging from “Removed Protection” (*i.e.*, the state previously had born-alive protections but repealed them) to “Best Protection”—based on how many of the above key provisions the state has in statute.

This year, **34** born-alive bills were introduced in state legislatures across **18 states**.

- Two of these bills, Ohio SB 157 and South Dakota HB 1051, would fill in gaps in existing statute, giving these states the best level of born-alive protections. Ohio's bill would add reporting requirements to current statute, while South Dakota's bill would add four key provisions that have been lacking (a “skill, care, and diligence” requirement, civil and professional penalties, hospitalization requirement, and reporting requirements).

Nineteen bills introduced in eight states (North Carolina, Hawaii, Oregon, Rhode Island, New Hampshire, Wisconsin, Illinois, and New York) would bring their states up to “Strong Protection” on FRC's map. Illinois' bills would only apply these protections to “viable” infants. FRC supports bills that apply born-alive protections to infants regardless of gestational age. The “viable” qualifier makes the Illinois bills weaker, although they still contain enough protections to move Illinois up to “Strong” status.

Three bills introduced in three states (Illinois, Wyoming, and New York) this year would give their states “Weak Protections.”

- New York’s bill (A 7437) is very weak, only applying its protections to infants up to 20 weeks gestation. However, the bill would still bring New York to a higher level of protection than it currently has (New York currently ranks as “Removed Protections”).
- Likewise, Wyoming’s bill (SF 34) only applies its protections to “viable” infants but still provides these infants with more protections than before (Wyoming had “No Protections” before this bill).

**Four** born-alive bills have been enacted this year in **four** different states.

- The most dramatic of these bills is South Dakota HB 1051 (mentioned previously), which included each of the key provisions that the state was previously missing (a “skill, care, and diligence” requirement, a health care requirement, civil and professional penalties, and a reporting requirement), bringing the state up from “Weak Protections” to the best possible born-alive protections.
- Kentucky SB 9 included four out of five key provisions (a “skill, care, and diligence” requirement; a health care requirement; criminal, civil, and professional penalties; and a statement declaring the infant’s right to medical care), moving the state from “No Protections” to “Strong Protections.”
- Montana HB 167 included three out of five key provisions (a “skill, care, and diligence” requirement, criminal penalties, and a statement declaring the infant’s right to medical care), which would move the state from “Weak Protection” to “Strong Protection” (the state already has criminal penalties for knowingly or negligently causing the death of a premature infant born alive). This bill creates a referendum, so voters will decide if it goes into effect in the state’s November 2022 election.
- Lastly, Wyoming SF 34 (mentioned previously) was the weakest bill enacted this year. It included the “skill, care, and diligence” requirement but no other provisions. In addition,

this bill only applied this protection to “viable” infants, moving the state from “No Protection” to “Weak Protection.”

From 2019 to 2020, **55** bills were introduced in **15** states. Of these, **four** were enacted: in West Virginia (HB 4007 in 2020), Texas (HB 16 in 2019), and Arkansas (SB 278 and SB 3 in 2019).

- West Virginia’s bill moved the state from “No Protection” to “Strong Protection,” as it added every key provision to state law except for reporting requirements.
- Texas’ bill moved the state from “Weak Protection” to “Best Protection,” building on a prior statement that had declared infants’ right to medical care and added reporting requirements to state law.
- Arkansas’ bills established reporting requirements for infants who survive abortions, moving the state from “Strong Protection” to “Best Protection” (a 2017 bill established other born-alive protections).

Born-Alive Infant Protection Acts are an appropriate and urgent response to a harsh reality: babies born alive following failed abortions do not enjoy the full legal protections they are due apart from such laws and are frequently left to die. Abortion survivors deserve the same level of care as any other infant. This should be non-controversial. If the last three years are any indication, states are sure to continue introducing and enacting strong protections for born children in the coming years, perhaps one day making such protections the norm, rather than the exception.

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<sup>1</sup> <https://www.centerformedicalprogress.org/cmp/investigative-footage/>

<sup>2</sup> <https://www.washingtonpost.com/news/wonk/wp/2013/04/15/the-gosnell-case-heres-what-you-need-to-know/>

<sup>3</sup> [https://www.cdc.gov/nchs/health\\_policy/mortality-records-mentioning-termination-of-pregnancy.htm](https://www.cdc.gov/nchs/health_policy/mortality-records-mentioning-termination-of-pregnancy.htm)

<sup>4</sup> <https://frc.org/prolifemaps>