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**Massachusetts' Draconian
Abortion Proposal**

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Introduction

In the first few months of 2019, with the prospect of a Supreme Court that is more willing to defer to state judgments about abortion law, several states have moved to adopt statutes and/or constitutional amendments that enshrine abortion rights in state law. While these proposals¹ are advancing in states that do not presently have many meaningful protections for unborn children and their mothers, legislators and citizens should vehemently reject the elimination of virtually all state recognition of unborn children as human beings.

Massachusetts bills H. 3320 and S. 1209 would codify a right to abortion through nine months of pregnancy in Bay State law and repeal the state's meager existing protections for unborn children and their mothers. However, because of a decision by the Massachusetts Supreme Judicial Court and the presence of an undefined health exception in the state's viability law, abortion is essentially legal through all nine months of pregnancy in Massachusetts today.

The chart below compares current Massachusetts law to the law as it will stand if this legislation is enacted.

Here is a summary:

- Any mention of unborn children will be removed from the definitions, effectively removing their recognition as living humans.
- No restrictions will be permitted on abortions before 24 weeks *post-implantation* (around 27 weeks, LMP, that is from the estimated commencement of the last menstrual period); no bans will be permitted on specific procedures, telemedicine, abortion-inducing drug regimens, and more.
- Abortion providers can provide virtually any reason to justify abortions at or after 24 weeks. Further, there will no longer be a requirement for abortion providers to provide the justifications to anyone.
- No criminal penalties for performing abortion.
- No reflection requirements will be permitted prior to an abortion.
- Existing law encourages abortion providers to try to save both the lives of the mother and the viable unborn child by using a procedure that could lead to live

¹ Proposals to enact statutes or adopt constitutional amendments that expansively permit abortion until birth and repeal existing limits and health standards for the procedure have been enacted, considered and rejected, or remain under consideration in at least: Illinois, Massachusetts, New Mexico, New York, Rhode Island, and Vermont.

birth. An explicitly listed requirement to accomplish this is to have life-supporting equipment present in the procedure room. These provisions will be repealed.

- Any abortion reporting will be subject to the will of the department of public health.
- A requirement that abortions after 13 weeks be performed in hospitals was repealed in 2018. This legislation also repeals the requirement that abortions at or after 24 weeks be performed in hospitals.
- The strongest informed consent provisions in the state’s current law are already enjoined. This legislation would also repeal parental consent requirements.
- Abortion will be covered under the state medical assistance program for uninsured women who do not otherwise meet criteria for the program and are at or below 200% of the federal poverty level.

§	Topic	Existing Law	After Legislation
112 12K	Definition of “abortion”	“The knowing destruction of the life of an unborn child...”	“Any medical treatment intended to induce the termination of a clinically diagnosable pregnancy except for the purpose of producing a live birth.”
12K	Definition of “pregnancy”	“The condition of a mother carrying an unborn child.”	“The presence of an implanted human embryo or fetus within a person’s uterus.”
12K	Definition of “unborn child”	“The individual human life in existence and developing from implantation of the embryo in the uterus until birth.”	Repealed. Translation: Unborn children will no longer be recognized as human beings.
12L	Abortion: Pregnancy of Less Than 24 Weeks	“If a pregnancy has existed for less than twenty–four weeks no abortion may be performed except by a physician and only if, in the best medical judgment of a physician,	“The Commonwealth shall not interfere with a person’s personal decision and ability to ... terminate ... their own pregnancy.”

		the abortion is necessary under all attendant circumstances.”	<p>“The Commonwealth shall not restrict the use of medically appropriate methods of abortion or the manner in which medically appropriate abortion is provided.”</p> <p>Translation: No restrictions will be permitted on abortions before 24 weeks <i>post-implantation</i>; no bans will be permitted on specific procedures, telemedicine, abortion-inducing drug regimens, and more.</p>
12M	Abortion: Pregnancy of 24 Weeks or More	“If a pregnancy has existed for twenty-four weeks or more, no abortion may be performed except by a physician and only if it is necessary to save the life of the mother, or if a continuation of her pregnancy will impose on her a substantial risk of grave impairment of her physical or mental health.”	<p>[Abortion regulation before and after 24 weeks are combined in new 12M.]</p> <p>“A physician ... may perform an abortion when, according to the physician’s best medical judgment, the patient is within twenty-four weeks from the commencement of pregnancy.</p> <p>A physician ... may perform an abortion when, according to the physician’s best medical judgment based on the facts of the patient’s case, the patient is beyond twenty-four weeks from the commencement of pregnancy and the</p>

			<p>abortion is necessary to protect the patient’s life or physical or mental health, in cases of lethal fetal anomalies, or where the fetus is incompatible with sustained life outside the uterus.</p> <p>Medical judgment may be exercised in the light of all factors—physical, emotional, ^[L]_[SEP]psychological, familial, and the person’s age—relevant to the well-being of the patient.” ^[L]_[SEP]</p> <p>Translation: No restrictions will be permitted on abortions before 24 weeks <i>post-implantation</i>; abortion providers can provide virtually any reason to justify abortions after 24 weeks. Further, there will no longer be a requirement for abortion providers to provide the justifications-see below.</p>
Old 12N	Criminal Penalties	Imprisonment for 1 to 5 years.	<p>Repealed.</p> <p>Translation: No criminal penalties for abortion.</p>
New 12N	Informed Consent		<p>Undefined informed consent form prescribed by the Commissioner of Public Health “shall not impose any waiting period between the signing of the consent</p>

			<p>form and the performance of the abortion.”</p> <p>Translation: No reflection requirements will be permitted prior to an abortion.</p>
Old 120	<p>Abortion: Pregnancy of 24 weeks or more: Life & Health Considerations</p>	<p>“No abortion procedure which is designed to destroy the life of the unborn child or injure the unborn child in its mother’s womb may be used unless, in the physician’s best medical judgment, all other available procedures would create a greater risk of death or serious bodily harm to the mother either at the time of the abortion, or subsequently as the result of a future pregnancy, than the one being used.”</p>	<p>Repealed.</p> <p>Translation: Existing law encourages abortion providers to try to save both the lives of the mother and the viable unborn child by using a procedure that could lead to live birth. This provision will be repealed.</p>
New 120	<p>Reporting</p>		<p>“The department of public health shall have the authority to require aggregate reports regarding induced termination of pregnancy.” <i>[Not required]</i></p> <p>Translation: Any abortion reporting will be subject to the will of the department of public health.</p>

12P	<p>Abortion: Pregnancy of 24 Weeks or More: Steps to Preserve Life & Health of Child</p>	<p>“The physician performing the abortion shall take all reasonable steps, both during and subsequent to the abortion, in keeping with good medical practice, consistent with the procedure being used, to preserve the life and health of the aborted child. Such steps shall include the presence of life-supporting equipment, as defined by the department of public health, in the room where the abortion is to be performed.”</p>	<p>Repealed.</p> <p>Translation: As noted above, existing law encourages abortion providers to try to save both the lives of the mother and the viable unborn child by using a procedure that could lead to live birth. This provision explicitly states that one of the steps to accomplish this is to have life-supporting equipment present in the procedure room. This provision will be repealed.</p>
12Q	<p>Abortion: written informed consent; hospitals</p>	<p>“Except in an emergency requiring immediate action, no abortion may be performed [at or after 24 weeks] unless performed in a hospital duly authorized to provide facilities for obstetrical services.”</p>	<p>Repealed.</p> <p>Translation: A requirement that abortions after 13 weeks be performed in hospitals was repealed in 2018. This provision repeals the requirement that abortions at or after 24 weeks be performed in hospitals.</p>
12R	<p>Abortion: Statements, records and reports of physicians advising and performing abortions</p>	<p>Includes detailed requirements for reporting the basis for and the outcome from an abortion performed at or after 24 weeks.</p>	<p>Repealed.</p> <p>Translation: Abortion providers will no longer need to report their justifications for performing abortions at or after 24 weeks.</p>
12S	<p>Abortion: Written, informed consent; parent or</p>	<p>Includes detailed informed consent requirements; 24-hour</p>	<p>Repealed.</p>

	guardian consent for minor	waiting period. [<i>portions, including waiting period, currently enjoined.</i>] Includes a parental consent requirement.	Translation: The strongest informed consent provisions in existing laws are already enjoined. However, this legislation would repeal parental consent requirements.
12T	Abortion: Penalties for violations of provisions pertaining to late term abortions	Imposes a \$500 to \$2000 fine and/or imprisonment of 3 months to five years.	Repealed. Translation: No criminal penalties for abortion.
12U	Petition to Superior Court for order to enjoin abortion	Permits the Attorney General to petition the superior court for an order enjoining performance of any abortion that may violate the law.	Repealed.
118E 10E (i)	Coverage for pregnancy care under state medical assistance program (for women who do not otherwise meet criteria for program and do not have insurance)	“All medically necessary care to maintain health during the course of the pregnancy and delivery, including newborn hospital care;”	“All medically necessary care relative to pregnancy, including but not limited to abortion , care to maintain health during the course of the pregnancy and delivery, and newborn hospital care; ^{SEP} Translation: Abortion will be covered under the state medical assistance program for uninsured women who do not otherwise meet criteria for the program and are at or below 200% of the federal poverty level.

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