**T.P.I. - CRIM. 29.20**

**CRIMINAL ABORTION**

Any person who commits the offense of criminal abortion is guilty of a crime.

For you to find the defendant guilty of this offense, the state must have proven beyond a reasonable doubt the existence of the following essential elements:

[Part A:

(1) that the defendant performed an abortion;

and

1. that the defendant acted intentionally.]

or

[Part B:

(1) that the defendant intended to perform an abortion;

and

(2)(a) that the defendant did some act or caused something to happen that would have constituted an abortion if the defendant’s beliefs at the time *[he] [she]* acted had in fact been true;

or

(b) that the defendant did some act intending to cause an abortion to occur, and at the time believed the act would cause the abortion to occur without further action on the defendant’s part;

or

(c) that the defendant did some act intending to complete a course of

action or cause a result that would constitute abortion under the circumstances, as the defendant believed them to be at the time, and *[his] [her]* actions constituted a substantial step toward the performing of the abortion. The defendant’s actions do not constitute a substantial step unless the defendant’s entire course of action clearly shows *[his] [her]* intent to perform an abortion. **[see Comment 2 of T.P.I - Crim. 4.01, Criminal Attempt, for instructions as to which of these three sections to use in element 2 of Part B]**.]

“Abortion” means the use of any instrument, medicine, drug, or any other substance or device with intent to terminate the pregnancy of a woman known to be pregnant with intent other than to increase the probability of a live birth, to preserve the life or health of the child after live birth, *[***only for offenses committed on or after 4/28/23:** *to terminate an ectopic or molar pregnancy]* or to remove a dead fetus.

“Fertilization” means that point in time when a male human sperm

penetrates the zona pellucida (the transparent layer that surrounds an ovum) of a female human ovum.

"Pregnant" means the human female reproductive condition of having a

living unborn child within her body throughout the entire embryonic and fetal stages of the unborn child from fertilization until birth; and

"Unborn child" means an individual living member of the species, homo

sapiens, throughout the entire embryonic and fetal stages of the unborn child from fertilization until birth.

[“Intended”] [“Intentionally”] [“Intent”] means that a person acts intentionally with respect to the nature of the conduct or to a result of the conduct when it is the person’s conscious objective or desire to engage in the conduct or cause the result.

[It is a defense to prosecution for this offense, which must be proven by a preponderance of the evidence, that:

(1) The abortion was performed or attempted by a licensed physician;

(2) The physician determined, in the physician’s good faith medical judgment, based upon the facts known to the physician at the time, that the abortion was necessary to prevent the death of the pregnant woman or to prevent serious risk of substantial and irreversible impairment of a major bodily function of the pregnant woman. “Serious risk of substantial and irreversible impairment of a major bodily function” means (A) any medically diagnosed condition that so complicates the pregnancy of a woman as to directly or indirectly cause the substantial and irreversible impairment of a major bodily function; (B) may include previable preterm premature rupture of membranes; inevitable abortion; severe preeclampsia; mirror syndrome associated with fetal hydrops; and an infection that can result in uterine rupture or loss of fertility; and (C) does not include any condition related to the woman's mental health. “Inevitable abortion” means a dilation of the cervix prior to viability of the pregnancy, either by preterm labor or cervical insufficiency. [It is not a defense that the abortion was performed on the basis of a claim or a diagnosis that the woman would have engaged in conduct that would result in her death or substantial and irreversible impairment of a major bodily function or for any reason relating to her mental health]; and

(3) The physician performed the abortion in the manner which, in the physician’s good faith medical judgment, based upon the facts known to the physician at the time, provided the best opportunity for the unborn child to survive, unless in the physician’s good faith medical judgment, termination of the pregnancy in that manner would have posed a greater risk of the death of the pregnant woman or substantial and irreversible impairment of a major bodily function. [No such greater risk shall have been deemed to exist if it was based on a claim or diagnosis that the woman would have engaged in conduct that would have resulted in her death or substantial and irreversible impairment of a major bodily function or for any reason relating to her mental health]].

[It is an exception to this offense that medical treatment provided to the pregnant woman by a licensed physician resulted in the accidental death of or unintentional injury to or death of the unborn child].