



PRENATAL LAWS

Wrongful Birth and Wrongful Life¹

STATES AND TERRITORIES

DEFINITIONS

▶ WRONGFUL BIRTH CLAIM

A malpractice claim brought by the parents of a child born with a birth defect against a physician or health-care provider whose alleged negligence (as in diagnosis) effectively deprived the parents of the opportunity to make an informed decision whether to avoid or terminate a pregnancy.²

▶ WRONGFUL LIFE CLAIM

A malpractice claim brought by or on behalf of a child born with a birth defect alleging that he or she would never have been born if not for the negligent advice or treatment provided to the parents by a physician or health-care provider.³

▶ WRONGFUL PREGNANCY/CONCEPTION CLAIM⁴

“[I]n a wrongful pregnancy action, the parents of a healthy child claim that negligence in the provision of contraceptives or the performance of a sterilization or termination of pregnancy operation has led to the birth of an unplanned child.” *Haymon v. Wilkerson*, 535 A.2d 880, 883 (D.C. 1987).

ALABAMA

LEGISLATION: No wrongful birth, wrongful pregnancy/conception, or wrongful life legislation.

RELEVANT CASE LAW

▶ **WRONGFUL BIRTH IN ALABAMA** Claims are recognized as medical negligence malpractice cases and parents must be able to prove their damages. *Keel v. Banach*, 624 So.2d 1022 (Ala. 1993). In *Keel*, parents filed suit against the doctors for medical malpractice in failing to discover fetal abnormalities that would have caused them to terminate a pregnancy. *Id.* Although no cause of action for wrongful birth or damages for wrongful birth are recognized in Alabama, “the court held that an action for wrongful birth was in reality a medical negligence malpractice case.” *Id.* “[T]he parents were allowed to maintain an action claiming that the birth was the result of the negligent failure of the doctors to discover and inform them of the existence of fetal defects.” *Id.* at 1023. **The parents must be able to prove their damages and they can then recover medical and hospital expenses incurred as a result of the doctors’ negligence, the physical pain suffered by the wife, loss of consortium, and for the mental and emotional anguish they had suffered.**

▶ **WRONGFUL PREGNANCY IN ALABAMA** The court found that damages are recoverable “including: (1) The physical pain and suffering, and mental anguish of the mother as a result of her pregnancy; (2) the loss to the husband of the comfort, companionship, services, and consortium of the wife during her pregnancy and immediately after the birth; and (3) the medical expenses incurred by the parents as a result of the pregnancy.” *Boone v. Mullendore*, 416 So.2d 718, 719 (Ala. 1982).

▶ **WRONGFUL LIFE IN ALABAMA** *Elliott v. Brown*, 361 So.2d 546 (Ala. 1978). “The father of the child went to the doctor for a vasectomy because of the medical condition of his wife, which could not support a pregnancy. . . . Despite the vasectomy the wife became pregnant and the child was born with deformities. . . . The child brought an action for wrongful life.” *Id.* at 546. The court dismissed the action for failure to state a claim because it held that there was no legal right not to be born and the child therefore had no cause of action for wrongful life. *Id.* **(Alabama permits no relief under this claim).**

¹ Statute of limitations are not included in this summary, but note that claims will be dismissed should the statute of limitations expire.

² Wrongful Birth, MERRIAM-WEBSTER.COM, www.merriam-webster.com/dictionary/wrongful%20birth (last visited Feb. 1, 2021).

³ Wrongful Life, MERRIAM-WEBSTER.COM, www.merriam-webster.com/dictionary/wrongful%20life (last visited Feb. 1, 2021).

⁴ While these claims are not specifically applicable to people with intellectual and developmental disabilities, they are often intertwined with wrongful birth and wrongful life legislation and case law, and therefore included for some states.

ALASKA

LEGISLATION: No wrongful birth, wrongful pregnancy/conception, or wrongful life legislation.

RELEVANT CASE LAW

▶ **WRONGFUL BIRTH IN ALASKA** No relevant case law.

But see Poor v. Moore, 791 P.2d 1005 (Alaska 1990). In *Poor*, a child was conceived as the result of a tortious sexual relationship between a therapist and a client. *Id.* The court held that inappropriate sexual conduct resulting in the birth of a child would not allow the victim to recover damages as a wrongful birth medical malpractice case. *Id.*

▶ **WRONGFUL PREGNANCY/CONCEPTION IN ALASKA** No relevant case law. Although courts have discussed it peripherally, no cases have dealt directly with this claim.

▶ **WRONGFUL LIFE IN ALASKA** No relevant case law.

ARIZONA

LEGISLATION: No wrongful birth, wrongful pregnancy/conception, or wrongful life legislation.

RELEVANT CASE LAW

▶ **WRONGFUL BIRTH IN ARIZONA** *Walker by Pizano v. Mart*, 790 P.2d 735 (Ariz. 1990). “A mother sought medical treatment during her pregnancy from two doctors. The doctors failed to adequately test the mother and therefore she was unaware that she had contracted rubella. She gave birth to a child who suffered from severe birth defects including cerebral palsy, deafness, and cardiac abnormalities” *Id.* at 736. “[I]f parents establish that a physician’s negligence prevented them from exercising their right of choice to terminate the pregnancy, they may bring a wrongful birth claim to recover damages in accordance with the principles established in *Univ. of Ariz. Health Scis. Ctr. v. Superior Court*, 667 P.2d 1294 (Ariz. 1983).” *Id.* at 738 (emphasis added).

But see Arbors Health Care Ctr. v. Superior Court, No. 1 CA-SA 93-0266, 1994 LEXIS 15, at *1 (Ariz. Ct. App. Jan. 27, 1994) (holding that the adoption statutes prevented adoptive parents from a claim of wrongful birth because they did not suffer any injury from the wrongful birth of a child).

▶ **WRONGFUL PREGNANCY IN ARIZONA** *Univ. of Ariz. Health Scis. Ctr. v. Superior Court*, 667 P.2d 1294 (Ariz. 1983).

A husband and a wife had a healthy unwanted child after a doctor had performed a failed vasectomy on the husband. *Id.* The husband and the wife filed a wrongful birth action against the hospital for medical malpractice. *Id.* The court held that the parents could present evidence to collect future costs of rearing and educating the child offset by the benefits [also known as the “benefit” doctrine] to the parents of receiving a healthy child, but that the term “wrongful pregnancy” is used to “describe an action brought by the parents of a healthy, but unplanned, child against a physician who negligently performs a sterilization or abortion.” *Id.* at 1295. (distinguishing from a “wrongful birth” claim brought by the parents of a child born with birth defects).

▶ **WRONGFUL LIFE IN ARIZONA** The court held that children suffer no legal injury when a parent, doctor, or other practitioner fail to prevent their birth. *Walker by Pizano*, 790 P.2d at 735.

Myers v. Hoffman-La Roche, Inc., No. 1 CA-CV 06-0137, 2008 LEXIS 857, at *1-2 (Ariz. Ct. App. May 22, 2008). In *Myers*, claimant, through her mother, sought damages for personal injuries she sustained after her mother took Accutane. *Id.* The court held that the claims were not barred by “wrongful life” (which is not recognized in Arizona) because they were for damages sustained *in utero*. *Id.*

ARKANSAS

LEGISLATION:

Wrongful birth and wrongful life claims: ARK. CODE ANN. § 16-120-902 (2020). “Wrongful birth claims – Wrongful life claims,” prohibits civil actions for wrongful life and wrongful birth claims whether or not a child is born healthy or with a birth defect; however, it “[d]oes not apply to a civil action for damages for an intentional, reckless, or grossly negligent act or omission, including without limitation an act or omission that violates criminal law.” *Id.*

No wrongful pregnancy/conception legislation.

RELEVANT CASE LAW

▶ **WRONGFUL PREGNANCY/CONCEPTION IN ARKANSAS** Parents cannot recover the expenses of raising a normal, healthy child; however, “damages connected with the operation and connected with the pregnancy [are recoverable] inasmuch as these are valid damages.” *Wilbur v. Kerr*, 628 S.W.2d 568, 569 (Ark. 1982).

CALIFORNIA

LEGISLATION: No specific wrongful birth legislation; however, under CAL. CIV. CODE § 1714 (2020). “Responsibility for willful acts or negligence; Proximate cause of injuries resulting from furnishing alcohol to intoxicated person; Liability of social host; Provision of alcoholic beverages to persons under 21 years of age,” “if defendants’ negligence was the proximate cause of plaintiff’s present medical expenses, then the basic liability principles of CAL. CIVIL CODE § 1714 would hold defendants liable for the cost of such care.” *Turpin v. Sortini*, 643 P.2d 954, 955 (Cal. 1982).

No wrongful pregnancy/conception legislation.

CAL. CIV. CODE § 43.6 (2020). “Wrongful life action.” “(a) No cause of action arises against a parent of a child based upon the claim that the child should not have been conceived or, if conceived, should not have been allowed to have been born alive.” This statute, “relieves the parents of any liability in this situation and also provides that the parents’ decision shall neither be ‘a defense in any action against a third party’ nor ‘be considered in awarding damages in any such action.’” *Turpin*, 643 P.2d at 959.

RELEVANT CASE LAW

▶ **WRONGFUL BIRTH IN CALIFORNIA** In *Turpin*, a child was born with hereditary deafness, after doctors misdiagnosed her sister’s hereditary defect, thereby depriving her parents the choice to conceive her. **“Parents have regularly been permitted to recover the medical expenses incurred on behalf of such a child.”** *Turpin*, 643 P.2d at 965 (emphasis added).

▶ **WRONGFUL PREGNANCY/CONCEPTION IN CALIFORNIA** The court found that “plaintiff should be permitted to recover all the damages to which she is entitled under ordinary tort principles. Under those same principles the defendants may prove any offsets for benefits conferred and amounts chargeable to a plaintiff under her duty to mitigate damages.” *Stills v. Gratton*, 127 Cal. Rptr. 652, 659 (Cal. Ct. App. 1976).

▶ **WRONGFUL LIFE IN CALIFORNIA** “[W]hile a plaintiff-child in a wrongful life action may not recover general damages for being born impaired as opposed to not being born at all, the child -- like his or her parents -- **may recover special damages for the extraordinary expenses necessary to treat the hereditary ailment.**” *Turpin*, 643 P.2d at 966 (emphasis added).

But see Alexandria S. v. Pacific Fertility Medical Center, Inc., 55 Cal. App. 4th 110 (1997). **Although courts recognize wrongful life claims by “impaired” children, the court does not recognize wrongful life claims by children born without any mental or physical impairment.**

COLORADO

LEGISLATION: No wrongful birth, wrongful pregnancy/conception, or wrongful life legislation.

RELEVANT CASE LAW

▶ **WRONGFUL BIRTH AND WRONGFUL LIFE IN COLORADO** Colorado recognizes “wrongful birth” claims but not “wrongful life” claims. *Lininger v. Eisenbaum*, 764 P.2d 1202 (Colo. 1988).

▶ **WRONGFUL BIRTH IN COLORADO** In *Lininger*, Plaintiffs [the Liningers] had one blind child and were unwilling to have a second blind child. Defendant physicians failed to properly diagnose the first child’s blindness as hereditary, and plaintiffs had a second child, also born blind. 764 P.2d at 1203-04. Both children were later diagnosed with a hereditary form of blindness. *Id.* The Liningers allege that “but for defendant’s act of negligence, plaintiff would have avoided conception of their second infant [Pierce], which was diagnosed with the same blindness.” *Id.* at 1203. “[T]he Liningers’ complaint sufficiently states a cause of action upon which relief may be granted, and they are **entitled to prove and to recover at least the extraordinary medical and education expenses they have incurred, and will incur, in raising Pierce, if they are able to establish that those expenses were proximately caused by defendants’ negligence.**” *Id.* at 1208 (emphasis added).

▶ **WRONGFUL PREGNANCY/CONCEPTION IN COLORADO** No relevant case law; although courts have mentioned the claim, they have not opined on the action.

▶ **WRONGFUL LIFE IN COLORADO** “[A] person’s existence, however handicapped it may be, **does not constitute a legally cognizable injury relative to non-existence.**” *Lininger*, 764 P.2d at 1210 (emphasis added).

CONNECTICUT

LEGISLATION: No wrongful birth, wrongful pregnancy/conception, or wrongful life legislation.

RELEVANT CASE LAW

- ▶ **WRONGFUL BIRTH IN CONNECTICUT** “Connecticut recognizes a cause of action for wrongful birth.” *Chamberland v. Physicians for Women’s Health, LLC*, No. CV010164040S, 2006 LEXIS 451, at *8 (Conn. Super. Ct. Feb. 8, 2006) (emphasis added). “[T]he law in Connecticut permit[s] **damages for emotional distress in wrongful birth cases where, as in the case at bar, the emotional distress was a direct and proximate result of the defendant’s negligence.**” *Id.* at 1 (emphasis added). “Connecticut has adopted the so-called ‘benefit rule’ which permits the trier of fact to deduct from the parents’ damages the value of the joy which the child brings to the parents.” *Id.* at 20.
- ▶ **WRONGFUL PREGNANCY/CONCEPTION IN CONNECTICUT** The court in *Connecticut allows “parents to recover for the expenses of rearing an unplanned child to majority when the child’s birth results from negligent medical care.”* *Ochs v. Borrelli*, 445 A.2d 883, 885 (Conn. Super. Ct. 1982) (emphasis added).
- ▶ **WRONGFUL LIFE IN CONNECTICUT** *Donnelly v. Candlewood Obstetric-Gynecological Associates, P.C.*, No. 30 20 96, 1992 LEXIS 1682, at *1 (Conn. Super. Ct. June 8, 1992). The court **declined to recognize the wrongful life claim** because it requires a calculation of damages dependent on a comparison of the “choice of life in an impaired state [to] nonexistence.” *Id.* at *4.

DELAWARE

LEGISLATION: No wrongful birth, wrongful pregnancy/conception, or wrongful life legislation.

RELEVANT CASE LAW

- ▶ **WRONGFUL BIRTH IN DELAWARE** *Garrison v. Med. Ctr. of Del., Inc.*, 581 A.2d 288 (Del. 1989). “[T]here is an actionable claim under Delaware law, rooted in common law, for negligence in performing a medical testing procedure and for negligence in failing to timely report the results of testing. The cause of action need not be characterized as ‘wrongful birth’ since it falls within the realm of traditional tort and medical malpractice law.” *Id.* at 290 “**If the health care provider deprives the parents of the ability to choose not to carry an unwell fetus to term, the provider may be held liable for the resulting extraordinary expenses of the parents for child care.**” *Id.* at 292 (emphasis added). The expenses include: “maintaining and educating the child that exceed the usual costs of raising an unimpaired child.” *Id.*
- ▶ **WRONGFUL PREGNANCY IN DELAWARE** In a failed sterilization procedure, the court does not allow damages for support of a healthy child; however, plaintiffs **may be allowed provable damages associated with the procedure, pregnancy, and birth.** These damages are limited to: “1. The pain, suffering and discomfort of Doris Mae Coleman as a result of her last pregnancy; and 2. The cost of a tubal ligation; and 3. The loss to Leroy B. Coleman of the comfort, companionship, services and consortium of Doris Mae Coleman; however, the loss of consortium is limited to the loss arising from pregnancy and immediately after birth; and 4. The medical expenses incurred by Mr. and Mrs. Coleman as a result of the 1968 pregnancy of Mrs. Coleman.” *Coleman v. Garrison*, 327 A.2d 757, 761-62 (Del. 1974). “[P]laintiff must allege and prove not only that the representation was false, but also that it was made with fraudulent intent.” *Id.* at 763. In *Coleman*, the court refused damages to the plaintiffs because there were risks involved in the procedure, and plaintiffs did not prove false representation or intent. *Id.*
- ▶ **WRONGFUL LIFE IN DELAWARE** The court in *Garrison*, in dicta, adopts the view of many other jurisdictions, **denying wrongful life claims, due to the “impossible task of identifying damages based on comparison between life in the child’s impaired state and nonexistence.”** *Id.* at 293 (emphasis added). The court also distinguishes the claim in *Garrison* from other wrongful life claims when a child was born with Down syndrome, because the condition of the child was not caused by action or inaction (or a negligent act) by the defendants. *Garrison*, 581 A.2d at 288.

DISTRICT OF COLUMBIA

LEGISLATION: No wrongful birth, wrongful pregnancy/conception, or wrongful life legislation.

RELEVANT CASE LAW

- ▶ **WRONGFUL BIRTH IN DISTRICT OF COLUMBIA** *Dyson v. Winfield*, 129 F. Supp. 2d 22 (D.D.C. 2001). Plaintiff Dyson filed a suit alleging defendant Winfield “negligently prescribed the drug Provera to her while she was pregnant, causing her child to be born with numerous birth defects and eventually die.” *Id.* 23. “[A] **plaintiff may recover for extraordinary child rearing expenses under a common law cause of action for wrongful birth.**” *Id.* at 24. (citing *Haymon v. Wilkerson*, 535 A.2d 880, 884-86 (D.C. 1987) (emphasis added) (stating that parent of Down syndrome child has cause of action for wrongful birth where physician failed to properly advise amniocentesis)). *But see Cauman v. George Washington Univ.*, 630 A.2d 1104, 1109 (D.C. 1993) (clarifying that D.C. allows recovery for extraordinary expenses for child rearing, but does not recognize a claim for negligent infliction of emotional distress resulting from a wrongful birth).
- ▶ **WRONGFUL PREGNANCY IN DISTRICT OF COLUMBIA** “In *Flowers v. District of Columbia*, 478 A.2d 1073 (D.C. 1984), **this court refused to recognize a wrongful pregnancy action**, holding that shifting the financial burden of raising an unplanned but healthy child to a physician would be wholly disproportionate to the culpability involved. *Id.* at 1077.” *Haymon*, 535 A.2d at 883 (emphasis added).
- ▶ **WRONGFUL LIFE IN DISTRICT OF COLUMBIA** No explicit bar; however, in *Haymon*, the court reiterated that **most courts have refused to recognize a wrongful life action** because of an impossible calculation between the “choice of life in an impaired state and nonexistence.” 535 A.2d at 883.

FLORIDA

LEGISLATION:

Wrongful birth, wrongful life, and wrongful pregnancy/conception: Florida has established the Birth-Related Neurological Injury Compensation Plan under FLA. STAT. ANN. § 766.303 (LexisNexis 2020). The Plan provides “**compensation, irrespective of fault, for birth-related neurological injury claims.**” FLA. STAT. ANN. § 766.303 (emphasis added). The rights granted by this plan prevent other claims by the parents or on behalf of the child related to medical negligence, but not bad faith, malicious purpose, or willful and wanton disregard of human life. Awards are calculated under FLA. STAT. ANN. § 766.31. (“Administrative law judge awards for birth-related neurological injuries; notice of award.”).

RELEVANT CASE LAW

▶ **WRONGFUL BIRTH IN FLORIDA** In *Kush v. Lloyd*, plaintiffs, the Lloyds, had one son with an inherited genetic condition. 616 So. 2d 415, 417 (Fla. 1992). They received genetic testing and were advised that their son’s impairment was not a genetic defect. *Id.* The Lloyds went on to have a second child with the same condition. A test disclosed the condition was inherited. The court “extend[ed] the tort of wrongful birth to encompass all extraordinary expenses caused by the impairing condition for the duration of the child’s life expectancy.” *Id.* at 424 (emphasis added).

▶ **WRONGFUL PREGNANCY AND WRONGFUL CONCEPTION IN FLORIDA** Florida does not allow “rearing expense damages in ‘wrongful birth’ cases where the child born is otherwise normal and healthy.” *Ramey v. Fassoulas*, 414 So. 2d 198, 200 (Fla. Dist. Ct. App. 1982) (emphasis added).

▶ **WRONGFUL LIFE IN FLORIDA** “In common with the other courts to have considered the issue, we decline to recognize a cause of action for general damages for wrongful life.” *Lloyd v. N. Broward Hosp. Dist.*, 570 So. 2d 984, 989 (Fla. Dist. Ct. App. 1990) (emphasis added); See, e.g., *Moore v. Lucas*, 405 So. 2d 1022, 1024-26 (Fla. Dist. Ct. App. 1981); *Viccaro v. Milunsky*, 551 N.E.2d 8, 12-13 (Mass. 1990).

Florida does not recognize specific damages for wrongful life for special care and maintenance expenses before and after the age of majority, ascribing these as claims of the parents and not the child. *Lloyd*, 570 So. 2d at 989.

GEORGIA

LEGISLATION: No wrongful birth, wrongful pregnancy/conception, or wrongful life legislation.

RELEVANT CASE LAW

▶ **WRONGFUL BIRTH IN GEORGIA** *Etkind v. Suarez*, 519 S.E.2d 210, 211 (Ga. 1999). “After their child was born with Down’s [s]yndrome, plaintiff parents brought a wrongful birth suit against defendant doctors claiming that, but for the treatment or advice provided by defendants, plaintiffs would have aborted the fetus and prevented the birth of their child.” *Id.* “The court said that **because the General Assembly had not enacted any legislation authorizing a recovery for wrongful birth, plaintiffs had no viable claim.**” *Id.* (emphasis added) (upholding *Atlanta Obstetrics & Gynecology Group v. Abelson*, 398 S.E.2d 557 (Ga. 1990), that that Georgia courts cannot recognize wrongful birth claims absent legislative authorization).

▶ **WRONGFUL PREGNANCY AND WRONGFUL CONCEPTION IN GEORGIA** “The plaintiffs in a wrongful pregnancy action never wanted to become parents, and their suit is based upon the alleged negligent performance of an actual sterilization or abortion procedure.” *Etkin*, 519 S.E.2d at 213. “[W]rongful pregnancy will not authorize a recovery of the expenses of raising the child, but only a **limited ‘recovery of expenses for the unsuccessful medical procedure which led to conception or pregnancy, for pain and suffering, medical complications, costs of delivery, lost wages, and loss of consortium.’**” *Id.* (emphasis added) (citing *Fulton-Dekalb Hospital Authority v. Graves*, 314 S.E.2d 653, 654 (Ga. 1984)).

▶ **WRONGFUL LIFE IN GEORGIA** A claim for wrongful life is not recognized in Georgia. *Atlanta Obstetrics & Gynecology Grp. v. Abelson*, 398 S.E.2d 557, 558 (Ga. 1990).

LEGISLATION: No wrongful birth, wrongful pregnancy/conception, or wrongful life legislation.

RELEVANT CASE LAW: No relevant case law.

GUAM



HAWAII

RELEVANT CASE LAW

LEGISLATION: No wrongful birth, wrongful pregnancy/conception, or wrongful life legislation.

WRONGFUL PREGNANCY IN HAWAII No relevant case law; *But see Carr v. Strobe*, 904 P.2d 489 (Haw. 1995) (finding a failed vasectomy procedure could result in a claim for lack of informed consent based on failure of physician to convey information for patient to make an intelligent decision); *See also Omori v. Jowa Haw. Co., Ltd.*, 981 P.2d 714, 718–19 (Haw. Ct. App. 1999), *aff’d as modified*, 981 P.2d 703 (1999) (holding that in Hawaii, a child who is subsequently born alive, may recover damages for negligently inflicted prenatal injuries.)

NO WRONGFUL BIRTH OR WRONGFUL LIFE LEGISLATION

IDAHO

RELEVANT CASE LAW

LEGISLATION:

Wrongful birth, wrongful pregnancy, and wrongful life: IDAHO CODE § 5-334 (LexisNexis 2020). “Act or omission preventing abortion not actionable” prohibits actions for wrongful birth, wrongful pregnancy, and wrongful life. *Id.* However, it does “not preclude causes of action based on claims that, but for a wrongful act or omission, fertilization would not have occurred, maternal death would not have occurred or disability, disease, defect or deficiency of an individual prior to birth would have been prevented, cured or ameliorated in a manner that preserved the health and life of the affected individual.” *Id.*

WRONGFUL BIRTH IN IDAHO Although the claim was initially allowed in *Blake v. Cruz*, 698 P.2d 315 (Idaho 1984), the Idaho Legislature enacted IDAHO CODE § 5-334 to overturn *Blake*. *Vanvooren v. Astin*, 111 P.3d 125, 127 (Idaho 2005).

Although **negligent infliction of emotional distress is prohibited within wrongful birth claims** under IDAHO CODE § 5-334 (LexisNexis 2020), the court in *Vanvooren*, left the potential for a claim of negligent infliction of emotional distress open, should a plaintiff amend the claim without specifically relying upon wrongful birth allegations. 111 P.3d at 128.

WRONGFUL PREGNANCY/CONCEPTION IN IDAHO No relevant case law.

WRONGFUL LIFE IN IDAHO The court held in *Blake* that **wrongful life was not a cognizable action in Idaho**. 698 P.2d at 315.

ILLINOIS

RELEVANT CASE LAW

LEGISLATION: No wrongful birth, wrongful pregnancy/conception, or wrongful life legislation.

WRONGFUL BIRTH IN ILLINOIS “Plaintiffs who succeed in wrongful birth claims are **entitled to recover extraordinary damages, including the medical, institutional and educational expenses that are necessary to properly manage and treat their child’s congenital or genetic disorder.**” *Williams v. Rosner*, 7 N.E.3d 57 (Ill. 2014) (emphasis added). However, “[b]ecause the common law and statutes of the State of Illinois do not require the plaintiff parents to support their child after he reaches the age of majority, **they may not recover his extraordinary postmajority expenses as an element of their damages.**” *Clark v. Children’s Memorial Hospital*, 955 N.E.2d 1065 (Ill. 2011) (emphasis added).

WRONGFUL PREGNANCY/CONCEPTION IN ILLINOIS Parents are generally permitted to recover damages for the cost of the unsuccessful operation, pain and suffering, any medical complications caused by the pregnancy, the costs of the child’s delivery, lost wages, and loss of consortium. Parents may not be awarded the expenses of raising a normal, healthy child born following the negligently performed procedure.” *Cockrum v. Baumgartner*, 447 N.E.2d 385, 387 (Ill. 1983) (emphasis added).

“[W]here the pleadings establish that the birth of a diseased child is a foreseeable consequence of a negligently performed sterilization procedure, then wrongful pregnancy plaintiffs should be able to obtain an award of extraordinary damages.” *Williams v. Rosner*, 7 N.E.3d 57, 67 (Ill. App. Ct. 2014).

WRONGFUL LIFE IN ILLINOIS *Goldberg v. Ruskin*, 499 N.E.2d 406 (Ill. 1986). In *Goldberg*, “[t]he parents filed a wrongful life action on behalf of their child against the wife’s obstetrician, alleging that he failed to diagnose the presence of Tay-Sachs disease in the fetus and alleged further that had the diagnosis been made, they would have aborted the fetus.” 499 N.E.2d at 406. The court held that “**a child may not recover, in an action for wrongful life, damages for pain and suffering associated with the disease or condition that underlies the action.**” *Id.* at 410 (emphasis added). “**[N]o right not to be born, even into a life of hardship, has ever been recognized in our judicial system.**” *Siemieniec v. Lutheran General Hospital*, 512 N.E.2d 691, 700 (Ill. 1987) (emphasis added).

INDIANA

LEGISLATION:

Wrongful birth, wrongful pregnancy/conception, and wrongful life: IND. CODE ANN. § 34-12-1-1 (LexisNexis 2020). “Action based on failure to abort.” “A person may not maintain a cause of action or receive an award of damages on the person’s behalf based on the claim that but for the negligent conduct of another, the person would have been aborted.” *Id.*

RELEVANT CASE LAW

▶ **WRONGFUL BIRTH IN INDIANA** *Bader v. Johnson*, 732 N.E.2d 1212 (Ind. 2000). In *Bader*, plaintiffs sued a doctor for failing to disclose the results of prenatal testing—where the ultrasound showed abnormalities. “The child died several months after birth due to congenital birth defects. Plaintiffs alleged plaintiff wife would have terminated the pregnancy had plaintiffs known the test results.” *Id.* at 1214. The court declined to recognize the tort of wrongful birth, but held that **wrongful birth claims such as these should be addressed as “any other medical malpractice claim.”** *Id.* (emphasis added). If the parents proved negligence then they were “entitled to damages proximately caused by the tortfeasor’s breach of duty.” *Id.* at 1220.

▶ **WRONGFUL PREGNANCY AND WRONGFUL CONCEPTION IN INDIANA** “The costs involved in raising and educating a normal, healthy child conceived subsequent to an allegedly negligent sterilization procedure **are not cognizable as damages** in an action for medical negligence.” *Chaffee v. Seslar*, 786 N.E.2d 705, 706 (Ind. 2003) (emphasis added). However, the **parents can recover costs directly incident to the pregnancy and child bearing expenses.** *Id.* at 708.

▶ **WRONGFUL LIFE IN INDIANA** **Wrongful life damages are not cognizable in Indiana.** *Cowe v. Forum Group, Inc.*, 575 N.E.2d 630 (Ind. 1991).

IOWA

LEGISLATION:

No wrongful pregnancy legislation.

Wrongful birth and wrongful life: IOWA CODE § 613.15B (LexisNexis 2020). “Wrongful birth or wrongful life case of action – prohibitions – exceptions.” Iowa prohibits wrongful birth and wrongful life claims except civil actions “for damages for an intentional or grossly negligent act or omission, including any act or omission that constitutes a public offense.” *Id.* Or “for the intentional failure of a physician to comply with the duty imposed by licensure pursuant to chapter 148 to provide a patient with all information reasonably necessary to make decisions about a pregnancy.” *Id.*

RELEVANT CASE LAW

▶ **WRONGFUL BIRTH IN IOWA** *Plowman v. Fort Madison Cmty. Hosp.*, 896 N.W.2d 393 (Iowa 2017). In *Plowman*, the court held that wrongful birth claims “**fall within existing medical negligence principles.**” 896 N.W.2d at 401 (emphasis added).

▶ **WRONGFUL PREGNANCY IN IOWA** *Nanke v. Napier*, 346 N.W.2d 520 (Iowa 1984). In *Nanke*, a failed abortion procedure led to the birth of a healthy child. *Id.* at 521. The court held the parents could not recover. *Id.* at 522-23.

▶ **WRONGFUL LIFE IN IOWA** No relevant case law.

KANSAS

LEGISLATION:

Wrongful life and wrongful birth: KAN. STAT. ANN. § 60-1906 (LexisNexis 2020). “Wrongful life or wrongful birth claims; prohibited.” The statute prohibits wrongful life and wrongful birth claims except for those claims where, “the death or physical injury of the mother would not have occurred, or the handicap, disease or disability of an individual prior to birth would have been prevented, cured or ameliorated in a manner that preserved the health and life of such individual.” *Id.*

No wrongful pregnancy/conception legislation.

RELEVANT CASE LAW

▶ **WRONGFUL PREGNANCY IN KANSAS** Kansas courts have parsed out wrongful conception and do not permit the projected cost of rearing a normal, healthy child. *Johnston v. Elkins*, 736 P.2d 935, 938 (Kan. 1987). In Kansas, the court has defined wrongful pregnancy as “cases where parents of a healthy child bring a claim on their own behalf for the monetary and emotional damages they suffered as a result of giving birth to an unwanted child.” *Id.* (citing *Bruggeman v. Schimke*, 718 P.2d 635 (Kan. 1986)). The court in *Johnston* held that upon proper proof, **damages are recoverable** for: the expense of the unsuccessful vasectomy; the physical pain and suffering of the patient for that surgery; the cost of prenatal care, delivery, and tubal ligation; the physical pain and suffering sustained in connection with the pregnancy, childbirth, and tubal ligation, and during a reasonable recovery period thereafter; loss of consortium at the time of vasectomy, during the later stages of the pregnancy, and during a reasonable recovery period thereafter. *Id.* at 940.

▶ **NO WRONGFUL BIRTH OR WRONGFUL LIFE CASE LAW**

KENTUCKY

RELEVANT CASE LAW

LEGISLATION: No wrongful birth, wrongful pregnancy/conception, or wrongful life legislation.

▶ **WRONGFUL BIRTH IN KENTUCKY** “Where parents allege that their injury was in being deprived of accurate medical information that would have led them to seek an abortion, the Kentucky Supreme Court is **unwilling to equate the loss of an abortion opportunity resulting in a genetically or congenitally impaired human life, even severely impaired, with a cognizable legal injury.**” *Grubbs v. Barbourville Family Health Ctr.*, P.S.C., 120 S.W.3d 682, 684 (Ky. 2003) (emphasis added).

▶ **WRONGFUL PREGNANCY/CONCEPTION IN KENTUCKY** No relevant case law.

▶ **WRONGFUL LIFE IN KENTUCKY** “[W]rongful life claims. . . must fail for lack of a cognizable injury.” *Grubbs*, 120 S.W.3d at 684. (emphasis added).

LOUISIANA

RELEVANT CASE LAW

LEGISLATION: No wrongful birth, wrongful pregnancy/conception, or wrongful life legislation.

▶ **WRONGFUL BIRTH IN LOUISIANA** “[A] doctor who negligently fails directly to prevent the conception or birth of an unwanted child, as by negligently performing a sterilization or abortion procedure, or by failing to diagnose or inform the parents that the child might be born with a birth defect - because of a disease or genetic condition -- breaches his duty of care owed to the parents.” *Pitre v. Opelousas Gen. Hosp.*, 530 So. 2d 1151, 1157 (La. 1988).

▶ **WRONGFUL PREGNANCY/CONCEPTION IN LOUISIANA** Because of the foreseeable consequences of the doctor’s alleged negligent acts and omissions, “the **parents upon proper proof may recover for the expenses incurred** during pregnancy and delivery, the mother’s pain and suffering, the father’s loss of consortium, service and society, and their emotional and mental distress associated with the birth of an unplanned and unwanted child and the unexpected restriction upon their freedom to plan their family.” *Pitre*, 530 So. 2d at 1161-62 (emphasis added).

▶ **WRONGFUL LIFE IN LOUISIANA** The court does not recognize these claims in Louisiana. *Davis v. Bd. of Supervisors of La. State Univ. & Agric. & Mech. Coll.*, 709 So.2d 1030 (La. 1998).

MAINE

RELEVANT CASE LAW

LEGISLATION:

Wrongful birth and wrongful life: ME. REV. STAT. ANN. tit. 24, § 2931 (LexisNexis 2020). “Wrongful birth; wrongful life.” “It is the intent of the Legislature that the birth of a normal, healthy child does not constitute a legally recognizable injury and that it is contrary to public policy to award damages for the birth and rearing of a healthy child.” *Id.* The statute limits damages to expenses associated with a failed sterilization and other expenses surrounding the pregnancy—for the birth of a normal, healthy child. Damages are prohibited for rearing a healthy child. The statute allows for but limits damages for the birth of an unhealthy child born as the result of professional negligence.

No wrongful pregnancy/conception legislation.

▶ **WRONGFUL BIRTH IN MAINE** In *Thibeault v. Larson*, plaintiffs allege that had their doctor properly performed an amniocentesis, “they would have been informed that the fetus suffered from Down’s Syndrome . . . [and] they would have terminated the pregnancy.” 666 A.2d 112, 115 (Me. 1995). The court held that in order to state a claim for wrongful birth of an unhealthy child born because of professional negligence, “it is the birth of the child, and not the child’s defect, that must be proximately caused by the physician’s negligence.” *Id.*

▶ **WRONGFUL PREGNANCY/CONCEPTION IN MAINE** “A person may maintain a claim for relief based on a failed sterilization procedure resulting in the birth of a healthy child and receive an award of damages for the hospital and medical expenses incurred for the sterilization procedures and pregnancy, the pain and suffering connected with the pregnancy and the loss of earnings by the mother during pregnancy.” *Musk v. Nelson*, 647 A.2d 1198, 1199 (Me. 1994) (citing ME. REV. STAT. ANN. tit. 24, § 2931 (LexisNexis 2020)).

▶ **WRONGFUL LIFE IN MAINE** No on-point case law.

But see Anastosopoulos v. Perakis, 644 A.2d 480 (Me. 1994) (finding that the question of wrongful life would require statutory interpretation in this case, but reporting requirements were not met, so the court did not opine).

MARYLAND

LEGISLATION: No wrongful birth, wrongful pregnancy/conception, or wrongful life legislation.

RELEVANT CASE LAW

▶ **WRONGFUL BIRTH IN MARYLAND** The State of Maryland **recognizes a tort cause of action for wrongful birth** when the doctor does not inform the patient about an available diagnostic test to determine the nature and extent of any fetal defects, and when the plaintiff asserts she would have aborted the child had she been aware of the fetus's deformities. *Reed v. Campagnolo*, 630 A.2d 1145 (Md. 1993).

▶ **WRONGFUL PREGNANCY IN MARYLAND** "In Maryland, a **wrongful pregnancy action is nothing more than an action in negligence and is decided properly by applying the same legal analysis employed in any medical negligence claim.**" *Dehn v. Edgcombe*, 865 A.2d 603, 610 (Md. 2005) (emphasis added).

▶ **WRONGFUL LIFE IN MARYLAND** "Because it was impossible to calculate damages that would require a comparison between an impaired life and no life at all, **a wrongful life claim was not recognized.**" *Kassama v. Magat*, 767 A.2d 348, 350 (Md. 2001) (emphasis added).

LEGISLATION: No wrongful birth, wrongful pregnancy/conception, or wrongful life legislation.

RELEVANT CASE LAW

▶ **WRONGFUL BIRTH IN MASSACHUSETTS** *Yanjun Li v. Davidson*, No. MICV2015-02455, 2015 LEXIS 154, at 6* (Mass Super. Ct. Oct. 19, 2015). **The court allows parents of a child born with "a genetic defect" to recover against a "physician whose negligent preconception counseling led the parents to decide to conceive children."** *Id.* (emphasis added). Parents can recover the extraordinary medical, educational, and other expenses that are associated with and are consequences of the disorder, during the child's minority. "Under Massachusetts law, the parents of a disabled child must continue to support her in adulthood if the child is physically or mentally impaired and incapable of supporting herself." *Id.* If parents prove they must continue to support the child; they will be entitled to recover for the extraordinary expenses they will incur during the child's majority. "The parents may additionally recover for emotional distress and for physical harm caused by that emotional distress and, in some circumstances, for wages they lost or will lose in providing extraordinary care to the child." *Id.* at 6-7.

▶ **WRONGFUL PREGNANCY IN MASSACHUSETTS** "[D]amages properly would include the cost of the unsuccessful sterilization procedure and costs directly flowing from the pregnancy: the wife's lost earning capacity; medical expenses of the delivery and care following the birth; the cost of care for the other children while the wife was incapacitated; the cost of the second sterilization procedure and any expenses flowing from that operation; and the husband's loss of consortium; the wife's pain and suffering in connection with the pregnancy and birth and with the second sterilization procedure. . . and emotional distress they sustained as a result of the unwanted pregnancy." *Burke v. Rivo*, 551 N.E.2d 1, 3-4 (Mass. 1990) (emphasis added). If the reason for not wanting the child was for economic reasons, the parents "may recover the cost of rearing a normal, healthy but (at least initially) unwanted child. . . the trier of fact should offset against the cost of rearing the child the benefit, if any, the parents receive and will receive from having their child." *Id.* at 6.

▶ **WRONGFUL LIFE IN MASSACHUSETTS** The court in Massachusetts **does not recognize wrongful life claims**, finding a comparison of existence to nonexistence beyond the task of the judicial system. *Doolan v. Ivf Am.*, 2000 Lexis 581, at *6 (Mass. Super. Ct. Nov 20, 2000) (citing *Payton v. Abbott Labs*, 437 N.E.2d 171, 190 (Mass. 1982)).

LEGISLATION:

Wrongful birth and wrongful life: MICH. COMP. LAWS SERV. § 600.2971 (LexisNexis 2020). "Wrongful birth or wrongful life claims; prohibitions; exceptions." This statute prohibits civil actions for wrongful birth and wrongful life claims; but does not apply to a civil action for damages for an intentional or grossly negligent act or omission.

No wrongful pregnancy/conception legislation.

RELEVANT CASE LAW

▶ **WRONGFUL BIRTH, WRONGFUL CONCEPTION, AND WRONGFUL LIFE IN MICHIGAN** "[T]he Legislature has spoken in no uncertain terms, and those terms state that **wrongful birth and wrongful life claims are actionable in Michigan for damages for an intentional or grossly negligent act or omission.** MICH. COMP. LAWS SERV. § 600.2971(4) (LexisNexis 2020). Further, **wrongful conception claims remain actionable in Michigan, and damages related to the costs of raising the child to the age of majority may be recovered on a showing of an intentional or grossly negligent act or omission.**" *Cichewicz v Salesin*, 854 N.W.2d 903 (Mich. 2014) (emphasis added).

MASSACHUSETTS

MICHIGAN



MINNESOTA

LEGISLATION:

Wrongful birth and wrongful life: MINN. STAT. ANN. § 145.424 (LexisNexis 2020). “Prohibition of Tort Actions.” The Minnesota statute prohibits claims for wrongful life and wrongful birth where plaintiffs claim that “but for the negligent conduct, an abortion would have been sought.” But, it does not prevent wrongful contraception/wrongful pregnancy claims for intentional or negligent malpractice of a contraceptive method or sterilization procedure.

No wrongful pregnancy/conception legislation.

RELEVANT CASE LAW

WRONGFUL BIRTH AND WRONGFUL LIFE IN MINNESOTA Claims for wrongful birth and wrongful life are prohibited under MINN. STAT. ANN. § 145.424, where “but for” the doctor’s negligence, the child would have been aborted.

WRONGFUL CONCEPTION IN MINNESOTA Minnesota classifies (and allows) all cases where a claim is based in a failed contraceptive method or sterilization procedure as wrongful conception, regardless of whether the child was born healthy or with “genetic abnormalities.” *Sherlock v. Stillwater Clinic*, 260 N.W.2d 169, 172 (Minn. 1977); *Molloy v. Meier*, 660 N.W.2d 444 (Minn. Ct. App. 2003), aff’d, 679 N.W.2d 711 (Minn. 2004).



MISSISSIPPI

LEGISLATION: No wrongful birth, wrongful pregnancy, or wrongful life legislation.

RELEVANT CASE LAW

WRONGFUL BIRTH, WRONGFUL CONCEPTION/PREGNANCY, AND WRONGFUL LIFE IN MISSISSIPPI *Miss. State Fed’n of Colored Women’s Club House for the Elderly in Clinton, Inc. v. L. R.*, 62 So. 3d 351, 364 (Miss. 2010). Other than L.R., Mississippi does not have any wrongful birth, conception/pregnancy, or wrongful life cases. While the court did not address wrongful birth or wrongful life specifically, it followed the majority of jurisdictions, holding that **Mississippi does not recognize a claim for the wrongful birth of a healthy child.**



MISSOURI

LEGISLATION: No wrongful birth or wrongful pregnancy/conception legislation.

Wrongful life: MO. REV. STAT. § 188.130 (2020). “No cause of action for wrongful life.” Missouri prohibits wrongful life claims by statute.

RELEVANT CASE LAW

WRONGFUL BIRTH AND WRONGFUL LIFE IN MISSOURI Missouri does not recognize the torts of wrongful birth or wrongful life. *Wilson v. Kuenzi*, 751 S.W.2d 741, 746 (Mo. 1988), cert. denied 488 U.S. 893, 102 L. Ed. 2d 219, 109 S. Ct. 229 (1988); in *Williams v. Van Biber*, 886 S.W.2d 10, 12 (Mo. Ct. App. 1994) (citing Mo. REV. STAT. § 188.130 (1986)).

WRONGFUL PREGNANCY/CONCEPTION IN MISSOURI Missouri recognizes wrongful conception as a form of malpractice. *Miller v. Duhart*, 637 S.W.2d 183, 188 (Mo. Ct. App. 1982). If plaintiff can prove injury, this claim allows for compensatory damages that are measurable. “Such damages might include prenatal and postnatal medical expenses, the mother’s pain and suffering during the pregnancy and delivery, loss of consortium, and the cost of a second, corrective sterilization procedure.” *Id.* In addition to these, plaintiffs can recover damages “subject to appropriate proof, emotional distress, loss of wages, pain and suffering associated with the second corrective procedure, and any permanent impairment suffered by the parents as a result of the pregnancy, the delivery, or the second corrective procedure.” *Girdley v. Coats*, 825 S.W.2d 295, 298-99 (Mo. 1992).



MONTANA

LEGISLATION: No wrongful birth, wrongful pregnancy/conception, or wrongful life legislation.

RELEVANT CASE LAW

NO WRONGFUL BIRTH OR WRONGFUL LIFE CASE LAW

WRONGFUL PREGNANCY/CONCEPTION IN MONTANA Montana does not recognize wrongful pregnancy claims. *Martin v. Fife*, 1996 Mont. Dist. LEXIS 837, *8 (Mont. Dist. Ct. September 25, 1996).

NEBRASKA

LEGISLATION: No wrongful birth, wrongful pregnancy/conception, or wrongful life legislation.

RELEVANT CASE LAW

NO WRONGFUL BIRTH, WRONGFUL PREGNANCY/CONCEPTION, OR WRONGFUL LIFE CASE LAW

But see Rice v. Adam, 575 N.W.2d 399 (Neb. 1998) (Plaintiffs initially brought a wrongful pregnancy action against a physician and hospital alleging negligence for a failed tubal sterilization procedure; however, because the patient had an outstanding bankruptcy petition, the court did not rule on this issue in the suit.)

NEVADA

LEGISLATION: No wrongful birth, wrongful pregnancy/conception, or wrongful life legislation.

RELEVANT CASE LAW

WRONGFUL BIRTH IN NEVADA *Greco v. United States*, 893 P.2d 345 (Nev. 1995). Plaintiff Sundi Greco gave birth to a child with “severe anomalies” who she would have aborted had doctors made a timely diagnosis of the “anomalies afflicting” the child in utero. *Id.* at 347. The court held that should plaintiff mother be able to prove them; she should be able to recover **extraordinary care expenses associated with the doctors’ negligence.** *Id.* at 350. “Nevada law requires the parents of a handicapped child to support that child beyond the age of majority if the child cannot support itself.” NEV. REV. STAT. ANN. § 125B.110(1) (LexisNexis 2020); see, e.g., *Minnear v. Minnear*, 814 P.2d 85 (Nev. 1991).” Therefore, the court held that plaintiff could **“recover extraordinary medical and custodial expenses associated with caring for Joshua for whatever period of time it is established that Joshua will be dependent upon her to provide such care.”** *Greco*, 893 P.2d at 350 (emphasis added).

The court also held that “a mother who is denied her right to abort a severely deformed fetus will suffer emotional distress,” and **permitted damages for emotional distress.** *Id.* at 351.

WRONGFUL PREGNANCY/CONCEPTION IN NEVADA “[T]he mother of a normal, healthy child **could not recover in tort** from a physician who negligently performed her sterilization operation because the birth of a normal, healthy child is not a legally cognizable injury.” *Greco*, 839 P.2d at 348 (citing *Szekeres v. Robinson*, 715 P.2d 1076 (Nev. 1986)) (emphasis added).

WRONGFUL LIFE IN NEVADA Nevada does not recognize a claim by a child for harms the child claims to have suffered by virtue of having been born. *Greco*, 893 P.2d at 348.

NEW HAMPSHIRE

LEGISLATION: No wrongful birth, wrongful pregnancy/conception, or wrongful life legislation.

RELEVANT CASE LAW

WRONGFUL BIRTH IN NEW HAMPSHIRE *Smith v. Cote*, 513 A.2d 341 (N.H. 1986). Plaintiffs claim that the mother “contracted rubella early in her pregnancy and that, while she was under the defendants’ care, the defendants negligently failed to test for and discover in a timely manner her exposure to the disease,” that the child was born with multiple impairments, and plaintiff mother would have aborted had she known. *Id.* at 342. The court found that “New Hampshire **recognizes a cause of action for wrongful birth.**” *Id.* at 348 (emphasis added). And that plaintiff mother could seek compensation for “the extraordinary medical and educational costs, extraordinary maternal care . . . damages for her ‘emotional distress, anxiety and trauma.’” *Id.*

WRONGFUL PREGNANCY/CONCEPTION IN NEW HAMPSHIRE New Hampshire permits a claim for wrongful conception. *Kingsbury v. Smith*, 442 A.2d 1003 (N.H. 1982).

WRONGFUL LIFE IN NEW HAMPSHIRE New Hampshire does not recognize a cause of action for wrongful life. *Smith*, 513 A.2d at 355.

NEW JERSEY

LEGISLATION: No wrongful birth, wrongful pregnancy/conception, or wrongful life legislation.

RELEVANT CASE LAW

- ▶ **WRONGFUL BIRTH IN NEW JERSEY** *Canesi v. Wilson*, 730 A.2d 805 (N.J. 1999). The court in New Jersey has emphasized that wrongful birth is not about proving the doctor caused the birth defect, but that the doctor failed to provide parents an appropriate diagnosis and therefore, the option of whether to terminate the pregnancy. *Id.* at 809. **New Jersey permits recoverable damages for this claim beyond the normal costs of raising a child for the duration of the child’s life, for “the special medical expenses attributable to raising a child with a congenital impairment.”** *Id.* at 811 (emphasis added). And if parents can prove proximate injuries suffered by the doctor’s negligence, **parents can also recover for emotional and economic injury suffered.** *Id.*
- ▶ **WRONGFUL PREGNANCY/CONCEPTION IN NEW JERSEY** “We distinguish between the application of the rule in wrongful pregnancy cases that involve damages for the birth of a *healthy* child. We have **permitted recovery for wrongful pregnancy** and have followed the same reasoning as *Berman v. Allan*, applying the concept of the benefits rule to preclude recovery for the normal cost of raising the child, rather than applying it to reduce the emotional distress damages.” *Lodato ex rel. Lodato v. Kappy*, 353 N.J. Super. Ct. 439, 447 n.2 (N.J. Super. Ct. App. Div. 2002) (citing *Berman v. Allan*, 404 A.2d 8 (N.J. 1979) (emphasis added)); See *P. v. Portadin*, 432 A.2d 556 (N.J. Super. Ct. App. Div. 1981); *M. v. Schmid Labs., Inc.*, 428 A.2d 515 (N.J. Super. Ct. App. Div. 1981).
- ▶ **WRONGFUL LIFE IN NEW JERSEY** The child could recover extraordinary medical expenses attributable to birth defects as special damages, but could not recover general damages for emotional distress or for an impaired childhood. *Procanik by Procanik v. Cillo*, 478 A.2d 755 (N.J. 1984).

NEW MEXICO

LEGISLATION: No wrongful birth, wrongful pregnancy, or wrongful life legislation.

RELEVANT CASE LAW

- ▶ **WRONGFUL BIRTH AND WRONGFUL LIFE IN NEW MEXICO** No case law on wrongful birth or wrongful life. *But see* *Provencio v. Wenrich*, 261 P.3d 1089, 1092-93 (N.M. 2011) (defining both in a comparison to wrongful conception).
- ▶ **WRONGFUL CONCEPTION IN NEW MEXICO** “New Mexico remains one of very few jurisdictions to permit **complete recovery for the costs of raising a child to the age of majority** in a wrongful conception case . . . with no offset to the doctor for any benefits that the child might provide the parents over the course of their lives.” *Provencio*, 261 P.3d at 1096 (emphasis added) (referencing *Lovelace Medical Ctr. V. Mendez*, 806 P.2d 603, 612, 616-17 (N.M. 1991)).

NEW YORK

LEGISLATION: No wrongful birth, wrongful pregnancy, or wrongful life legislation.

RELEVANT CASE LAW

- ▶ **WRONGFUL BIRTH IN NEW YORK** “[T]he child’s parents may seek to **recover their past and future ‘extraordinary financial obligations relating to the care’ of that child during his or her minority.**” *B.F. v Reproductive Medicine Assoc. of N.Y., LLP*, 136 A.D.3d 73, 77 (N.Y. App. Div. 2015) (emphasis added) (citing *Foote v. Albany Med. Ctr. Hosp.*, 944 N.E.2d 1111, 1114 (N.Y. 2011)). “The parents must establish that malpractice by a defendant physician deprived them of the opportunity to terminate the pregnancy within the legally permissible time period, or that the child would not have been conceived but for the defendant’s malpractice.” *Id.* at 73 (citing *Mayzel v Moretti*, 105 A.D.3d 816, 817 (N.Y. 2013)).
- ▶ **WRONGFUL PREGNANCY/CONCEPTION IN NEW YORK** While the court does not permit recovery for raising a healthy child, “[i]f that pregnancy was the result of medical malpractice, established law permits the parents to **recover damages for the medical expenses for the care and treatment . . . during pregnancy and delivery of the baby and for the loss of her services and consortium and it permits . . . recover[y] for the physical injury and pain occasioned by [the] unanticipated pregnancy.**” *Sorkin v Lee*, 78 A.D.2d 180, 184 (N.Y. App. Div. 1980) (emphasis added).
- ▶ **WRONGFUL LIFE IN NEW YORK** **Wrongful life is not legally cognizable.** *Alquijay v St. Luke’s-Roosevelt Hosp. Ctr.*, 473 N.E.2d 244 (N.Y. 1984).

No cause of action can be maintained under wrongful life; however, if parents can prove that but for defendant’s negligence, the child would not have been born, **parents can seek extraordinary expenses related to caring for disabled child**—but they must be necessitated and causally connected to child’s condition. *Mickens v. LaSala*, 8 A.D.3d 453 (2d Dep’t 2004), leave to appeal denied 825 N.E.2d 1093.



**NORTH
CAROLINA**

LEGISLATION: No wrongful birth, wrongful pregnancy, or wrongful life legislation. However, see N.C. GEN. STAT. ANN. § 14-45.1 (LexisNexis 2020). “When abortion is not unlawful.” The statute references several cases on wrongful birth, wrongful pregnancy, and wrongful conception.

RELEVANT CASE LAW

WRONGFUL BIRTH AND WRONGFUL LIFE IN NORTH CAROLINA Claims for relief for wrongful life and wrongful birth are not cognizable. *Azzolino v. Dingfelder*, 337 S.E.2d 528, 532, 537 (N.C. 1985), cert. denied, 479 U.S. 835 (1986).

WRONGFUL CONCEPTION/PREGNANCY IN NORTH CAROLINA Wrongful conception and pregnancy claims are recognized in North Carolina—and treated as medical malpractice claims. *Jackson v. Bumgardner*, 347 S.E.2d 743, 749 (N.C. 1986).

**NORTH
DAKOTA**

LEGISLATION: No wrongful birth or wrongful pregnancy legislation.

N.D. CENT. CODE § 32-03-43 (2020). “Wrongful life action prohibited – Definition.” **This statute prohibits wrongful life actions.**

RELEVANT CASE LAW

NO WRONGFUL PREGNANCY/CONCEPTION CASE LAW.

The only case with a wrongful birth claim brought in North Dakota was barred by the two-year statute of limitations for malpractice actions. *B.D.H. v. Mickelson*, 792 N.W.2d 169 (N.D. 2010).

**NORTHERN
MARIANAS**

LEGISLATION: No wrongful life, wrongful pregnancy, or wrongful birth legislation or case law.

OHIO

LEGISLATION: No wrongful birth, wrongful pregnancy, or wrongful life legislation.

RELEVANT CASE LAW

WRONGFUL BIRTH IN OHIO Ohio does not allow recovery for this claim. *Schirmer v. Mt. Auburn Obstetrics & Gynecologic Assocs.*, 844 N.E.2d 1160, 1162 (Ohio 2006).

WRONGFUL CONCEPTION/PREGNANCY IN OHIO Ohio does not recognize this claim. *Johnson v. Univ. Hosps. of Cleveland*, No. 53192, 1988 Ohio App. LEXIS 228, at *8 (Ohio Ct. App. Jan. 14, 1988).

WRONGFUL LIFE IN OHIO This claim is not actionable in Ohio. *Flanagan v. Williams*, 623 N.E.2d 185, 187 (Ohio Ct. App. 1993).

OKLAHOMA

LEGISLATION:

Wrongful birth and wrongful life in Oklahoma: OKLA. STAT. TIT. 16, § 1-741.12 (2020). “Wrongful Life Action – Wrongful Birth Action – Limitation on Damages.” This statute prohibits recovery for wrongful life and wrongful birth actions.

No wrongful pregnancy legislation.

RELEVANT CASE LAW

WRONGFUL PREGNANCY/CONCEPTION IN OKLAHOMA Damages are not recoverable for this claim. *Morris v. Sanchez*, 746 P.2d 184, 185 (Okla. 1987).

OREGON

LEGISLATION: No wrongful life, wrongful pregnancy, or wrongful birth legislation.

RELEVANT CASE LAW

▶ **WRONGFUL BIRTH IN OREGON** This claim is actionable if plaintiff “establishes a cognizable negligence claim, [and] damages are recoverable to the extent necessary to make the plaintiff whole.” *Tomlinson v. Metro. Pediatrics, LLC*, 412 P.3d 133, 146 (Or. 2018). Damages may also include “the parents’ emotional distress, subject to offsets for emotional benefits the parents may gain in having the child.” *Id.* at 147.

▶ **WRONGFUL PREGNANCY IN OREGON** Plaintiff is entitled to present evidence for damages in a claim for negligence for all alleged harm, including: “damages in the form of expenses of raising the child and providing for the child’s college education.” *Zehr v. Haugen*, 871 P.2d 1006, 1011-1012 (Or. 1994).

▶ **WRONGFUL LIFE IN OREGON** This claim is not recognized in Oregon. “Without a principled way to determine the relative values of life and nonexistence under the circumstances alleged in this case, we cannot conclude that [the child] had a legally protected interest in remaining in a state of nonexistence.” *Tomlinson*, 412 P.3d at 156.

PENNSYLVANIA

LEGISLATION: Wrongful birth and wrongful life in Pennsylvania: 42 PA. CONST. STAT. § 8305 (2020). “Actions for wrongful birth and wrongful life.” The statute prohibits wrongful birth and wrongful life claims.

No legislation for wrongful pregnancy.

NO RELEVANT CASE LAW FOR WRONGFUL PREGNANCY.

PUERTO RICO

LEGISLATION: No wrongful birth, wrongful pregnancy, or wrongful life legislation.

RELEVANT CASE LAW

▶ **WRONGFUL BIRTH IN PUERTO RICO** There may not be any wrongful birth cases. But see *DOMINGA SOTO CABRAL Y OTROS v. estado LIBRE ASOCIADO DE P.R., UNIVERSIDAD DE P.R., Y OTROS*, 138 D.P.R. 298, 330 (P.R. 1995) (assessing a wrongful pregnancy claim) (“A child’s right to the development of his or her life and the indelible parental obligations arising from it cannot be regarded as compensable damages”). Damages would be recoverable if there is a causal link between the congenital condition and negligent medical act. *DOMINGA SOTO CABRAL Y OTROS*, 138 D.P.R. at 315.

▶ **WRONGFUL PREGNANCY IN PUERTO RICO** *RAMÓN TORRES ORTIZ y OTROS v. DR. FRANCISCO J. PLÁ y OTROS*, 123 D.P.R. Dec. 637 (P.R. 1989). In *Ortiz v. Plá*, the doctor incorrectly performed a sterilization procedure. *Id.* “If negligence and a causal relation are established, compensation should be awarded for the medical expenses incurred in the [pregnancy,] delivery and in the sterilizations, the mental anguish, physical sufferings, loss of earnings, and other damages.” *Id.* at 648.

▶ **WRONGFUL LIFE IN PUERTO RICO** “We simply cannot consider a child’s right to live and develop as ‘compensable damages.’” *DOMINGA SOTO CABRAL Y OTROS*, 138 D.P.R. at 315.

RHODE ISLAND

LEGISLATION: No wrongful birth, wrongful pregnancy, or wrongful life legislation..

RELEVANT CASE LAW

▶ **WRONGFUL PREGNANCY/CONCEPTION IN RHODE ISLAND** “Plaintiffs would be entitled to recover the medical expenses of the ineffective sterilization procedure, the medical and hospital costs of the pregnancy, the expense of a subsequent sterilization procedure, loss of wages, loss of consortium to the spouse arising out of the unwanted pregnancy, and medical expenses for prenatal care, delivery, and postnatal care. However, no recovery would be allowable for emotional distress arising out of the birth of a healthy child.” *Emerson v. Magendantz*, 689 A.2d 409, 414 (R.I. 1997) (emphasis added). “[T]he public policy of this state would preclude the granting of rearing costs for a healthy child whose parents have decided to forego the option of adoption and have decided to retain the child as their own with all the joys and benefits that are derived from parenthood.” *Id.* at 413

▶ **WRONGFUL BIRTH IN RHODE ISLAND** If a child is born with “congenital defects,” whose birth is a result of an unwanted pregnancy, arising out of a negligently performed sterilization procedure, special medical and educational expenses beyond normal rearing costs should be allowed. *Id.* **Parents would be permitted to recover costs beyond the age of majority** as well as compensation for emotional distress. However, the damages award should be “[o]ffset against . . . any economic benefits derived by the parents from governmental or other agencies that might contribute to defraying the costs of caring for the child or its support in adult life.” *Id.*

▶ **WRONGFUL LIFE IN RHODE ISLAND** This claim is not permitted in Rhode Island. “If the negligence of the defendants in this case was the cause of injury to the child plaintiff, which resulted in extraordinary medical expense, his parents will be able to claim such damages.” *Schloss v. Miriam Hosp. & DR.*, C.A. No. 98-2076, LEXIS 116, at *16 (Super. Ct. Jan. 11, 1999).



**SOUTH
CAROLINA**

RELEVANT CASE LAW

LEGISLATION: No wrongful birth, wrongful pregnancy, or wrongful life legislation.

▶ **WRONGFUL BIRTH IN SOUTH CAROLINA** No relevant case law.

▶ **WRONGFUL PREGNANCY IN SOUTH CAROLINA** No relevant case law.

▶ **WRONGFUL LIFE IN SOUTH CAROLINA** Following a majority of courts, **South Carolina does not recognize an action for wrongful life.** “[W]e find [the argument] untenable. . . that a child who already has been born should have the chance to prove it would have been better if he had never have been born at all.” *Willis v. Wu*, 607 S.E.2d 63, 71 (S.C. 2004).



**SOUTH
DAKOTA**

LEGISLATION:

Wrongful life in South Dakota: S.D. CODIFIED LAWS § 21-55-1 (2020). “No cause of action based on wrongful life – Conception defined.” South Dakota prohibits wrongful life actions by statute.

No wrongful birth or wrongful pregnancy legislation.

NO RELEVANT WRONGFUL BIRTH OR WRONGFUL PREGNANCY CASE LAW.



TENNESSEE

RELEVANT CASE LAW

LEGISLATION: No wrongful birth, wrongful pregnancy, or wrongful life legislation.

▶ **WRONGFUL PREGNANCY/CONCEPTION IN TENNESSEE** Plaintiffs cannot recover for the cost of raising a healthy child. *Smith v. Gore*, 728 S.W.2d 738 (Tenn. 1987). However, **damages are recoverable** “related to the pregnancy and delivery would be recoverable, such as the costs of prenatal care during pregnancy, the expenses of any medical complications arising from the avoidance technique itself or caused by the pregnancy and delivery, as well as pain and suffering from the time Plaintiff discovered she was pregnant until she has recovered from childbirth. In addition, lost wages during pregnancy, delivery, and some period of postnatal recovery of the mother are recoverable. In the appropriate case, loss of consortium would be an element of damages as well.” *Id.* at 751.

▶ **WRONGFUL BIRTH AND WRONGFUL LIFE IN TENNESSEE** No “on point” case law; however, courts have dismissed several cases for plaintiff’s failure to allege that any act by the doctors or hospital caused the child’s injuries/disabilities. *Glasner by Glasner v. Howick*, 1997 LEXIS 766, at *1 (Tenn. Ct. App. November 3, 1997). “Tennessee does not recognize ‘wrongful birth’ as anything other than a claim for ordinary negligence.” See *Owens v. Foote*, 773 S.W.2d 911, 913 (Tenn. 1989).



TEXAS

RELEVANT CASE LAW

LEGISLATION: No wrongful birth, wrongful pregnancy, or wrongful life legislation.

▶ **WRONGFUL BIRTH IN TEXAS** “In *Jacobs v. Theimer*, 519 S.W.2d 846 (Tex. 1975), we approved a cause of action for ‘wrongful birth,’ under which parents may recover the expenses reasonably necessary for the care and treatment of their child’s impairment from a physician who has negligently failed to inform the parents of the risk of that impairment.” *Nelson v. Krusen*, 678 S.W.2d 918, 923-24 (Tex. 1984).

▶ **WRONGFUL PREGNANCY/CONCEPTION IN TEXAS** These claims are not recognized in Texas. Although the action is called “wrongful birth” in *Hickman v. Myers*, the court found that “the cost of raising a healthy child born as a result of the negligent performance of a sterilization operation on the mother is not recoverable from the physician.” 632 S.W.2d 869, 872 (Tex. App. 1982).

▶ **WRONGFUL LIFE IN TEXAS** There is no cause of action in Texas for wrongful life. *Nelson*, 678 S.W.2d at 925.

UTAH

LEGISLATION:

Wrongful birth and wrongful life in Utah: UTAH CODE ANN. § 78B-3-109 (LexisNexis 2020). “Right to life — State policy — Act or omission preventing abortion not actionable — Failure or refusal to prevent birth not a defense.” The statute prohibits a cause of action for wrongful birth and wrongful life.

No wrongful pregnancy/conception legislation.

RELEVANT CASE LAW

WRONGFUL PREGNANCY/CONCEPTION IN UTAH “[D]amages [are] recoverable for medical and hospital expenses, compensation for physical and mental pain and damage suffered by the mother, lost wages, and punitive damages, if applicable. . . [T]he projected costs of rearing a healthy, normal child [are] not recoverable.” *C.S. v. Nielson*, 767 P.2d 504, 505 (Utah 1988).

VERMONT

LEGISLATION: No wrongful birth, wrongful pregnancy/conception, or wrongful life legislation.

NO RELEVANT CASE LAW FOR WRONGFUL BIRTH, WRONGFUL PREGNANCY, OR WRONGFUL LIFE.

VIRGIN ISLANDS

LEGISLATION: No wrongful birth, wrongful pregnancy, or wrongful life legislation.

NO RELEVANT CASE LAW FOR WRONGFUL BIRTH, WRONGFUL PREGNANCY, OR WRONGFUL LIFE.

VIRGINIA

LEGISLATION: No wrongful birth, wrongful pregnancy, or wrongful life legislation

RELEVANT CASE LAW

WRONGFUL BIRTH IN VIRGINIA Virginia recognizes a wrongful birth claim in accordance with traditional tort principles. *Naccash v. Burger*, 290 S.E.2d 825, 829 (Va. 1982). Parents are entitled to recover damages for the care and treatment of a child. *Id.* at 830. Parents are also permitted to recover damages for emotional distress. *Id.* at 831.

WRONGFUL PREGNANCY/CONCEPTION IN VIRGINIA Virginia applies traditional tort principles in a wrongful pregnancy or wrongful conception claim “where the child is reasonably healthy, both physically and mentally.” *Miller v. Johnson*, 343 S.E.2d 301, 304 (Va. 1986). The costs of raising a healthy child are not recoverable because those damages are too speculative. *Id.* at 302. However, “[t]he mother . . . may recover damages, if proven, for medical expenses, pain and suffering, and lost wages for a reasonable period, directly resulting from the negligently performed abortion, the continuing pregnancy, and the ensuing childbirth. The mother is also entitled to recover damages for emotional distress causally resulting from the tortiously caused physical injury.” *Id.*

WRONGFUL LIFE IN VIRGINIA A wrongful life claim cannot be maintained in Virginia. *Glascok v. Laserna*, 30 Va. Cir. 366, 369 (Va. Cir. Ct. 1993).

WASHINGTON

LEGISLATION: No wrongful birth, wrongful life, or wrongful pregnancy legislation. Although not directly on point, the court has cited to WASH. REV. CODE ANN § 4.24.010 (LexisNexis 2020) to inform damages for wrongful birth claims.

RELEVANT CASE LAW

WRONGFUL BIRTH IN WASHINGTON Recovery may include “those expenses in excess of the cost of the birth and rearing of . . . normal children. In addition, the damages may compensate for mental anguish and emotional stress suffered by the parents during [the] child’s life as a proximate result of the physicians’ negligence. Any emotional benefits to the parents resulting from the birth of the child should be considered in setting the damages.” *Harbeson v. Parke-Davis, Inc.*, 656 P.2d 483, 494 (Wash. 1983) (emphasis added).

WRONGFUL PREGNANCY/CONCEPTION IN WASHINGTON Child-rearing costs cannot be recovered. But, if proven, “damages for the expense, pain and suffering, and loss of consortium associated with the failed tubal ligation, pregnancy and childbirth may be recovered.” *McKernan v. Aasheim*, 687 P.2d 850, 856 (Wash. 1984) (emphasis added).

WRONGFUL LIFE IN WASHINGTON A “child may maintain an action for wrongful life in order to recover the extraordinary expenses to be incurred during the child’s lifetime, as a result of the child’s congenital defect. . . [T]he costs of such care for the child’s minority may be recovered only once. If the parents recover such costs for the child’s minority in a wrongful birth action, the child will be limited to the costs to be incurred during his majority.” *Harbeson*, 656 P.2d at 495 (emphasis added) (citing *Wooldridge v. Woolett*, 96 Wn.2d 659, 666, 638 P.2d 566 (1981)).



WEST
VIRGINIA

LEGISLATION: No wrongful birth, wrongful pregnancy, or wrongful life legislation.

WRONGFUL BIRTH IN WEST VIRGINIA Parents may “recover the extraordinary costs for rearing a child with birth defects not only during his minority, but also after the child reaches the age of majority if the child is unable to support himself because of physical or emotional disabilities.” *James G. v. Caserta*, 332 S.E.2d 872, 882-83 (W. Va. 1985).

RELEVANT CASE LAW

WRONGFUL PREGNANCY/CONCEPTION IN WEST VIRGINIA Wrongful pregnancy claims are recognized in West Virginia. *James G.*, 332 S.E.2d at 876. The ordinary costs of raising a healthy child cannot be recovered. *Id.* at 878. The court held that damages could include: “(1) any medical and hospital expenses incurred as a result of a physician’s negligence, including costs of the initial unsuccessful sterilization operation, prenatal care, childbirth, postnatal care, and a second sterilization operation, if obtained; (2) the physical and mental pain suffered by the wife as a result of the pregnancy and subsequent childbirth and as a result of undergoing two sterilization operations; and (3) recovery for the loss of consortium and loss of wages.” *Id.* at 877.

WRONGFUL LIFE IN WEST VIRGINIA This claim is not recognized in West Virginia. *James G.*, 332 S.E.2d. at 881.

WISCONSIN

LEGISLATION: No wrongful birth, wrongful pregnancy, or wrongful life legislation

RELEVANT CASE LAW

WRONGFUL BIRTH IN WISCONSIN Plaintiffs must prove the doctor was negligent in not diagnosing a condition that would have led them to seek an abortion—and that one was legally available to them. *Dumer v. St. Michael’s Hospital*, 233 N.W.2d 372, 377 (Wis. 1975). “If they obtain a favorable finding as to all of these facts they then are **entitled to the damages they have sustained because of the deformity and defects of the child**. Their damages must be limited to those expenses which they have reasonably and necessarily suffered, and will to a reasonable medical certainty suffer in the future by reason of the additional medical, hospital and supportive expense occasioned by the deformities of the child as contrasted to a normal, healthy child.” *Id.* (emphasis added).

WRONGFUL PREGNANCY/CONCEPTION IN WISCONSIN Using the term “negligent sterilization,” Wisconsin permits parents to recover the full costs of raising a healthy child to majority. *Marciniak v. Lundborg*, 450 N.W.2d 243, 244 (Wis. 1990).

WRONGFUL LIFE IN WISCONSIN This claim is not recognized in Wisconsin. “The damages claimed cannot be measured by any standards recognized by our law.” *Dumer v. St. Michael’s Hosp.*, 233 N.W.2d 372, 376 (Wis. 1975) (ruling on the claim as a wrongful birth claim of the child—which is a wrongful life claim in almost every other state).

WYOMING

LEGISLATION: No wrongful birth, wrongful pregnancy, or wrongful life legislation.

RELEVANT CASE LAW

WRONGFUL PREGNANCY/CONCEPTION IN WYOMING If parents can prove fault, parents can “recover damages for any medical expenses associated with the unsuccessful ligation, medical expenses for the birth of the unplanned child, wages for lost time due to the pregnancy, and costs of abortion, together with pain and suffering.” *Beardsley v. Wierdsma*, 650 P.2d 288, 289 (Wyo. 1982) (using “wrongful birth” and “wrongful pregnancy” interchangeably for a failed sterilization procedure leading to the birth of a healthy child).

WRONGFUL BIRTH IN WYOMING There are no specific wrongful birth cases. In *Beardsley*, the terms “wrongful birth” and “wrongful pregnancy” were used interchangeably for negligent sterilization procedures leading to healthy children. *Beardsley*, 650 P.2d at 289. However, in awarding damages, **the court expressly rejected the “benefit-rule” or offset concept** (“with fact finders first assessing the expense and damage incurred because of a child’s life, then deducting the value of that child’s life”). *Id.*

WRONGFUL LIFE IN WYOMING There are no specific wrongful life cases. In *Beardsley* the court dismissed the wrongful life claims of healthy children; however, no other cases exist in Wyoming for wrongful life claims.

5 Isotretinoin, sold under the brand name Accutane, is a vitamin A derivative dispensed orally and primarily used to treat severe acne.