

STATE OF TENNESSEE
OFFICE OF THE ATTORNEY GENERAL

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Opinion No. 22-12

Applicability of the Human Life Protection Act to the Disposal of Human Embryos that Have Not Been Transferred to a Woman's Uterus

Question

Is the disposal of a human embryo that has not been transferred to a woman's uterus punishable as "criminal abortion" under the Human Life Protection Act?

Opinion

No. The Human Life Protection Act only applies when a woman has a living unborn child within her body.

ANALYSIS

Under Tennessee's Human Life Protection Act, "[a] person . . . commits the offense of criminal abortion" by "perform[ing] or attempt[ing] to perform an abortion." Tenn. Code Ann. § 39-15-213(b). To "perform an abortion" within the meaning of the law, a person must use an "instrument, medicine, drug, or . . . other substance or device with intent to terminate the pregnancy of a woman known to be pregnant." *Id.* § 39-15-213(a)(1). And to be "pregnant" within the meaning of the law, a woman must have "a living unborn child *within* her body." *Id.* § 39-15-213(a)(4) (emphasis added).

Disposing of an embryo that was created *outside* a woman's body and that has never been transferred *to* a woman's body thus does not qualify as "abortion." *Id.* § 39-15-213(a)(1). Such an embryo may fit the Act's definition of "[u]nborn child," *id.* § 39-15-213(a)(4), but the Act does not prohibit the embryo's disposal unless and until it is "living . . . within" a woman's body, *id.* § 39-15-213(a)(3). Only then can the embryo's gestation render a woman "[p]regnant," *id.*, and if there is no "pregnancy" to "terminate," there can be no "abortion," *id.* § 39-15-213(a)(1).

In sum, the Human Life Protection Act does not apply to a human embryo before it has been transferred to a woman's uterus and, therefore, disposing of a human embryo that has not been transferred to a woman's uterus is not punishable as a "criminal abortion" under the Act.

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