



## 1997 SENATE BILL 131

March 20, 1997 - Introduced by Senators FITZGERALD, GROBSCHMIDT, ZIEN, HUELSMAN, FARROW, COWLES, WELCH, A. LASEE, DARLING, SCHULTZ, BUETTNER, WEEDEN and BRESKE, cosponsored by Representatives GOETSCH, WOOD, LADWIG, SERATTI, FREESE, GREEN, WALKER, RYBA, LAZICH, F. LASEE, WARD, KREIBICH, ZUKOWSKI, ZIEGELBAUER, HUEBSCH, AINSWORTH, HOVEN, DOBYNS, NASS, HANDRICK, VRAKAS, URBAN, LORGE, OTTE, DUFF, HUTCHISON, STASKUNAS, OWENS, HARSDORF, POWERS, KELSO, HAHN, GARD, SYKORA, JESKEWITZ, SCHAFER, OTT, BRANDEMUEHL, GUNDERSON, PORTER, VANDER LOOP, OLSEN and PLALE. Referred to Committee on Judiciary, Campaign Finance Reform and Consumer Affairs.

- 1     **AN ACT to amend** 939.62 (2m) (a) 2. and 973.0135 (1) (b) 2.; and **to create** 940.16  
2             of the statutes; **relating to:** prohibiting performance of certain partial-birth  
3             abortions and providing a penalty.

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### *Analysis by the Legislative Reference Bureau*

In *Planned Parenthood of Southeastern Pennsylvania v. Casey*, 505 U.S. 833 (1992), the U.S. Supreme Court reaffirmed what it called the essential holding of the landmark abortion case, *Roe v. Wade*, 410 U.S. 113 (1973). In *Casey* the court described the holding in *Roe* as having 3 parts:

1. A pregnant woman has a right to choose to have an abortion before the fetus reaches viability (which means that the fetus is potentially able to live outside the womb) without undue interference from the state. The state may not prohibit abortions before viability.

2. The state may restrict abortions after the fetus reaches viability if it provides exceptions for pregnancies in which the woman's life or health is endangered.

3. The state has legitimate interests from the start of the pregnancy in protecting the health of the woman and the life of the fetus.

Currently, Wisconsin has 2 statutes that might be used to prosecute the performance of an abortion. The first statute clearly provides criminal penalties for performing abortions. This statute, which was enacted after *Roe v. Wade*, provides a fine of not more than \$10,000 or imprisonment for not more than 2 years or both for the intentional performance of an abortion after a fetus reaches viability or, at any time, by a person who is not a physician. This statute does not apply to abortions

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performed under specified conditions that are necessary to preserve the life or health of the pregnant woman and may not be enforced against a woman who obtains an abortion.

The 2nd statute appears to provide criminal penalties for performing abortions, though whether the statute applies to abortion is currently unclear. This statute, which was enacted before *Roe v. Wade*, provides penalties for destroying the life of an unborn child. The penalties provided by this statute, the maximum of which is 15 years' imprisonment, vary depending on whether or not the unborn child who dies has quickened. One provision of this statute has been interpreted to be a feticide statute, not an abortion statute. *State v. Black*, 188 Wis. 2d 639 (1994). It is not clear whether the provisions of the statute that were not considered in the *Black* case prohibit abortion or feticide or both. To the extent that this statute covers abortion, it provides an exception for therapeutic abortions, it may not be enforced against a woman who obtains an abortion and its enforcement is subject to the holdings of *Roe v. Wade* and *Casey*.

This bill prohibits the performance of "partial-birth" abortions. The bill defines a partial-birth abortion as an abortion in which a person partially vaginally delivers a living child, causes the death of the partially delivered child with the intent to kill the child, and then completes the delivery of the child. The bill does not require that the child be viable at the time of the partial-birth abortion. A person who is found guilty of violating this prohibition must be sentenced to life imprisonment. The prohibition created in the bill does not apply if a partial-birth abortion is necessary to save the life of a woman whose life is endangered by a physical disorder, physical illness or physical injury and if no other medical procedure would suffice to save her life.

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***The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:***

- 1           **SECTION 1.** 939.62 (2m) (a) 2. of the statutes is amended to read:
- 2           939.62 (**2m**) (a) 2. Any felony under s. 940.01, 940.02, 940.03, 940.05, 940.09
- 3           (1), 940.16, 940.19 (5), 940.21, 940.225 (1) or (2), 940.305, 940.31, 941.327 (2) (b) 4.,
- 4           943.02, 943.10 (2), 943.23 (1g), (1m) or (1r), 943.32 (2), 946.43, 948.02 (1) or (2),
- 5           948.025, 948.03 (2) (a) or (c), 948.05, 948.06, 948.07, 948.08, 948.30 (2), 948.35 (1) (b)
- 6           or (c) or 948.36.
- 7           **SECTION 2.** 940.16 of the statutes is created to read:
- 8           **940.16 Partial-birth abortion. (1)** In this section:

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1 (a) "Child" means a human being from the time of fertilization until it is  
2 completely delivered from a pregnant woman.

3 (b) "Partial-birth abortion" means an abortion in which a person partially  
4 vaginally delivers a living child, causes the death of the partially delivered child with  
5 the intent to kill the child, and then completes the delivery of the child.

6 (2) Except as provided in sub. (3), whoever intentionally performs a  
7 partial-birth abortion is guilty of a Class A felony.

8 (3) Subsection (2) does not apply if the partial-birth abortion is necessary to  
9 save the life of a woman whose life is endangered by a physical disorder, physical  
10 illness or physical injury, including a life-endangering physical disorder, physical  
11 illness or physical injury caused by or arising from the pregnancy itself, and if no  
12 other medical procedure would suffice for that purpose.

13 **SECTION 3.** 973.0135 (1) (b) 2. of the statutes is amended to read:

14 973.0135 (1) (b) 2. Any felony under s. 940.01, 940.02, 940.03, 940.05, 940.09  
15 (1), 940.16, 940.19 (5), 940.21, 940.225 (1) or (2), 940.305, 940.31, 941.327 (2) (b) 4.,  
16 943.02, 943.10 (2), 943.23 (1g), (1m) or (1r), 943.32 (2), 946.43, 948.02 (1) or (2),  
17 948.025, 948.03 (2) (a) or (c), 948.05, 948.06, 948.07, 948.08, 948.30 (2), 948.35 (1) (b)  
18 or (c) or 948.36.

19 (END)