



Key Abortion Restrictions in Wisconsin

Prepared by: Margit Kelley, Principal Attorney

In addition to an 1849 law, the Legislature has enacted various laws relating to abortion over the last several decades. Those laws remain “on the books,” require compliance by physicians, and may be enforced at the discretion of prosecutors, if the elements of the crime apply. This issue brief provides a snapshot of some of the commonly referenced abortion restrictions and procedural requirements.¹

ABORTION PROHIBITION

General description: Prohibits any person from intentionally destroying the life of an unborn child.

Exceptions: For the life of the mother.

Penalty: Class E or H felony.

Statute: s. [940.04](#), Stats. Enacted in SECS. 10 and 11, ch. 133, 1849 Wis. Stats., and further amended.²

State law prohibits any person, other than the mother, from intentionally destroying the life of an unborn child or unborn quick child. The provision is commonly referred to as the state’s abortion prohibition or abortion ban.³

The law contains an exception for a therapeutic abortion that meets all of the following criteria: (1) is performed by a physician; (2) is necessary, or is advised by two other physicians as necessary, to save the life of the mother; and (3) unless an emergency prevents, is performed in a licensed maternity hospital.

A [December 5, 2023, decision and order](#) from the circuit court in *Kaul v. Kapenga* (Dane County Case No. 2022CV001594) held that the provision does not prohibit abortions. An appeal is pending. [[Kaul v. Urmanski](#), Appeal No. 2023AP002362.]

20-WEEK ABORTION BAN

General description: Prohibits abortion at 20 weeks postfertilization and after.

Exceptions: For the life or health of the mother.

Penalty: Class I felony; civil liabilities.

Statute: s. [253.107](#), Stats. Enacted in [2015 Wisconsin Act 56](#).

Current law prohibits a person from performing or inducing or attempting to perform or induce an abortion when an unborn child is considered capable of experiencing pain unless the woman is undergoing a medical emergency. For purposes of this prohibition, an unborn child is considered capable of experiencing pain if the probable age of the unborn child is 20 or more weeks postfertilization.

A medical emergency is a condition, in a physician’s reasonable medical judgment, that so complicates the medical condition of a pregnant woman as to necessitate the immediate abortion of her pregnancy to avert her death. A medical emergency may also be a condition, in a physician’s reasonable medical judgment, for which a 24-hour delay in performance or inducement of an abortion will create serious risk of substantial and irreversible impairment of one or more of the woman’s major bodily functions.

If a physician terminates a pregnancy due to a medical emergency, the physician may do so only in a manner that, in reasonable medical judgment, provides the best opportunity for the unborn child to survive. This method must be used unless the termination of the pregnancy in that manner poses a greater risk of death of the pregnant woman, or of the substantial and irreversible physical impairment of a major bodily function of the woman, than other available methods.

ABORTION BAN AFTER VIABILITY

General description: Prohibits abortion after viability.

Exceptions: For the life or health of the mother.

Penalty: Class I felony.

Statute: s. [940.15](#), Stats. Enacted in [1985 Wisconsin Act 56](#), and further amended.

Current law prohibits a person from intentionally performing an abortion after a fetus or unborn child reaches viability (as determined in the attending physician's medical judgment).⁴ This prohibition does not apply if the abortion is necessary to preserve the life or health of the woman, as determined by reasonable medical judgment of the woman's attending physician. Similar to the 20-week abortion ban, if an abortion is performed as necessary to preserve the life or health of the woman, the physician must use a method most likely to preserve the life and health of the fetus or unborn child unless that method would increase the risk to the woman.

PROCEDURAL REQUIREMENTS

General description: Requires informed consent, a 24-hour waiting period, and an ultrasound before performing an abortion.

Exceptions: For the life or health of the mother; rape; incest.

Penalty: Forfeiture between \$1,000 and \$10,000; civil liabilities.

Statute: s. [253.10](#), Stats. Enacted in [1985 Wisconsin Act 56](#), and further amended.

Current law generally requires informed consent, a 24-hour waiting period, and an ultrasound before an abortion may be performed, subject to certain exceptions. A physician must provide certain materials and information outlined in the statutes, in person, before a woman provides written informed consent to perform an abortion. The provision also specifies that an ultrasound must be performed with a simultaneous oral explanation of what the ultrasound is depicting. A woman is not required to view the ultrasound images.

In a medical emergency, a physician must obtain written consent prior to an abortion, if possible, but the 24-hour waiting period and ultrasound requirements may be waived. A "medical emergency" must meet the same criteria as a medical emergency under the 20-week abortion ban.

In a case of sexual assault, informed consent for an abortion is required, but the 24-hour waiting period and ultrasound requirements may be waived. In a case of incest, informed consent for an abortion is required, the waiting period may be reduced, but may not be less than two hours, and an ultrasound is required. A woman must allege that the pregnancy is the result of sexual assault or incest. A physician must confirm with law enforcement authorities that a report on behalf of the woman has been made.

LIMITATION ON USE OF ABORTION-INDUCING DRUGS

General description: Requires an abortion-inducing drug to be given in person, by a physician.

Exceptions: None.

Penalty: Class I felony; civil liabilities.

Statute: s. [253.105](#), Stats. Enacted in [2011 Wisconsin Act 217](#).

Under current law, a physician must give an abortion-inducing drug to terminate a pregnancy in person. A physician must first perform a physical examination of the woman and provide the information required for informed consent noted above. The physician must be physically present in the room when the drug is given to the woman.

¹ Other statutes, not described here, include limitations on public funding, an admitting privileges requirement, and a partial-birth abortion ban, among others. [See, for example, ss. [20.927](#), [20.9275](#), [59.53\(13\)](#), [66.0601\(1\)](#), [253.095](#), and [940.16](#), Stats.]

² For more information, see Wisconsin Legislative Reference Bureau (LRB), [A Brief History of Abortion Laws in Wisconsin](#), LRB Reports, Vol. 6, No. 4 (rev. ed., August 25, 2022).

³ Although not defined in the statute, a "quick child" is the stage of development when the motion of the fetus is felt by the mother. This is commonly between 16 and 20 weeks of pregnancy.

⁴ Viability is typically at around 23 or 24 weeks gestational age. Because of that timing, the 20-week abortion ban is generally viewed as superseding the prohibition on performing an abortion after viability.