

Iowa

Planned Parenthood of the Heartland et al., v. Iowa, Case No. EQCE089066, D. Ct. Polk County, July 22, 2024). The court lifted the temporary injunction staying the enforcement of 2023 HF 732, allowing for the six-week abortion ban to take effect, July 29, 2024.

Planned Parenthood of the Heartland, Inc. v. Reynolds ex rel. State, No. 23-1145, 2024 Iowa Sup. LEXIS 74 (June 28, 2024). The Supreme Court of Iowa reverses the district court's temporary injunction prohibiting enforcement of Iowa's fetal heartbeat statute and remands the case to the district court to dismiss the injunction and continue further proceedings. Applying the rational basis test, the Court held Planned Parenthood could not demonstrate a likelihood of success on the merits of a substantive due process claim.

Planned Parenthood of the Heartland v. Reynolds, (S. Ct. Iowa, No. 22-2036, June 16, 2023) S. Ct. of Iowa upheld the district court's (2019) permanent injunction against enforcement of Iowa Code chapter 146C "fetal heartbeat" law (6-week abortion ban). . The undue burden test is the governing standard under the Iowa Constitution. The fetal heartbeat bill is unconstitutional under that test. The Court stated "[I]t would be ironic and troubling for our court to become the first state supreme court in the nation to hold that trash set out in a garbage can for collection is entitled to more constitutional protection than a woman's interest in autonomy and dominion over her own body. See Wright, 961 N.W.2d at 420. But see id. at 429".

Planned Parenthood of the Heartland, Inc. v. Reynolds, 975 N.W.2d 710, 715 (Iowa 2022) (holding there is no fundamental right to an abortion in Iowa's Constitution requiring strict scrutiny analysis, rather only *Casey*'s undue burden test applies)

Iowa Code § 135L.3 Notification of parent prior to the performance of abortion on a pregnant minor — requirements — criminal penalty.

1. A licensed physician shall not perform an abortion on a pregnant minor until at least forty-eight hours' prior notification is provided to a parent of the pregnant minor.
2. The licensed physician who will perform the abortion shall provide notification in person or by mailing the notification by restricted certified mail to a parent of the pregnant minor at the usual place of abode of the parent. For the purpose of delivery by restricted certified mail, the time of delivery is deemed to occur at 12:00 noon on the next day on which regular mail delivery takes place, subsequent to the mailing.
3. If the pregnant minor objects to the notification of a parent prior to the performance of an abortion on the pregnant minor, the pregnant minor may petition the court to authorize waiver of the notification requirement pursuant to this section in accordance with the following procedures:
 - a. The court shall ensure that the pregnant minor is provided with assistance in preparing and filing the petition for waiver of notification and shall ensure that the pregnant minor's identity remains confidential.
 - b. The pregnant minor may participate in the court proceedings on the pregnant minor's own behalf. The court may appoint a guardian ad litem for the pregnant minor and the court shall appoint a guardian ad litem for the pregnant minor if the pregnant minor is not accompanied by a responsible adult or if the pregnant minor has not viewed the video as

provided pursuant to section 135L.2. In appointing a guardian ad litem for the pregnant minor, the court shall consider a person licensed to practice psychology pursuant to chapter 154B, a licensed social worker pursuant to chapter 154C, a licensed marital and family therapist pursuant to chapter 154D, or a licensed mental health counselor pursuant to chapter 154D to serve in the capacity of guardian ad litem. The court shall advise the pregnant minor of the pregnant minor's right to court-appointed legal counsel, and shall, upon the pregnant minor's request, provide the pregnant minor with court-appointed legal counsel, at no cost to the pregnant minor.

c. The court proceedings shall be conducted in a manner which protects the confidentiality of the pregnant minor and notwithstanding section 232.147 or any other provision to the contrary, all court documents pertaining to the proceedings shall remain confidential and shall be sealed. Only the pregnant minor, the pregnant minor's guardian ad litem, the pregnant minor's legal counsel, and persons whose presence is specifically requested by the pregnant minor, by the pregnant minor's guardian ad litem, or by the pregnant minor's legal counsel may attend the hearing on the petition.

d. Notwithstanding any law or rule to the contrary, the court proceedings under this section shall be given precedence over other pending matters to ensure that the court reaches a decision expeditiously.

e. Upon petition and following an appropriate hearing, the court shall waive the notification requirements if the court determines either of the following:

(1) That the pregnant minor is mature and capable of providing informed consent for the performance of an abortion.

(2) That the pregnant minor is not mature, or does not claim to be mature, but that notification is not in the best interest of the pregnant minor.

f. The court shall issue specific factual findings and legal conclusions, in writing, to support the decision.

g. Upon conclusion of the hearing, the court shall immediately issue a written order which shall be provided immediately to the pregnant minor, the pregnant minor's guardian ad litem, the pregnant minor's legal counsel, or to any other person designated by the pregnant minor to receive the order.

h. An expedited, confidential appeal shall be available to a pregnant minor for whom the court denies a petition for waiver of notification. An order granting the pregnant minor's application for waiver of notification is not subject to appeal. Access to the appellate courts for the purpose of an appeal under this section shall be provided to a pregnant minor twenty-four hours a day, seven days a week.

i. A pregnant minor who chooses to utilize the waiver of notification procedures under this section shall not be required to pay a fee at any level of the proceedings. Fees charged and court costs taxed in connection with a proceeding under this section are waived.

j. If the court denies the petition for waiver of notification and if the decision is not appealed or all appeals are exhausted, the court shall advise the pregnant minor that, upon the request of the pregnant minor, the court will appoint a licensed marital and family therapist to assist the pregnant minor in addressing any intrafamilial problems. All costs of

services provided by a court-appointed licensed marital and family therapist shall be paid by the court through the expenditure of funds appropriated to the judicial branch.

k. Venue for proceedings under this section is in any court in the state.

l. The supreme court shall prescribe rules to ensure that the proceedings under this section are performed in an expeditious and confidential manner. The rules shall require that the hearing on the petition shall be held and the court shall rule on the petition within forty-eight hours of the filing of the petition. If the court fails to hold the hearing and rule on the petition within forty-eight hours of the filing of the petition and an extension is not requested, the petition is deemed granted and waiver of the notification requirements is deemed authorized. The court shall immediately provide documentation to the pregnant minor and to the pregnant minor's legal counsel if the pregnant minor is represented by legal counsel, demonstrating that the petition is deemed granted and that waiver of the notification requirements is deemed authorized. Resolution of a petition for authorization of waiver of the notification requirement shall be completed within ten calendar days as calculated from the day after the filing of the petition to the day of issuance of any final decision on appeal.

m. The requirements of this section regarding notification of a parent of a pregnant minor prior to the performance of an abortion on a pregnant minor do not apply if any of the following applies:

(1) The abortion is authorized in writing by a parent entitled to notification.

(2)

(a) The pregnant minor declares, in a written statement submitted to the attending physician, a reason for not notifying a parent and a reason for notifying a grandparent of the pregnant minor in lieu of the notification of a parent. Upon receipt of the written statement from the pregnant minor, the attending physician shall provide notification to a grandparent of the pregnant minor, specified by the pregnant minor, in the manner in which notification is provided to a parent.

(b) The notification form shall be in duplicate and shall include both of the following:

(i) A declaration which informs the grandparent of the pregnant minor that the grandparent of the pregnant minor may be subject to civil action if the grandparent accepts notification.

(ii) A provision that the grandparent of the pregnant minor may refuse acceptance of notification.

(3) The pregnant minor's attending physician certifies in writing that a medical emergency exists which necessitates the immediate performance of an abortion, and places the written certification in the medical file of the pregnant minor.

(4) The pregnant minor declares that the pregnant minor is a victim of child abuse pursuant to section 232.68, the person responsible for the care of the child is a parent of the child, and either the abuse has been reported pursuant to the procedures prescribed in chapter 232, subchapter III, part 2, or a parent of the child is named in a report of founded child abuse. The department of human services shall maintain

confidentiality under chapter 232 and shall not release any information in response to a request for public records, discovery procedures, subpoena, or any other means, unless the release of information is expressly authorized by the pregnant minor regarding the pregnant minor's pregnancy and abortion, if the abortion is obtained. A person who knowingly violates the confidentiality provisions of this subparagraph is guilty of a serious misdemeanor.

(5) The pregnant minor declares that the pregnant minor is a victim of sexual abuse as defined in chapter 709 and has reported the sexual abuse to law enforcement.

n. A licensed physician who knowingly performs an abortion in violation of this section is guilty of a serious misdemeanor.

o. All records and files of a court proceeding maintained under this section shall be destroyed by the clerk of court when one year has elapsed from any of the following, as applicable:

(1) The date that the court issues an order waiving the notification requirements.

(2) The date after which the court denies the petition for waiver of notification and the decision is not appealed.

(3) The date after which the court denies the petition for waiver of notification, the decision is appealed, and all appeals are exhausted.

p. A person who knowingly violates the confidentiality requirements of this section relating to court proceedings and documents is guilty of a serious misdemeanor.

146B.2 Determination of postfertilization age — certain abortions prohibited — exceptions — reporting requirements — penalties.

1. Except in the case of a medical emergency, in addition to compliance with the prerequisites of chapter 146A, an abortion shall not be performed or be attempted to be performed unless the physician performing the abortion has first made a determination of the probable postfertilization age of the unborn child or relied upon such a determination made by another physician. In making such a determination, a physician shall make such inquiries of the pregnant woman and perform or cause to be performed such medical examinations and tests the physician considers necessary in making a reasonable medical judgment to accurately determine the postfertilization age of the unborn child.

2. a. A physician shall not perform or attempt to perform an abortion upon a pregnant woman when it has been determined, by the physician performing the abortion or by another physician upon whose determination that physician relies, **that the probable postfertilization age of the unborn child is twenty or more weeks unless**, in the physician's reasonable medical judgment, any of the following applies:

(1) The pregnant woman has a condition which the physician deems a medical emergency.

(2) The abortion is necessary to preserve the life of an unborn child.

b. If an abortion is performed under this subsection, the physician shall terminate the human pregnancy in the manner which, in the physician's reasonable medical judgment, provides the best opportunity for an unborn child to survive, unless, in the physician's reasonable medical judgment, termination of the human pregnancy in that manner would pose a greater risk than any other available method of the death of the pregnant woman or of the substantial and irreversible physical impairment of a major bodily function. A greater risk shall not be deemed to exist if it is based on a

claim or diagnosis that the pregnant woman will engage in conduct which would result in the pregnant woman's death or in substantial and irreversible physical impairment of a major bodily function.

3. A physician who performs or attempts to perform an abortion shall report to the department, on a schedule and in accordance with forms and rules adopted by the department, all of the following:

- a. If a determination of probable postfertilization age of the unborn child was made, the probable postfertilization age determined and the method and basis of the determination.
- b. If a determination of probable postfertilization age of the unborn child was not made, the basis of the determination that a medical emergency existed.
- c. If the probable postfertilization age of the unborn child was determined to be twenty or more weeks, the basis of the determination of a medical emergency, or the basis of the determination that the abortion was necessary to preserve the life of an unborn child.
- d. The method used for the abortion and, in the case of an abortion performed when the probable postfertilization age was determined to be twenty or more weeks, whether the method of abortion used was one that, in the physician's reasonable medical judgment, provided the best opportunity for an unborn child to survive or, if such a method was not used, the basis of the determination that termination of the human pregnancy in that manner would pose a greater risk than would any other available method of the death of the pregnant woman or of the substantial and irreversible physical impairment of a major bodily function.

4. a. By June 30, annually, the department shall issue a public report providing statistics for the previous calendar year, compiled from the reports for that year submitted in accordance with subsection 3. The department shall ensure that none of the information included in the public reports could reasonably lead to the identification of any woman upon whom an abortion was performed.

- b. (1) A physician who fails to submit a report by the end of thirty days following the due date shall be subject to a late fee of five hundred dollars for each additional thirty-day period or portion of a thirty-day period the report is overdue.
(2) A physician required to report in accordance with subsection 3 who has not submitted a report or who has submitted only an incomplete report more than one year following the due date, may, in an action brought in the manner in which actions are brought to enforce Thu Dec 29 22:59:49 2022 Iowa Code 2023, Section 146B.2 (6, 0) §146B.2, ABORTION — POSTFERTILIZATION AGE 2 chapter 148, be directed by a court of competent jurisdiction to submit a complete report within a time period stated by court order or be subject to contempt of court.
(3) A physician who intentionally or recklessly falsifies a report required under this section is subject to a civil penalty of one hundred dollars.

5. Any medical facility in which a physician is authorized to perform an abortion shall implement written medical policies and procedures consistent with the requirements and prohibitions of this chapter.

6. The department shall adopt rules to implement this section. 2017 Acts, ch 108, §3, 7
Section 146B.2

Iowa Code § 146C.2 Abortion prohibited — detectable fetal heartbeat.

1. Except in the case of a medical emergency or when the abortion is medically necessary, a physician shall not perform an abortion unless the physician has first complied with the prerequisites of chapter 146A and has tested the pregnant woman as specified in this subsection,

to determine if a fetal heartbeat is detectable.

a. In testing for a detectable fetal heartbeat, the physician shall perform an abdominal ultrasound, necessary to detect a fetal heartbeat according to standard medical practice and including the use of medical devices, as determined by standard medical practice and specified by rule of the board of medicine.

b. Following the testing of the pregnant woman for a detectable fetal heartbeat, the physician shall inform the pregnant woman, in writing, of all of the following:

(1) Whether a fetal heartbeat was detected.

(2) That if a fetal heartbeat was detected, an abortion is prohibited.

c. Upon receipt of the written information, the pregnant woman shall sign a form acknowledging that the pregnant woman has received the information as required under this subsection.

2.

a. A physician shall not perform an abortion upon a pregnant woman when it has been determined that the unborn child has a detectable fetal heartbeat, unless, in the physician's reasonable medical judgment, a medical emergency exists, or when the abortion is medically necessary.

b. Notwithstanding paragraph "a", if a physician determines that the probable postfertilization age, as defined in section 146B.1, of the unborn child is twenty or more weeks, the physician shall not perform an abortion upon a pregnant woman when it has been determined that the unborn child has a detectable fetal heartbeat, unless in the physician's reasonable medical judgment the pregnant woman has a condition which the physician deems a medical emergency, as defined in section 146B.1, or the abortion is necessary to preserve the life of an unborn child.

3. A physician shall retain in the woman's medical record all of the following:

a. Documentation of the testing for a fetal heartbeat as specified in subsection 1 and the results of the fetal heartbeat test.

b. The pregnant woman's signed form acknowledging that the pregnant woman received the information as required under subsection 1.

4. This section shall not be construed to impose civil or criminal liability on a woman upon whom an abortion is performed in violation of this section.

5. The board of medicine shall adopt rules pursuant to chapter 17A to administer this section.

Iowa Code § 146D.1 Fetal body parts — actions prohibited — penalties.

1. A person shall not knowingly acquire, provide, receive, otherwise transfer, or use a fetal body part in this state, regardless of whether the acquisition, provision, receipt, transfer, or use is for valuable consideration.

2. Subsection 1 shall not apply to any of the following:

a. Diagnostic or remedial tests, procedures, or observations which have the sole purpose of

determining the life or health of the fetus in order to provide that information to the pregnant woman or to preserve the life or health of the fetus or pregnant woman.

b. The actions of a person taken in furtherance of the final disposition of a fetal body part.

c. The pathological study of body tissue, including genetic testing, for diagnostic or forensic purposes.

d. A fetal body part if the fetal body part results from a spontaneous termination of pregnancy or stillbirth and is willingly donated for the purpose of medical research.

3. A person who violates this section is guilty of a class “C” felony.

4. For the purposes of this section:

a. “Abortion” means as defined in section 146.1.

b. “Fetal body part” means a cell, tissue, organ, or other part of a fetus that is terminated by an abortion. “Fetal body part” does not include any of the following:

(1) Cultured cells or cell lines derived from a spontaneous termination of pregnancy or stillbirth and willingly donated for the purposes of medical research.

(2) A cell, tissue, organ, or other part of a fetus that is terminated by an abortion that occurred prior to July 1, 2018.

(3) All cells and tissues external to the fetal body proper.

c. “Final disposition” means the disposition of fetal body parts by burial, interment, entombment, cremation, or incineration.

d. “Valuable consideration” means any payment including but not limited to payment associated with the transportation, processing, preservation, quality control, or storage of fetal body parts.

Iowa Code § 707.7 Feticide.

1. Any person who intentionally terminates a human pregnancy, with the knowledge and voluntary consent of the pregnant person, after the end of the second trimester of the pregnancy where death of the fetus results commits feticide. Feticide is a class “C” felony.

2. Any person who attempts to intentionally terminate a human pregnancy, with the knowledge and voluntary consent of the pregnant person, after the end of the second trimester of the pregnancy where death of the fetus does not result commits attempted feticide. Attempted feticide is a class “D” felony.

3. Any person who terminates a human pregnancy, with the knowledge and voluntary consent of the pregnant person, who is not a person licensed to practice medicine and surgery or osteopathic medicine and surgery under the provisions of chapter 148, commits a class “C” felony.

4. This section shall not apply to the termination of a human pregnancy performed by a physician licensed in this state to practice medicine or surgery or osteopathic medicine or surgery when in the best clinical judgment of the physician the termination is performed to preserve the life or health of the pregnant person or of the fetus and every reasonable medical effort not inconsistent with preserving the life of the pregnant person is made to preserve the life of a viable fetus.

Iowa Code § 707.8A Partial-birth abortion prohibited — exceptions — penalties.

1. As used in this section, unless the context otherwise requires:

a. “Abortion” means abortion as defined in section 146.1.

b. “Fetus” means a human fetus.

c. “Partial-birth abortion” means an abortion in which a person partially vaginally delivers a living fetus before killing the fetus and completing the delivery.

d. “Vaginally delivers a living fetus before killing the fetus” means deliberately and intentionally delivering into the vagina a living fetus or a substantial portion of a living fetus for the purpose of performing a procedure the person knows will kill the fetus, and then killing the fetus.

2. A person shall not knowingly perform or attempt to perform a partial-birth abortion. This prohibition shall not apply to a partial-birth abortion that is necessary to save the life of the mother whose life is endangered by a physical disorder, physical illness, or physical injury.

3. This section shall not be construed to create a right to an abortion.

a. The mother on whom a partial-birth abortion is performed, the father of the fetus, or, if the mother is less than eighteen years of age or unmarried at the time of the partial-birth abortion, a maternal grandparent of the fetus may bring an action against a person violating subsection 2 to obtain appropriate relief, unless the pregnancy resulted from the plaintiff’s criminal conduct or the plaintiff consented to the partial-birth abortion.

b. In an action brought under this subsection, appropriate relief may include any of the following:

(1) Statutory damages which are equal to three times the cost of the partial-birth abortion.

(2) Compensatory damages for all injuries, psychological and physical, resulting from violation of subsection 2.

4. A person who violates subsection 2 is guilty of a class “C” felony.

5. A mother upon whom a partial-birth abortion is performed shall not be prosecuted for violation of subsection 2 or for conspiracy to violate subsection 2.

6.

a. A licensed physician subject to the authority of the board of medicine who is accused of a violation of subsection 2 may seek a hearing before the board on whether the physician’s conduct was necessary to save the life of the mother whose life was endangered by a physical disorder, physical illness, or physical injury.

b. The board’s findings concerning the physician’s conduct are admissible at the criminal trial of the physician. Upon a motion of the physician, the court shall delay the beginning of the trial for not more than thirty days to permit the hearing before the board of medicine to take place.