

Wisconsin

Kaul et al., v. Urmanski, Case No. 22 CV 1594 (Dane Cnty. Circ. Court, December 5, 2023). The Dane County Circuit Court held that Wis. Stat. § 940.04, a law written in 1894, does not apply to consensual abortions, but only to feticide. (Note: The Wisconsin Supreme Court is expected to release its ruling on this case soon, 5/29/25).

Wis. Stat. § 253.105. Prescription and use of abortion-inducing drugs.

(1) In this section:

- (a)** “Abortion” has the meaning given in s. 253.10 (2) (a).
- (b)** “Abortion-inducing drug” has the meaning given in s. 253.10 (2) (am).
- (c)** “Physician” has the meaning given in s. 448.01 (5).

(2) No person may give an abortion-inducing drug to a woman unless the physician who prescribed, or otherwise provided, the abortion-inducing drug for the woman:

- (a)** Performs a physical exam of the woman before the information is provided under s. 253.10 (3) (c) 1.

(b) Is physically present in the room when the drug is given to the woman.

(3) Penalty. Any person who violates sub. (2) is guilty of a Class I felony. No penalty may be assessed against a woman to whom an abortion-inducing drug is given.

(4) Civil remedies.

(a) Any of the following persons has a claim against a person who intentionally or recklessly violates sub. (2):

1. A woman to whom an abortion-inducing drug was given in violation of sub. (2).
2. If the abortion-inducing drug was given to a minor in violation of sub. (2), a parent or guardian of the minor.
3. The father of the unborn child aborted as the result of an abortion-inducing drug given in violation of sub. (2), unless the pregnancy of the person to whom the abortion-inducing drug was given was the result of sexual assault in violation of s. 940.225, 944.06, 948.02, 948.025, 948.06, 948.085, or 948.09 and the violation was committed by the father.

(b) A claim for relief under par. (a) may include:

1. Damages arising out of the inducement of the abortion, including damages for personal injury and emotional and psychological distress.
2. Punitive damages for a violation that satisfies the standard under s. 895.043 (3).

(c) Notwithstanding s. 814.04 (1), a person who recovers damages under this subsection may also recover reasonable attorney fees incurred in connection with the action.

(d) A conviction under sub. (3) is not a condition precedent to bringing an action,

obtaining a judgment, or collecting a judgment under this subsection.

(e) A contract is not a defense to an action under this subsection.

(f) Nothing in this section limits the common law rights of a person that are not in conflict with sub. (2).

(5) Confidentiality in court proceedings.

(a) In every proceeding brought under this section, the court, upon motion or sua sponte, shall rule whether the identity of any woman upon whom an abortion was induced or attempted to be induced shall be kept confidential unless the woman waives confidentiality. If the court determines that a woman's identity should be kept confidential, the court shall issue orders to the parties, witnesses, and counsel and shall direct the sealing of the record and exclusion of individuals from courtrooms or hearing rooms to the extent necessary to safeguard the woman's identity from public disclosure. If the court issues an order to keep a woman's identity confidential, the court shall provide written findings explaining why the woman's identity should be kept confidential, why the order is essential to that end, how the order is narrowly tailored to its purpose, and why no reasonable less restrictive alternative exists.

(b) Any person, except for a public official, who brings an action under this section shall do so under a pseudonym unless the person obtains the written consent of the woman upon whom an abortion was induced, or attempted to be induced, in violation of this section.

(c) The section may not be construed to allow the identity of a plaintiff or a witness to be concealed from the defendant.

(6) Construction. Nothing in this section may be construed as creating or recognizing a right to abortion or as making lawful an abortion that is otherwise unlawful.

Wis. Stat. § 253.107. Probable postfertilization age; later-term abortions.

(1) Definitions. In this section:

(a) "Abortion" has the meaning given in s. 253.10 (2) (a).

(b) "Medical emergency" has the meaning given in s. 253.10 (2) (d).

(c) "Probable postfertilization age of the unborn child" means the number of weeks that have elapsed from the probable time of fertilization of a woman's ovum.

(2) Probable postfertilization age. Except in the case of a medical emergency, no physician may perform or induce an abortion, or attempt to perform or induce an abortion, unless the physician performing or inducing it has first made a determination of the probable postfertilization age of the unborn child or relied upon such a determination made by another physician.

(3) Protection of unborn child capable of feeling pain from abortions.

(a) No person shall perform or induce or attempt to perform or induce an abortion upon a woman when the unborn child is considered capable of experiencing pain unless the woman is undergoing a medical emergency. For purposes of this subsection, an unborn child is considered to be capable of experiencing pain if the probable postfertilization age of the unborn child is 20 or more weeks.

(b) When the unborn child is considered capable of experiencing pain and the pregnant woman is undergoing a medical emergency, the physician shall terminate the pregnancy in the manner that, in reasonable medical judgment, provides the best opportunity for the unborn child to survive, unless the termination of the pregnancy in that manner poses a greater risk either of the 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.

(4) Penalty. Any person who violates sub. (3) (a) is guilty of a Class I felony. No penalty may be assessed against a woman upon whom an abortion is performed or induced or attempted to be performed or induced.

(5) Civil remedies; injunctions.

(a) Any of the following individuals may bring a claim for damages, including damages for personal injury and emotional and psychological distress, against a person who performs, or attempts to perform, an abortion in violation of this section:

1. A woman on whom an abortion is performed or induced or attempted to be performed or induced.
2. The father of the aborted unborn child or the unborn child that is attempted to be aborted, unless the pregnancy is the result of sexual assault under s. 940.225 (1), (2), or (3) or incest under s. 948.06 (1) or (1m).

(b) A person who has been awarded damages under par. (a) shall, in addition to any damages awarded under par. (a), be entitled to punitive damages for a violation that satisfies a standard under s. 895.043 (3).

(c)

1. Notwithstanding s. 814.04 (1), a person who recovers damages under par. (a) or (b) may also recover reasonable attorney fees incurred in connection with the action.
2. If a defendant prevails in an action under par. (a) and the court finds the action was frivolous or brought in bad faith, notwithstanding s. 814.04 (1), the defendant may recover reasonable attorney fees incurred in connection with defending the action.

(d) A contract is not a defense to an action under this subsection.

(e) Nothing in this subsection limits the common law rights of a person that are not in conflict with sub. (2) or (3).

(f) A prosecuting attorney with appropriate jurisdiction may bring an action for injunctive relief against a person who has intentionally or recklessly violated this section.

(6) Confidentiality in court proceedings.

(a) In every proceeding brought under this section, the court, upon motion or sua sponte, shall rule whether the identity of any woman upon whom an abortion was performed or induced or attempted to be performed or induced shall be kept confidential unless the woman waives confidentiality. If the court determines that a woman's identity should be kept confidential, the court shall issue orders to the parties, witnesses, and counsel and shall direct the sealing of the record and exclusion of individuals from courtrooms or hearing rooms to the extent necessary to safeguard the woman's identity from public disclosure. If the court issues an order to keep a woman's identity confidential, the court shall provide written findings explaining why the woman's identity should be kept confidential, why the order is essential to that end, how the order is narrowly tailored to its purpose, and why no reasonable less restrictive alternative exists.

(b) Any person, except for a public official, who brings an action under this section shall do so under a pseudonym unless the person obtains the written consent of the woman upon whom an abortion was performed or induced, or attempted to be performed or induced, in violation of this section.

(c) This section may not be construed to allow the identity of a plaintiff or a witness to be concealed from the defendant.

(7) Construction. Nothing in this section may be construed as creating or recognizing a right to abortion or as making lawful an abortion that is otherwise unlawful.

State v. Black, 526 N.W.2d 132, 135 (1994) (holding Wis. Stat. §940.04 is a feticide statute only)

Wis. Stat. § 940.04. Abortion.

(1) Any person, other than the mother, who intentionally destroys the life of an unborn child is guilty of a Class H felony.

(2) Any person, other than the mother, who does either of the following is guilty of a Class E felony:

(a) Intentionally destroys the life of an unborn quick child; or

(b) Causes the death of the mother by an act done with intent to destroy the life of an unborn child. It is unnecessary to prove that the fetus was alive when the act so causing the mother's death was committed.

(5) This section does not apply to a therapeutic abortion which:

(a) Is performed by a physician; and

(b) Is necessary, or is advised by 2 other physicians as necessary, to save the life of the mother; and

(c) Unless an emergency prevents, is performed in a licensed maternity hospital.

(6) In this section “unborn child” means a human being from the time of conception until it is born alive.

Wis. Stat. § 940.13. Abortion exception.

No fine or imprisonment may be imposed or enforced against and no prosecution may be brought against a woman who obtains an abortion or otherwise violates any provision of any abortion statute with respect to her unborn child or fetus, and s. 939.05, 939.30 or 939.31 does not apply to a woman who obtains an abortion or otherwise violates any provision of any abortion statute with respect to her unborn child or fetus.

Wis. Stat. § 940.15. Abortion.

(1) In this section, “viability” means that stage of fetal development when, in the medical judgment of the attending physician based on the particular facts of the case before him or her, there is a reasonable likelihood of sustained survival of the fetus outside the womb, with or without artificial support.

(2) Whoever intentionally performs an abortion after the fetus or unborn child reaches viability, as determined by reasonable medical judgment of the woman’s attending physician, is guilty of a Class I felony.

(3) Subsection (2) 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.

(4) Any abortion performed under sub. (3) after viability of the fetus or unborn child, as determined by reasonable medical judgment of the woman’s attending physician, shall be performed in a hospital on an inpatient basis.

(5) Whoever intentionally performs an abortion and who is not a physician is guilty of a Class I felony.

(6) Any physician who intentionally performs an abortion under sub. (3) shall use that method of abortion which, of those he or she knows to be available, is in his or her medical judgment most likely to preserve the life and health of the fetus or unborn child. Nothing in this subsection requires a physician performing an abortion to employ a method of abortion which, in his or her medical judgment based on the particular facts of the case before him or her, would increase the risk to the woman. Any physician violating this subsection is guilty of a Class I felony.

(7) Subsections (2) to (6) and s. 939.05, 939.30 or 939.31 do not apply to a woman who obtains an abortion that is in violation of this section or otherwise violates this section with respect to her unborn child or fetus.

Wis. Stat § 940.16. Partial-birth abortion.

(1) In this section:

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

(b) “Partial-birth abortion” means 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.

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

(3) Subsection (2) does not apply if the 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, including a life-endangering physical disorder, physical illness or physical injury caused by or arising from the pregnancy itself, and if no other medical procedure would suffice for that purpose.