

Legislative Proposal

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Amend Section 69.186 of the Wisconsin Statutes¹ ("Induced abortion reporting") to also require the reporting of

- (k) the gender of the aborted child
- (l) whether or not the child had a fetal anomaly, and the nature of that anomaly.

Brief Rationale:

Abortion providers are already required under Wisconsin law to provide certain demographic information about the women obtaining abortions within the state. There is no requirement, however, to report anything about the unborn child.

Political pressure against sex-selective abortions is growing. However, if a law prohibiting such abortions was passed, it would be impossible to discern whether or not the law was being complied with.

Moreover, numerous studies indicate a high likelihood that many children with defects are being aborted. Estimates range between 60% to 95%, depending on the condition. It is important to emphasize that these are *estimates*. Since most reports focus on the mother and not the child, very little² is known about how many children are targeted for abortion because of its gender or the presence of a birth defect.

There may be other ways to collect this information, but amending an already existing requirement at the exact point where the abortion occurs seems like the simplest way to get it.

Amending the reporting requirements would not by itself increase or decrease abortions. However, instead of having to work with estimates, having actual data, even if only at the state level, would allow exploration of other important issues, such as the state's role in fostering attitudes that reflect values consistent with a high value of human life. Most likely, attitudes that lead to the abortion of high numbers of children diagnosed with birth defects has something to do with attitudes cultivated through family planning clinics, public school curriculum, genetic counseling services, and so on; some of these programs may indeed be financed in part by the taxpayers of Wisconsin.

Thus, with reliable information in hand, policies could be formulated that help cultivate a 'culture of life' and ensure that Wisconsin citizens do not help subsidize policies and/or programs that fuel an opposite perspective.

It is worth noting that even pro-choice individuals are uncomfortable aborting children *because* it is of a particular gender or *because* it has a birth defect. Moreover, pro-choice individuals may also wish to have this data. It is not necessarily the case that this proposal will be opposed by the average, pro-choice Wisconsinite.

Arizona is one of the few states that requires reporting of birth defects. For reference sake, their statutory language is:

12. The reason for the abortion, including whether the abortion is elective or due to maternal or fetal health considerations.³

On the next page is table 9 of their annual abortion report. You can see how their statutory language is translated into action in a concrete way.

Note: previous versions of this proposal also called for amending this legislation to take into account referrals (ie, a hospital referring a patient to an abortion clinic). However, measuring referrals in general, not just in relation to children diagnosed with birth defects, but in all cases, might be valuable in itself. For this reason, carefully thinking about how women are referred to abortion providers more generally might be better tackled separately. Moreover, as stated below, the assumption is that the referrer and the abortion provider is expected to usually be the same, anyway: the hospital.

¹ The actual language is on page 4 of this document. The state-provided form pertaining to this statute is on page 5.

² In the U.S.; some countries do collect this information. At the time of this writing, there is only one known case where the gender of the aborted child is required to be reported (Oklahoma) and only a handful of states have prompts for 'fetal anomalies.' This will be updated as more information becomes available.

³ See: 36-2161.

Table 9 from Arizona's annual abortion report⁴

(asterisks indicate that there were fewer than 6 reported cases)

Table 9. Maternal characteristics and fetal medical conditions cited for obtaining an abortion, Arizona residents, 2013

Maternal Characteristics	Count (n = 141)	Percent
Age		
≤15-19 yrs	*	N/A
20-24 yrs	23	16.3
25-29 yrs	33	23.4
30-34 yrs	32	22.7
35-44 yrs	49	34.8
Gestational age		
≤ 13 weeks	40	28.4
14 to 20 weeks	72	51.1
≥ 21 weeks	26	18.4
Procedure Type		
Surgical	125	88.7
Non-Surgical/Medication	16	11.3
Facility Type		
Hospital	53	37.6
Clinic	87	61.7
Fetal Medical Conditions		
Aneuploidy/Trisomy/Triploidy	17	12.1
Fetal Demise	14	9.9
Fetus-Related Spontaneous Abortion	8	5.7
CNS Abnormality of Brain: Spina Bifida	19	13.5
Cardiac Defect	*	N/A
Hydrops	*	N/A
Multiple Anomalies	*	N/A
Urological abnormality	*	N/A
Karyotype or genetic abnormality	*	N/A
Lethal Anomalies	*	N/A
Oligohydramnios/Anhydramnios	*	N/A
Skeletal abnormality	*	N/A
Twin abnormality	*	N/A
Other/Unspecified	8	5.7

⁴ <http://azdhs.gov/diro/reports/pdf/2013-arizona-abortion-report.pdf> [Accessed 3/1/2015]

A Consideration of Objections

Friendly Objections:

Summary response to the following objections: the assumption is that these reporting requirements are designed to alter the number of abortions when in fact the primary purpose is to measure something which is not presently being measured. The design of future legislative proposals could very well hinge on what the data actually reveals. Moreover, there is no particular reason to think that this proposal can't be 'tweaked' to handle concerns that inevitably arise during the legislative process.

1. The sex of an unborn child and whether or not it has a defect is often determined late in the pregnancy, and many abortions occur before this point.

If this were the whole of it, it would similarly be pointless to pass laws preventing abortions based on the gender of the child, which has been previously advanced in the state of Wisconsin. Clearly, such laws would be meaningless if there was no mechanism to determine if people were obeying them. And yet, late-term abortions are a contemporary concern, which 'pain capable' proposals demonstrate. *Both* the determination of the gender *and* the point where the child can feel pain come later in the pregnancy than when most abortions occur, but the value of either proposal is not diminished because of the narrow scope they relate to.

Moreover, even if the mother does not know the gender, the abortionist certainly will. Despite the (current) limitations on determining gender, if nonetheless the data shows a disproportionate number of male or female children aborted, this will suggest that something is amiss. Finally, new technology could make this objection moot. Along the same lines, while most diagnoses of birth defects occur late in the pregnancy, new technology and developments in genetic testing can be expected to see such diagnoses occur earlier and earlier in the pregnancy.

Still, even if it is true that such provisions do not address the vast majority of abortions, the attitudes that must exist within society if people are seeking abortions because of the gender of the child, or whether or not it has a fetal abnormality, are surely of grave concern. In particular, arguments for infanticide and even physician-assisted suicide are identical in many respects to arguments in support of aborting children diagnosed with birth defects. (I.e., the person will live a life of suffering, etc). Thus, *the relevance of this question is not only to abortion, but all 'end of life' issues.*

2. Abortionists are not qualified to determine whether or not a child has a birth defect.

It is certainly the case that when a child is aborted *because* it is diagnosed with a birth defect, this diagnosis was not made by an abortionist. After all, abortion clinics are not known for pushing ultrasounds; Wisconsin had to pass a law to force abortion clinics to give women ultrasounds! However, the legislation *as it already stands* encompasses more than *abortion* clinics. It says: "On or before January 15 annually, each *hospital*, clinic or other facility in which an induced abortion is performed..."

Most, if not all, birth defects are detected in hospitals and medical clinics. Physicians at hospitals are qualified, if anyone is qualified. Furthermore it is reasonable to expect that in such instances, the abortion would be provided by the hospital itself, especially if the diagnosis is made after the first trimester.

As it happens, Wisconsin requires that abortions be provided by licensed physicians who have admitting rights at a hospital within 30 minutes of the abortion clinic. (This may be under litigation.) Theoretically, therefore, abortion providers typically *would* be qualified to make such determinations, because they would be licensed physicians. Indeed, it seems plausible to suspect that in many cases, the abortion would be provided by the same physician that made the initial diagnosis.

The steps through which a woman passes from the point of the diagnosis to the point of the abortion are not known definitively because little to no effort has been made to track or monitor the process. For this reason, legislation that will address the 'referral' process should be considered in the future.

3. These reporting regulations will not reduce the number of abortions.

This is true. The purpose of this proposal is to gather reliable information that can be used to formulate effective policies that hopefully will reduce the number of abortions. It will also aid in the planning for the social and economic 'costs' that arise in a society that has decided to uphold life.

Hostile Objections:

Summary response to the following objections: this proposal does not add any burden at all to the woman and only expands on a report that hospitals and clinics already have to produce.

1. Adding more reporting requirements puts more hurdles in front of a woman exercising her right to reproduce as she sees fit.

It is hard to see how this could be the case, since the burden, such as it is, rests completely on the shoulders of the abortion provider, who already must provide an annual report. Being the professionals that they are, they are accustomed to meeting regulatory requirements, and not above advocating for their own. In the realm of requirements, it is harder to think of one less onerous than this one.

Current Wisconsin statutory language:⁵

69.186 Induced abortion reporting.

(1) On or before January 15 annually, each hospital, clinic or other facility in which an induced abortion is performed shall file with the department a report for each induced abortion performed in the hospital, clinic or other facility in the previous calendar year. Each report shall contain all of the following information with respect to each patient obtaining an induced abortion in the hospital, clinic or other facility:

- (a) The state and, if this state, the county, of residence.
- (b) Patient number.
- (c) Race.
- (d) Age.
- (e) Marital status.
- [69.186\(1\)\(f\)](#) (f) Month and year in which the induced abortion was performed.
- (g) Education.

(h) The number of weeks since the patient's last menstrual period.

(hm) Whether the abortion was a chemically induced abortion, a surgical abortion or a surgical abortion following a failed or incomplete chemical abortion.

(i) Complications, if any, resulting from performance of the induced abortion.

(j) If the patient is a minor, whether consent was provided under s. [48.375 \(4\) \(a\) 1.](#) for the abortion and, if so, the relationship of the individual providing consent to the minor; or, if consent under s. [48.375 \(4\) \(a\) 1.](#) was not provided, on which of the bases under s. [48.375 \(4\) \(a\) 2.](#) or [\(b\) 1.](#), [1g.](#), [1m.](#), [2.](#) or [3.](#) the abortion was performed.

(2) The department shall collect the information under sub. (1) in a manner which the department shall specify and which ensures the anonymity of a patient who receives an induced abortion, a health care provider who provides an induced abortion and a hospital, clinic or other facility in which an induced abortion is performed. The department shall publish annual demographic summaries of the information obtained under this section, except that the department may not disclose any information obtained under this section that reveals the identity of any patient, health care provider or hospital, clinic or other facility and shall ensure anonymity in all of the following ways:

(a) The department may use information concerning the patient number under sub. (1)(b) or concerning the identity of a specific reporting hospital, clinic or other facility for purposes of information collection only and may not reproduce or extrapolate this information for any purpose.

(b) The department shall immediately destroy all reports submitted under sub. (1) after information is extrapolated from the reports for use in publishing the annual demographic summary under this subsection. **History:** [1985 a. 315](#); [1995 a. 309](#); [1997 a. 27](#).

⁵ As of January 27, 2015. Compare with what the CDC releases in its annual Abortion Surveillance Report. Notice that there is no data on gender or birth defect is provided or even alluded to in this national study.

- Maternal age in years (<15, 15–19 by individual year, 20–24, 25–29, 30–34, 35–39, or ≥40)
- Gestational age in weeks at the time of abortion (≤6, 7–20 by individual week, or ≥21)
- Race (black, white, or other, including Asian, Pacific Islander, other races, and multiple races)
- Ethnicity (Hispanic or non-Hispanic)
- Method type (curettage, § intrauterine instillation, medical [nonsurgical] abortion, or other¶)
- Marital status (married [including currently married or separated] or unmarried [including never married, widowed, or divorced])
- Number of previous live births (0, 1, 2, 3, or ≥4)
- Number of previous abortions (0, 1, 2, or ≥3)
- Maternal residence (the state, reporting area, territory, or foreign country in which the woman obtaining the abortion lived; or, if additional details are unavailable, in-reporting area versus out-of-reporting area)

Actual form, as produced by the state of Wisconsin, that abortion providers must submit:

DEPARTMENT OF HEALTH SERVICES
Division of Public Health
F-05506 (Rev. 01/09)

STATE OF WISCONSIN
Chap. 69.186, Wis. Stats.

INDUCED TERMINATION OF PREGNANCY REPORT

Complete one form for each induced termination of pregnancy performed. This form should be completed by facility or clinic staff only, following the procedure. Please refer to the reporting instructions on the back of this sheet for information on how to complete this form.

1. Facility Code	2. Patient Number*	3. Month and Year this Procedure was Performed
4a. Residence of Patient (Check one and specify state, if not Wisconsin.) <input type="checkbox"/> 1. Wisconsin Resident <input type="checkbox"/> 2. Resident of the State of _____		4b. County of Residence (for "Wisconsin Resident" only) County of _____, WI
5. Race (Answer both questions "5. Race" and "6. Hispanic Origin".) <input type="checkbox"/> 1. White <input type="checkbox"/> 3. American Indian <input type="checkbox"/> 5. Unknown <input type="checkbox"/> 2. Black <input type="checkbox"/> 4. Asian/Pacific Islander <input type="checkbox"/> 6. Other (Specify.) (List races here, if mixed.) _____		
6. Hispanic Origin (Check one.) <input type="checkbox"/> 1. Yes <input type="checkbox"/> 2. No	7. Age on Last Birthday (in Years) _____ Years	8. Marital Status (Check one.) <input type="checkbox"/> 1. Never Married <input type="checkbox"/> 3. Widowed <input type="checkbox"/> 5. Divorced <input type="checkbox"/> 2. Married <input type="checkbox"/> 4. Separated <input type="checkbox"/> 6. Unknown
9. Minor Patient Legal Status [Per ss. 48.375(4) and 69.186, this question must be completed if the patient is less than 18 years old.]		
9a. If the patient is less than 18 years old, indicate the circumstances of the patient. (Check one.) <input type="checkbox"/> 1. The patient is an emancipated minor. (Go to question 10.) <input type="checkbox"/> 2. A court granted a petition to waive the parental consent. (Go to question 10.) <input type="checkbox"/> 3. Consent was provided by an adult on behalf of the patient. (Go to question 9b.) <input type="checkbox"/> 4. None of the above apply. (Go to question 9c.)		
9b. If Box 3 in Question 9a is checked, specify the status of the adult providing written consent for the patient's procedure. (Check one.) <input type="checkbox"/> 1. Parent (Go to question 10.) <input type="checkbox"/> 2. Guardian or legal custodian (Go to question 10.) <input type="checkbox"/> 3. Adult family member (Go to question 10.) <input type="checkbox"/> 4. Foster parent or treatment foster parent (Go to question 10.)		
9c. If Box 4 in Question 9a is checked, specify the reason that consent was not legally required in this case. (Check one.) <input type="checkbox"/> 1. A medical emergency exists that requires an immediate induced termination. <input type="checkbox"/> 2. The minor provided a written statement that the pregnancy was the result of a sexual assault. I reported this assault as required by law. <input type="checkbox"/> 3. A psychiatrist or licensed psychologist provided a written statement that the minor is likely to commit suicide rather than file a petition or approach a person empowered to give consent. <input type="checkbox"/> 4. The minor provided a written statement that the pregnancy is the result of sexual intercourse with a caregiver. I reported this as required by law. <input type="checkbox"/> 5. The minor provided a written statement that she has been abused by person empowered to give consent. I reported this as required by law.		
10. Education (Circle highest grade completed.) None 0 Elementary 1 2 3 4 5 6 7 8 High School / GED 9 10 11 12 College (or Technical) 1 2 3 4 5+	11. Number of Weeks Since Patient's Last Menstrual Period _____ Weeks	12. Complications, if any (Check all that apply.) <input type="checkbox"/> 1. NONE <input type="checkbox"/> 4. Uterine Perforation <input type="checkbox"/> 2. Hemorrhage <input type="checkbox"/> 5. Cervical Laceration <input type="checkbox"/> 3. Infection <input type="checkbox"/> 6. Retained Products <input type="checkbox"/> 7. Other (Specify.) _____
13. Type of Procedure (Check one.) <input type="checkbox"/> 1. Chemically Induced (any non-surgical procedure including oral, injected and vaginally inserted chemicals) <input type="checkbox"/> 2. Surgical <input type="checkbox"/> 3. Surgical, following a failed or incomplete chemically induced termination.		
14. Remarks (Use this space for questions or clarifications concerning the other entries on this form. You may attach another sheet, if necessary.)		

*This number is used only for clarification of the information and then destroyed to assure the confidentiality of the patient and the facility.

Return this completed form to: CURRENT RECORDS - CONFIDENTIAL / State Vital Records Office / PO Box 309 / Madison WI 53701-0309

For assistance, please call: 608-266-2838

