

ROGER ROTH

STATE SENATOR • 19TH SENATE DISTRICT

September 9, 2021
Senate Committee on Judiciary and Public Safety

2021 Senate Bill 16

Relating to: requirements for children born alive following abortion or attempted abortion and providing a penalty.

Thank you Chairman Wanggaard and members of the Senate Committee on Judiciary and Public Safety for holding a public hearing on Senate Bill 16.

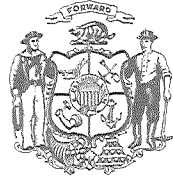
Today I testify before you to advance legislation that protects human life, specifically the life of newborn children. I'm a father of five amazing little boys, and I was in the room with my wife when each of my children were born. With all five of my sons, holding each one of them in my arms when they took their first breaths was an incredible experience. And I know if any of them needed medical attention in those first minutes and hours, the doctors and nurses in the room would have jumped into action to provide the care that my children needed.

To me, it is a universal truth that we would protect such delicate life without a moment's hesitation.

Now across America the unthinkable is happening. Over the last several years leaders around the country challenged that universal truth. From New York to Virginia to North Carolina, elected officials pushed back on the value that newborn babies – *all* newborn babies – deserve, and are entitled to, lifesaving treatment. I cannot fathom how they could be led to believe that such protections are unnecessary.

That is why we are here today. Regardless of the circumstances a baby comes into this world, he or she must have the same rights and protections that you and I have. Committee members, whether you are steadfastly pro-life or adamantly supportive of abortion or fall anywhere in between, there can be no ambiguity in the law on that point. Because this is not an abortion issue. Our bill simply provides the clarity necessary for health care providers to follow after a child is born alive.

{continued}



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Senate Bill 16 says that a survivor of an abortion is entitled to the “same degree of professional skill, care, and diligence to preserve the life and health of the child” that any other child born alive would receive.

Following the administration of that care, a survivor would need to be “immediately transported and admitted to a hospital.” Our bill makes crystal clear that failure to provide such care would result in a Class H felony, and a provider who explicitly denies care to an infant with the intent to kill that child would be guilty of a Class A Felony.

Here in the state legislature we deal with a wide range of issues of varying impact, however, Senate Bill 16 pertains to each and every one of us because it is upholding the sanctity of life.

Melissa Ohden is a survivor of a failed saline abortion. She now tells her story around the world. Melissa has previously provided written testimony to this committee last session and I want to leave you with a portion of her words from that day:

“Instead of being delivered as a successful abortion – a deceased child, I was miraculously born alive... Timely medical care is of the utmost importance for a child like me who survives an abortion. I truly believe I am alive today not only because I was miraculously saved from death in the abortion, but also because life-saving medical care was right down the hallway for me, once someone decided they couldn’t leave me to die.”

Despite the overwhelming popularity of born-alive protections, Governor Evers chose to veto 2019 AB 179, claiming that it interfered between patients and their healthcare provider. What the Governor misunderstood is that these newborns *are* the patients. They are fighting for their survival and have no ability to advocate for themselves – which is why this bill is so critical for us to act on their behalf.

I thank my colleagues for holding this hearing today and I encourage each of you to support advancing this bill to the floor of the State Senate.



JIM STEINEKE

MAJORITY LEADER

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Testimony on Senate Bill 16

Senate Committee on Judiciary and Public Safety

Thursday, September 9, 2021

Dear Chairman Wanggaard and members,

Thank you for the opportunity to submit testimony to discuss Senate Bill 16 — the Born Alive Abortion Survivors legislation I've authored along with Senator Roth.

As a father of three, there is nothing that I wouldn't do for my kids. Over the past sixteen years, I've had a front row seat as I've watched our children grow to be active, intelligent young adults. There's nothing more in my life that I cherish more than having had the opportunity to bring these three young adults into life alongside my wife.

The lives of my children, and frankly, every child are something we should hold dear — doing everything in our power to protect and defend.

As a parent, you can imagine the fright I feel as I continue to watch the idea and practice of abortion being advertised and promoted by activists, legislators and even sitting governors across the United States. For far too long the pro-abortion industry has hidden behind the cloak of medical terminology in an attempt to dehumanize an unborn child. Last session, our governor likened the horrific process of an abortion to that of a tonsillectomy. The fact that individuals of authority can discuss young life with such disregard is beyond troubling.

It has been these instances and more that has led to today's hearing.

Today, I'm here to discuss legislation that will ensure that should any baby being delivered in our state survive a botched abortion, that child cannot be gruesomely murdered after its delivery. Often referred to as "born alive" legislation, this bill further codifies our commitment to protecting young life — requiring that any health care provider present at the time of a failed abortion, exercise care and compassion to preserve the life of the surviving child.

Some will say this bill goes too far or that it is simply unneeded. Again, I'll harken back to instances that occurred in which leading voices from the left were advocating for killing a young child after its birth, saying such egregious things as "an infant would be kept comfortable," after delivery while a "discussion would ensure between the physicians and the mother," about whether or not to let that child live or die.

Coupled with heinous bills signed into law in places like New York and Virginia, I, along with the long list of supporters this bill has garnered, am here to say that this bill is absolutely needed. As lawmakers, it's our duty to step in and support those who cannot support themselves.

Republicans in the legislature have consistently taken a stand to protect our most vulnerable. Today, we're reaffirming that commitment and making it known that our state will not follow the suit of others around the country and move backward when it comes to protecting young lives.

Chairman Wanggaard, again, I appreciate the opportunity to come before you to have this important conversation today, and I'd be happy to answer any questions you or the members of the committee may have.



WISCONSIN CATHOLIC CONFERENCE

TESTIMONY ON SENATE BILL 16 THE BORN ALIVE PROTECTION ACT

Presented to the Senate Committee on Judiciary & Public Safety

By Barbara Sella, Associate Director

September 9, 2021

The Wisconsin Catholic Conference (WCC), the public policy voice of the Catholic bishops of Wisconsin, urges you to support Senate Bill 16, the Born Alive Protection Act. The Catholic Church has always held that induced abortion is both immoral and cruel because it treats some human lives as completely disposable.

Senate Bill 16 does three very simple, yet necessary things. First, it establishes a standard of care for infants who survive an induced abortion. It does this by requiring that health care providers “exercise the same degree of professional skill, care, and diligence to preserve the life and health of the child as a reasonably diligent and conscientious health care provider would render to any other child born alive at the same gestational age.” And it ensures “that the child born alive is immediately transported and admitted to a hospital.” Standards of care are especially valuable in unexpected situations when medical staff are called on to make split-second decisions.

Second, it sends a message to the medical profession and to the public at large that even though abortion may still be legal, for children outside of the womb, intentional neglect causing death is illegal.

Third, it makes health care providers or employees mandatory reporters when violations occur.

Some have argued that this legislation is not necessary in Wisconsin. However, so long as there are those who advocate for abortion, who debase and devalue those who are vulnerable or face challenges in life, we need to affirm that all born in Wisconsin have a right to life.

We must remember that the law is a teacher. It represents the collective conscience of the citizenry. The Born Alive Protection Act upholds the essential principle that every human life has dignity and should be treated equally by those to whom it is entrusted.

Finally, it is important to be specific about the number of lives that could be affected by this law. According to Wisconsin’s Department of Health Services (DHS), which provides an annual report on the number of induced abortions in the state, Wisconsin in 2019 reported 6,511 induced abortions. Of these, 60 (or 1 percent) were performed on children over 20 weeks gestation.¹ It is these children who are the ones who might survive an attempted abortion, because an increasing

¹ <https://www.dhs.wisconsin.gov/publications/45360-19.pdf>, p. 9.

number of children are viable even as early as 20 weeks. For example, a 2019 study has found that in Sweden, where neonatal care is more advanced than in the U.S., “For infants younger than 22 weeks, the survival rate has improved from 3.6 percent to 20 percent over the last decade, and for those born at 26 weeks, eight in 10 survive.”²

While the WCC supports this bill, there are ways in which it could be improved. First, since most late-term abortions are of children who are thought to have little chance of surviving more than a few days, weeks, or months, we believe that more information should be given to the birth parents regarding their options. They should be informed about advancements in maternal health and premature treatments and survival rates. Parents should have the option of utilizing perinatal hospice. This type of hospice cares for infants and their families when death may be imminent. Wisconsin is fortunate to have some excellent perinatal hospice programs. Too few parents, however, are aware of the support these programs provide.

Birth parents should also be informed that many families want to adopt children with Downs Syndrome and other serious, but not life-threatening, conditions.

Finally, women seeking abortions should be told that if their child is born alive, medical staff will provide the necessary care to preserve life. Women should also be told that they can choose to place their child with Safe Place for Newborns (<https://www.safeplacefornewborns.org>) should they choose not to parent their child.

SB 16 is humane and just. We urge you to support its passage. Thank you.

² Cited in <https://medicalxpress.com/news/2019-03-sweden-world-extremely-preterm-babies.html>. The 2019 study: <https://jamanetwork.com/journals/jama/article-abstract/2728924>



ProLife
LOVE. FOR LIFE. WI.

Testimony in Opposition to Senate Bill 16: requirements for children born alive following abortion or attempted abortion and providing a penalty
Senate Committee on Judiciary and Public Safety
By Matt Sande, Director of Legislation

September 9, 2021

Good afternoon Chairman Wanggaard and Committee members. My name is Matt Sande and I serve as director of legislation for Pro-Life Wisconsin. Thank you for this opportunity to express our opposition to Senate Bill (SB) 16 as currently written, legislation entitled the *Born Alive Protection Act*.

Pro-Life Wisconsin supports legislation that aims, through its requirements and penalties, to enhance current law protections for babies born alive following failed abortions. Under current law s. 990.001(17), babies born alive after an abortion attempt have the same legal status and rights as babies born naturally, or by induction or cesarean section. Under current law, intentionally killing that born alive baby can be punished as a Class A felony under Wisconsin's first-degree intentional homicide statute, s.940.01(1)(a).

Section 1 of Senate Bill 16 places new requirements on health care providers who are "present at the time an abortion or attempted abortion results in a child born alive." They must "(e)xercise the same degree of professional skill, care, and diligence to preserve the life and health of the child as a reasonably diligent and conscientious health care provider would render to any other child born alive at the same gestational age" and "ensure that the child born alive is immediately transported and admitted to a hospital." Anyone who violates this section is guilty of a Class H felony (a fine not to exceed \$10,000, imprisonment not to exceed six years, or both). There is a general immunity clause for the mother in Section 1 of the bill.

Section 2 of the bill creates a new section, s.940.01(1)(c), under Wisconsin's first-degree intentional homicide statute that specifically makes intentionally causing the death of a child born alive as a result of an abortion a Class A felony with a penalty of life imprisonment. We certainly support this just penalty.

The problem with Section 2 is that it applies to anyone but the mother. **It completely exempts from prosecution the mother of a child born alive after an abortion if she kills or conspires to kill her born alive child.** This erodes the equal protection that babies born alive following failed abortions enjoy under current law s.990.001(17). We want the *Born Alive Protection Act* to enhance current law, not undermine it.

The harmful impact of Senate Bill 16 can be easily remedied by either removing Section 2 entirely [since under current law 940.01(1)(a), we can already prosecute infanticide], or by removing the immunity clause (exemption) for the mother in Section 2. We prefer the latter option.

Along with my written testimony, I have handed to committee members a legal memorandum prepared by Personhood Alliance President Gualberto Garcia Jones for Pro-Life Wisconsin concerning last session's identical legislation, 2019 AB 179. We asked Mr. Jones what impact the exemption for the mother in Section 2 of the bill would have on the equal protection of born alive infants as codified in current law 990.001(17).

Current law 990.001(17) states that ... "whoever undergoes a live birth as the result of an abortion, as defined in s. 253.10 (2) (a), has the same legal status and legal rights as a human being at any point after the human being undergoes a live birth as the result of natural or induced labor or a cesarean section." The legal memorandum concludes that the bill "provides a new, unnecessary, and dangerous exemption from prosecution for mothers who kill their own children after an abortion" that "erode(s) the protections granted in 990.001(17)."

How so? Mr. Jones explains that

"Because Wisconsin law 990.001(17) recognizes that a child born alive after an attempted abortion has the same legal rights as a human being at any point after a natural birth, this exemption in (AB 179) is highly problematic. Section 990.001(17) requires equal protection for the child born alive after an abortion. While 990.001(17) is consistent with the requirement of (AB 179) that healthcare providers extend life-saving care to the born alive child, it is inconsistent with allowing a mother to avoid prosecution for intentionally killing her born alive child. In essence, (AB 179) violates the equal protection of the law that 990.001(17) requires for all children born alive."

Mr. Jones goes on to explain how the exemption for the mother in Section 2 has grave implications for holding accountable mothers who, following failed self-induced abortion attempts, kill their own born alive children. These cases of infanticide by a mother are known as maternal filicide.

"The definition of abortion used in (AB 179) is contained in 253.10(2)(a) and is broad enough to include self-abortion. As used in the bill, 'Abortion' means to terminate the pregnancy of a woman with intent other than to increase the probability of a live birth, to preserve the life or health of the infant after live birth or to remove a dead fetus. In many filicide cases the mother hides her pregnancy and gives birth with the intent to kill her child as soon as he or she is born alive. Often, the mother resorts to drugs or devices to induce early labor. These actions would constitute self-abortion and as such would create the fact pattern for the intended prosecution under Assembly Bill 179."

"Currently in Wisconsin, as in most other states, cases of maternal filicide - mothers who kill their infants - are treated as intentional homicides and they are prosecuted under the first-degree intentional homicide law 940.01(1)(a). However, with the creation of 940.01(1)(c) dealing specifically with the intentional killing of a born alive child after an abortion, it would be the clear legislative intent that this newer more specific statute be the favored statute used for prosecuting cases of filicide after abortion. Since mothers are exempted from prosecution, it would follow that according to (AB 179) the intent of the legislature in cases where a mother kills her own child after an abortion, would be to exempt her completely from prosecution for first degree intentional homicide."

Mr. Jones continues,

“Because basic rules of interpretation dictate that more specific statutes control over less specific ones and newer statutes over older ones, it is evident that cases of filicide after an abortion would be dealt with prosecution under the more specifically tailored and newer proposed section 940.01(1)(c) instead of the older more general 940.01(1)(a).”

Babies born alive following failed abortions must be fully protected as persons and given the same medical care as babies born naturally, or by induction or cesarean section. The specific requirements and penalties in the bill aim to ensure this. But **we fear the blanket immunity clause in Section 2 of the bill will undermine current law protections against maternal filicide - the killing of children by their own mothers.**

Although we acknowledge that a district attorney could use the current law homicide statute s.940.01(1)(a) to attempt prosecution of a mother who kills her born alive child following a failed abortion, it is more likely that a zealous criminal defense attorney would use the newly created immunity clause in Section 2 of the bill, 940.01(1)(c), to fully exculpate her. We want to preclude this dangerous possibility by amending out the immunity clause in Section 2.

The North Carolina *Born-Alive Abortion Survivors Protection Act*, 2021 Senate Bill (SB) 405, provides an example of a born-alive bill that does NOT provide immunity for the mother for intentionally killing her born alive child. The exemption for the mother in SB 405 does NOT extend to the murder section of the bill [Section 2.(b)] but only to the healthcare provider section [Section 2.(a)] **Let’s make clear that Wisconsin, like North Carolina, makes NO exceptions for the murder of born alive human beings.**

In a noble effort to uphold the dignity of human life and effectuate equal protection for born alive children by requiring equal care for them, this bill unfortunately provides *less* protection for born alive children by providing total immunity to the mothers who intentionally kill them. **An anti-infanticide bill inadvertently allows infanticide. This must be corrected.** It is our hope that an amendment removing the exemption in Section 2 will be introduced and approved by this committee.

Last session, Sen. Jacque introduced Senate Amendment (SA) 1 to AB 179, which removes the immunity clause in Section 2 of the *Born Alive Protection Act*. His amendment also clarifies the immunity clause in Section 1 of the bill. Section 1 places specific requirements/penalties on health care providers who are present at the time an abortion results in a child born alive. Rather than providing general immunity for the mother, the amendment states that if a parent or guardian of a child born alive does not give consent to the unlawful actions of a health care provider under the bill, the parent or guardian may not be held criminally or civilly liable.

Pro-Life Wisconsin strongly supported 2019 SA 1 to AB 179. If the intent of the legislature is to prevent parents (mothers and fathers) from being liable for the actions of healthcare providers who harm a child born alive after an abortion, then Sen. Jacque’s proposed simple amendment is clearly needed for SB 16. Thank you for your consideration, and I would be happy to answer any questions committee members may have for me.



State of Wisconsin
2019 - 2020 LEGISLATURE

LRBa0241/1
TJD:kjf

**SENATE AMENDMENT 1,
TO ASSEMBLY BILL 179**

May 23, 2019 – Offered by Senator JACQUE.

1 At the locations indicated, amend the bill as follows:

2 **1.** Page 3, line 8: delete “NO PENALTY FOR MOTHER” and substitute “LIABILITY OF
3 PARENT OR GUARDIAN”.

4 **2.** Page 3, line 10: delete lines 10 to 12 and substitute:

5 “(b) A parent or guardian of a child born alive may not be held criminally or
6 civilly liable for the actions of a health care provider to which the parent or guardian
7 did not give consent and that are in violation of sub. (2) or (3) or s. 940.01 (1) (c).”.

8 **3.** Page 5, line 16: delete the material beginning with “The mother” and ending
9 with “paragraph.” on line 19.

10

(END)



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Memorandum for Pro-Life Wisconsin on LRB-2675/1

From: Gualberto Garcia Jones, Esq.,
Personhood Alliance President
garcia@personhood.org

Date: April 17, 2019

Subject: LRB-2675/1: potential unintended consequences

As a member affiliate of Personhood Alliance, you asked me to clarify whether LRB-2675/1 could erode the rights of children born alive after an abortion.

Summary of LRB-2675/1

LRB-2675/1 contains two main provisions. LRB-2675/1 in s. 253.109 deals with healthcare providers and contains no exceptions which erode the rights of children born alive after an abortion and therefore is not relevant to this analysis. Under LRB-2675/1 in s. 940.01 (1) (c) whoever causes the death of the child born alive resulting from an abortion or attempted abortion as described under the bill is guilty of a class A felony. This section would be an additional subsection to the current first degree intentional homicide statute Section 940.01 (1) (a) and would deal specifically with killing a child born alive after an abortion, whereas the existing intentional homicide statute is applicable to all human beings after birth. LRB-2675/1 completely exempts from prosecution the mother of a child born alive after an abortion if she kills or conspires to kill her born alive child after an abortion.

While granting the mother immunity is understandable as a way of seeking the mother's cooperation in those cases where the prosecution is seeking to pursue charges against doctors who killed the born alive child, the complete exemption from prosecution for the mother is highly problematic in the case of infanticide after a self-abortion.

Unfortunately these gruesome cases of infanticide by a mother, properly called maternal filicide, are not rare. A study published by researchers at Brown University¹ found that every year there are roughly 500 cases of filicide - the killing of one's child - in the United States. Of these 500 annual cases, roughly one third were related to the killing of infants younger than one year. Researchers found that:

¹ <https://news.brown.edu/articles/2014/02/filicide>

“The final hypothetical motive category pertains mostly to those youngest of victims, ‘the unwanted child.’ This evolutionarily motivated idea, also informed by other studies, suggests that parents, particularly young mothers, may kill young children who are sick or for whom they feel they cannot provide care.”

The definition of abortion used in LRB-2675/1 is contained in 253.10(2)(a) and is broad enough to include self-abortion. As used in the bill, “Abortion” means to terminate the pregnancy of a woman with intent other than to increase the probability of a live birth, to preserve the life or health of the infant after live birth or to remove a dead fetus. In many filicide cases the mother hides her pregnancy and gives birth with the intent to kill her child as soon as he or she is born alive. Often, the mother resorts to drugs or devices to induce early labor. These actions would constitute self-abortion and as such would create the fact pattern for the intended prosecution under LRB-2675/1.

Currently in Wisconsin, as in most other states, cases of maternal filicide - mothers who kill their infants - are treated as intentional homicides and they are prosecuted under the first degree intentional homicide law 940.01(1)(a). However, with the creation of 940.01(1)(c) dealing specifically with the intentional killing of a born alive child after an abortion, it would be the clear legislative intent that this newer more specific statute be the favored statute used for prosecuting cases of filicide after abortion. Since mothers are exempted from prosecution, it would follow that according to LRB-2675/1 the intent of the legislature in cases where a mother kills her own child after an abortion, would be to exempt her completely from prosecution for first degree intentional homicide.

In an attempt to exempt the mother from prosecution in cases like those of abortionist Kermit Gosnell, LRB-2675/1 is in fact unwittingly opening the door for mothers who commit filicide to avoid prosecution.

While the Legislative Attorney’s analysis is correct that LRB-2675/1 addresses only “a particular action that constitutes first-degree intentional homicide” the fact of the matter is that the particular action described in the proposed new section 940.01(1)(c) is precisely the fact pattern of a self-abortion followed by the killing the born alive child.

The Legislative Attorney is also correct that LRB-2675/1 “does not affect any ability to prosecute a person for other actions that constitute first-degree intentional homicide” but again, we are not concerned with other actions, but with the specific case addressed by LRB-2675/1 of an abortion followed by the murder of the born alive child. Because basic rules of interpretation dictate that more specific statutes control over less specific ones and newer statutes over older ones, it is evident that cases of filicide after an abortion would be dealt with prosecution under the more specifically tailored and newer proposed section 940.01(1)(c) instead of the older more general 940.01(1)(a). Since LRB-2675/1 specifically exempts the mother from filicide after an abortion, it is reasonable that the legislative intent in addressing the issue directly and exempting the mother is to prevent the mother from being prosecuted for first degree intentional homicide.

Because Wisconsin law 990.001(17) recognizes that a child born alive after an attempted abortion has the same legal rights as a human being at any point after a natural birth, this exemption in LRB-2675/1 is highly problematic. Section 990.001(17) requires equal protection for the child born alive after an abortion. While 990.001(17) is consistent with the requirement of LRB-2675/1 that healthcare providers extend life saving care to the born alive child, it is inconsistent with allowing a mother to avoid prosecution for intentionally killing her born alive child. In essence, LRB-2675/1 violates the equal protection of the law that 990.001(17) requires for all children born alive.

In the fetal homicide case of *State v. Black* (1994) the Wisconsin Supreme Court held that “when two provisions are similar ... we must make every attempt to give effect to both by construing them together so as to be consistent with one another.” In the current case, the only possible way to construe 990.001(17) along with the exemption in LRB-2675/1 for mothers who kill their born alive children is to erode the protections granted in 990.001(17).

As the Legislative Attorney’s memo makes clear, infanticide is currently capable of prosecution under Wisconsin’s first-degree intentional homicide statute 940.01(1)(a) as applied to any person, including the mother of an unwanted child. While LRB-2675/1 does introduce a new and necessary penalty for healthcare providers who refuse to provide medical care to born alive children after an abortion, it also provides a new, unnecessary, and dangerous exemption from prosecution for mothers who kill their own children after an abortion. Because the definition of an abortion is broad enough to encompass a self-abortion, this exemption, which is specifically intended to apply to the killing of a child after an attempted abortion, could arguably be used to show that the legislature does not intend either 990.001(17) or the first degree intentional homicide statutes to apply to women who self-abort and then kill their own born alive children.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2021

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SENATE BILL 405

Short Title: Born-Alive Abortion Survivors Protection Act. (Public)

Sponsors: Senators Krawiec, Barnes, and Galey (Primary Sponsors).

Referred to: Rules and Operations of the Senate

March 31, 2021

A BILL TO BE ENTITLED

AN ACT ESTABLISHING THE BORN-ALIVE ABORTION SURVIVORS PROTECTION ACT.

The General Assembly of North Carolina enacts:

PART I. TITLE

SECTION 1. This act shall be known and may be cited as the "Born-Alive Abortion Survivors Protection Act."

PART II. BORN-ALIVE ABORTION SURVIVORS PROTECTION ACT

SECTION 2.(a) Chapter 90 of the General Statutes is amended by adding a new Article to read:

"Article 1M.

"Born-Alive Abortion Survivors Protection Act.

"§ 90-21.140. Definitions.

As used in this Article, the following definitions apply:

- (1) Abortion. – As defined in G.S. 90-21.81.
- (2) Attempt to perform an abortion. – As defined in G.S. 90-21.81.
- (3) Born alive. – With respect to a member of the species Homo sapiens, this term means the complete expulsion or extraction from his or her mother of that member, at any stage of development, who after such expulsion or extraction breathes or has a beating heart, pulsation of the umbilical cord, or definite movement of voluntary muscles, regardless of whether the umbilical cord has been cut, and regardless of whether the expulsion or extraction occurs as a result of natural or induced labor, cesarean section, or induced abortion.

"§ 90-21.141. Findings.

The General Assembly makes the following findings:

- (1) If an abortion results in the live birth of an infant, the infant is a legal person for all purposes under the laws of North Carolina and entitled to all the protections of such laws.
- (2) Any infant born alive after an abortion or within a hospital, clinic, or other facility has the same claim to the protection of the law that would arise for any newborn, or for any person who comes to a hospital, clinic, or other facility for screening and treatment or otherwise becomes a patient within its care.

"§ 90-21.142. Requirements for health care practitioners.



1 In the case of an abortion or an attempt to perform an abortion that results in a child born
2 alive, any health care practitioner present at the time the child is born alive shall do all of the
3 following:

4 (1) Exercise the same degree of professional skill, care, and diligence to preserve
5 the life and health of the child as a reasonably diligent and conscientious
6 health care practitioner would render to any other child born alive at the same
7 gestational age.

8 (2) Following the exercise of skill, care, and diligence required under subdivision
9 (1) of this section, ensure that the child born alive is immediately transported
10 and admitted to a hospital.

11 **"§ 90-21.143. Mandatory reporting of noncompliance.**

12 A health care practitioner or any employee of a hospital, a physician's office, or an abortion
13 clinic who has knowledge of a failure to comply with the requirements of G.S. 90-21.142 shall
14 immediately report the failure to comply to an appropriate State or federal law enforcement
15 agency, or both.

16 **"§ 90-21.144. Bar to prosecution of mothers of infants born alive.**

17 The mother of a child born alive may not be prosecuted for a violation of, or attempt to or
18 conspiracy to commit a violation of, G.S. 90-21.142 or G.S. 90-21.143 involving the child who
19 was born alive.

20 **"§ 90-21.145. Penalties.**

21 (a) In General. – Except as provided in subsection (b) of this section, unless the conduct
22 is covered under some other provision of law providing greater punishment, a person who
23 violates G.S. 90-21.142 or G.S. 90-21.143 is guilty of a Class 1 misdemeanor, which shall
24 include a fine of not more than two hundred fifty thousand dollars (\$250,000).

25 (b) Unlawful Killing of Child Born Alive. – Any person who intentionally performs or
26 attempts to perform an overt act that kills a child born alive shall be punished as under
27 G.S. 14-17(c) for murder.

28 **"§ 90-21.146. Civil remedies; attorneys' fees.**

29 (a) Civil Remedies. – If a child is born alive and there is a violation of this Article, a
30 claim for damages against any person who has violated a provision of this Article may be sought
31 by the woman upon whom an abortion was performed or attempted in violation of this Article.
32 A claim for damages may include any one or more of the following:

33 (1) Objectively verifiable money damage for all injuries, psychological and
34 physical, occasioned by the violation of this Article.

35 (2) Statutory damages equal to three times the cost of the abortion or attempted
36 abortion.

37 (3) Punitive damages pursuant to Chapter 1D of the General Statutes.

38 (b) Attorneys' Fees. – If judgment is rendered in favor of the plaintiff in any action
39 authorized under this section, the court shall also tax as part of the costs reasonable attorneys'
40 fees in favor of the plaintiff against the defendant. If judgment is rendered in favor of the
41 defendant and the court finds that the plaintiff's suit was frivolous or brought in bad faith, then
42 the court shall tax as part of the costs reasonable attorneys' fees in favor of the defendant against
43 the plaintiff."

44 **SECTION 2.(b)** G.S. 14-17(c) reads as rewritten:

45 "(c) For the purposes of this section, it shall constitute murder where a child is born alive
46 but (i) dies as a result of injuries inflicted prior to the child being born alive. ~~alive~~ or (ii) dies as
47 a result of an intentional, overt act performed after the child is born alive. The degree of murder
48 shall be determined as described in subsections (a) and (b) of this section."

49 **SECTION 2.(c)** This section becomes effective September 1, 2021, and applies to
50 offenses committed on or after that date.

1 **PART III. SAVINGS CLAUSE**

2 **SECTION 3.** Prosecutions for offenses committed before the effective date of this
3 act are not abated or affected by this act, and the statutes that would be applicable but for this act
4 remain applicable to those prosecutions.

5
6 **PART IV. EFFECTIVE DATE**

7 **SECTION 4.** Except as otherwise provided, this act becomes effective September 1,
8 2021.



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TESTIMONY ON SENATE BILL 16
SENATE COMMITTEE ON JUDICIARY & PUBLIC SAFETY
THURSDAY, SEPTEMBER 9, 2021
JULAIN K. APPLING, PRESIDENT

Thank you, Chairman Wanggaard and committee members, for holding this hearing on Senate Bill 16. Wisconsin Family Action supports this bill with one reservation. Senate Bill 16, the "Born -Alive Protection Act," at a minimum clarifies the standard of medical care expected for a baby who survives an abortion or an attempted abortion, a clarification that highlights that in Wisconsin we will rightly value and protect all babies born alive. Some have indicated existing law is sufficient to ensure these babies are given appropriate medical treatment; however, the law nowhere specifically addresses babies who survive an abortion or an attempted abortion. This bill does that and specifies the standard of care, which would include transportation to and admittance in a hospital. We also believe it is important that our law specifies that it is murder when a child born alive dies because he or she is intentionally neglected. Requiring those who know about such neglect to report it is also a critical addition to our laws.

We are thankful Senator Roth has authored this bill and that others have joined him in support of it. We sincerely wish that we could give a full-throated endorsement. Unfortunately, we cannot. Our concern has to do with the last portion of Section 2 of the bill. We do not believe it is appropriate to give anyone immunity in a situation where a child born alive is intentionally killed, even if that child is born alive as a result of an abortion or an attempted abortion. This is a very different situation from providing the mother immunity from prosecution for having the abortion.

A child who somehow manages to survive an abortion or attempted abortion is deemed by the law to have been "born alive." Current state statutes (990.001(17)) are clear that a born-alive child after an abortion or attempted abortion has "the same legal status and legal rights as a human being at any point after the human being undergoes a live birth as the result of natural or induced labor or a cesarean section." To allow anyone, including the mother, to kill such a child with impunity would be in violation of existing law. In essence this provision in the bill regrettably allows for infanticide while rightly seeking to prevent infanticide.

While we support the intent of the bill and the vast majority of the provisions, we find this portion of Section 2 very problematic; and urge the authors to remove this provision.

Thank you for your thoughtful and careful attention to our position on this bill.

“An Act to create 253.109 and 940.01 (1) (c) of the statutes; Relating to: requirements for children born alive following abortion or attempted abortion and providing a penalty.”

SB 16

Wisconsin Judiciary and Public Safety Committee

Melissa Ohden, MSW

Director, The Abortion Survivors Network

4810 NE Vivion Rd #25531 Kansas City MO 64119

Senate Judiciary and Public Safety Committee,

Thank you for hearing SB 16, "An Act to create 253.109 and 940.01 (1) (c) of the statutes; Relating to: requirements for children born alive following abortion or attempted abortion and providing a penalty."

This bill is vitally important because children **do** survive abortions and the Born Alive Infants Protection Act signed into law by President Bush in 2002 was a definitions bill that provided no consequence for failing to provide medical care to survivors (1).

There's limited data on the incidence of children surviving abortions, but in the words of Dr. Willard Cates, former head of the CDC's Abortion Surveillance group, (quoted in the Philadelphia Inquirer of August 2, 1981): "(Live births) are little known because organized medicine, from fear of public clamor and legal action, treats them more as an embarrassment to be hushed up than a problem to be solved. It's like turning yourself in to the IRS for an audit. ... The tendency is not to report because there are only negative incentives." (2)

However, data from the CDC about the incidence of infants surviving abortion gives us an idea of the depth of the issue. As Arina Grossu, MA, formerly of the Family Research Council, testified before Congress, according to the CDC, "between the years 2003 and 2014 there were somewhere between 376 and 588 infant deaths under the medical code P96.4 which keeps track of babies born alive after a "termination of pregnancy" (2).

The CDC concluded that of the 588 babies, 143 were "definitively" born alive after an attempted abortion and they lived from minutes to one or more days, with 48% of the babies living between one to four hours.

It's important to note that this is an underestimate, because these are just reported numbers from hospitals, **not** abortion facilities (3). Dr. Kermit Gosnell is only one abortionist who was responsible for "hundreds of snippings" of born-alive babies, yet he did not report even one. His numbers alone exceed the "definitive" numbers of the CDC.

Currently, there are only nine states that report out the incidence of born alive infants following abortion: Arizona, Florida, Indiana, Michigan, Minnesota, Oklahoma, Texas, Arkansas, and South Dakota. (4) (5)

1 U.S. Congress, House, Born-Alive Infants Protection Act of 2002, HR 2175, 107th Cong., introduced in House June 14, 2001, <https://www.congress.gov/107/plaws/publ207/PLAW-107publ207.pdf>.

2 L. Jeffries & R. Edmonds, "The Dreaded Complication," Philadelphia Inquirer, Aug. 2, 1981.

3 "Mortality Records with Mention of International Classification of Diseases-10 code P96.4 (Termination of Pregnancy): United States, 2003-2014," Centers for Disease Control and Prevention, accessed May 15, 2019, https://www.cdc.gov/nchs/health_policy/mortality-records-mentioning-termination-of-pregnancy.htm.

4 Patrina Mosley, Former Director of Life, Culture and Women's Advocacy Family Research Council, Hearing of the U.S. Senate Committee of the Judiciary. "The Infant Patient: Ensuring Appropriate Medical Care for Children Born Alive." Date: February 11, 2020. Accessed January 25, 2021.

5 Family Research Council, Born-Alive Protections, 2021. Accessed September 3, 2021: <https://downloads.frc.org/EF/EF21G28.pdf>

As you can see in the spreadsheet below, in five of those nine states, there were 108 abortion survivors reported in a 12-year-period.

Aborted Babies Born Alive selected states

	Arizona	Florida	Michigan	Minnesota	Texas	STATES TTL
2020		4				37
2019	15	2		3	6	27
2018	12	6		3	4	12
2017	10	11		3	0	19
2016				5	1	13
2015		4	1	5	2	
2014			0			
2013			2			
2012			1			
2011			5			
2010			1			
2009			1			
2008			1			
Total	37	27	12	19	13	108

Live Action News review of state abortion reports accessed 12/24/2020

States not included in this spreadsheet have reported the following numbers, as was presented in Congressional testimony by Patrina Mosley, MA, in 2019:

- Indiana: 27
- Arkansas: began reporting in 2019
- Oklahoma: **Oklahoma only reports the instances of failed termination, meaning after the abortion attempt, the pregnancy was still viable. Because this reporting is so vague, the actual number of babies born alive as a result of a failed abortion is not clear in the reports. (4)

It's important to note that states like Texas just began to report these statistics in recent years. In Texas' first reporting year, 2017, they reported six abortion survivors. You can read this in the Induced Termination of Pregnancy report [here](#), under "2019 Complications of Induced Terminations of Pregnancy." (6)

4 Patrina Mosley, Former Director of Life, Culture and Women's Advocacy Family Research Council, Hearing of the U.S. Senate Committee of the Judiciary. "The Infant Patient: Ensuring Appropriate Medical Care for Children Born Alive." Date: February 11, 2020. Accessed January 25, 2021.

6 "Induced Termination of Pregnancy Statistics," State of Texas, Health and Human Services, accessed January 25, 2021), <https://hhs.texas.gov/about-hhs/records-statistics/data-statistics/itop-statistics>

Historically, there have been at least two studies completed on the incidence of failed abortions and surviving children, as reflected in the [Dreaded Complication Series](#) by Liz Jeffries and Rick Edmonds, published in the Philadelphia Inquirer, in 1981. One study found life in about 10% of the prostaglandin abortions performed at a Hartford, CT, hospital. The other study found 38 survivors in a sample of 150,000 abortion (7).

Even Dr. Cates, CDC Abortion surveillance, stated that there are estimated to be “400-500 live births annually” as a result of failed abortion. (ibid) He is also quoted as saying, “No one is so naïve as to think there is reliable voluntary reporting of live births....” (ibid)

As if the number of children surviving abortion wasn't enough, as if the lack of reporting them or knowing the outcome for them after their survival wasn't enough, as if the reality of the lack of consequence for failing to provide timely medical care to survivors or even killing them post-birth wasn't enough to convict me of the importance of this bill, my own story most certainly does.

I am an abortion survivor, myself. In August of 1977, my birthmother, as a 19-year-old college student, had a saline infusion abortion forced upon her against her will by her mother, my maternal grandmother.

The saline infusion abortion was the most common abortion procedure performed at the time, which involved injecting a toxic salt solution into the amniotic fluid surrounding me in the womb. The intent of that toxic salt solution was to poison and scald me to death. Typically, that procedure lasts about 72 hours—the child soaks in that toxic solution until their life is effectively ended by it, and then premature labor is induced, expelling the deceased child from the womb. My medical records indicate that I didn't soak in that saline solution for just three days, but five, while they tried numerous times to induce my birthmother's labor.

No matter what people believe about abortion in our society, most people agree that what happened to me was horrific. But I also hope that people recognize that what happened to my birth mother during those five days was also horrific. Abortion ends the life of its primary victim — (most of the time), and dramatically impacts the life of the secondary victim — the woman.

Her labor was finally successfully induced on the fifth day, and I was delivered in the final step of that abortion procedure at St. Luke's Hospital in Sioux City, Iowa. However, instead of being delivered as a successful abortion—a deceased child, I was miraculously born alive.

My medical records actually state “a saline infusion for an abortion was done but was unsuccessful.” They also list out a complication of pregnancy as a “saline infusion.” (8)

I weighed a little less than three pounds, which indicated to the medical professionals that my birth mother was much further along in her pregnancy than the 18-20 weeks pregnant that was estimated in medical records. In fact, a neonatologist remarked that he estimated me to be about 31 weeks gestation. (8)

7 L. Jeffries & R. Edmonds, "The Dreaded Complication," Philadelphia Inquirer, Aug. 2, 1981.

8 Melissa (Cross) Ohden, scan of birth record, St. Luke's Hospital, Sioux City, Iowa. First accessed, May 2007.

Whether the abortionist simply estimated wrong the gestation based on my birthmother's self-reporting, or he was lying in order to proceed with the abortion, we'll probably never know. What we do know is that when I was delivered alive that day, there was an argument about whether I would be provided medical care. My adoptive parents were told that I was "laid aside," and that nurses intervened to save my life.

I have now been in contact with a nurse who was working that day in the NICU at St. Luke's, who confirmed that a "tall, blonde nurse" rushed me in that day, unwilling to follow my grandmother's orders to leave me to die. Dramatic, yes, I know. But I am far from alone. I never understood how something like this could happen in our world until I began to study reports like The Dreaded Complication series, where story after story is shared of survivors being left to die and yes, even in some circumstances, killed.

I am one of the lucky ones-to not only survive an abortion, but to have someone fight to save me. We know this is not always the case. Look up the [testimony](#) of nurse Jill Stanek, in case you haven't heard of her experience, although there are so many more stories like hers. (9)

In fact, I know I'm not the only survivor from St. Luke's Hospital. In 2013, I met a former nurse in Omaha, Nebraska, at an event I was speaking at. Overcome with emotion and pleading for my forgiveness, she shared that she was working there in 1975 when a little boy survived a saline infusion abortion like I did. In her words, she "followed [her] superior's orders," and "placed him in a bucket of formaldehyde, in the utility closet, to die, and be picked up later as medical waste." Sadly, she told me this was not an isolated or unknown incident. The fact that I was ultimately provided medical care doesn't negate the fact that there was initially an argument about whether that should or would happen. And it surely doesn't negate the fact that other children have faced a far different fate than I did.

Passage of SB 16 will ensure that the fate of survivors like me or the 403 that we've connected with through The Abortion Survivors Network, aren't left in the hands of their abortionist, (who historically have called survivors a "dreaded complication," which I believe speaks volumes about how they proceed with care for us) or the "luck of the draw" with which medical professional is working that day.

Thank you for giving SB 16 every consideration.

Sincerely,

Melissa Ohden, MSW

The Abortion Survivors Network