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# INTERNATIONAL STANDARDS ABORTION LAW

Model Legislation & Policy Guide  
*For the 2017 Legislative Year*



**We *Need* a Law**

*because all human beings  
have human rights*



# INTRODUCTION

In December 2016 a woman from Montreal, QC requested an abortion. She was 30 weeks pregnant. After two Montreal area hospitals refused to abort her child this late in the pregnancy she went to a third hospital which granted her request.

This story is not as rare as some make it out to be. The Abortion Rights Coalition of Canada estimates that there were over 104,000 abortions in 2014<sup>1</sup>. And the Canadian Institute of Health Information reported that of the abortions for which we know the gestational age (some places refuse to report), 2.4% are done after 20 weeks<sup>2</sup>. In Canada there are over 2,500 abortions performed every year after 20 weeks gestation.

Canada is way out of line with our international counterparts when it comes to protecting pre-born human rights. A few examples:

France has an abortion law which protects pre-born children after 12 weeks' gestation. The only exceptions are if the "pregnancy poses a grave danger to the woman's health or there is a strong probability that the expected child will suffer from a particularly severe illness recognized as incurable."

Spain has a law that bans abortion after 12 weeks' gestation. In cases of foetal impairment there is an exception, but only up to twenty-two weeks. If that is the reason, then two specialists, other than the doctor performing the abortion, must certify that the child would suffer from severe physical or mental defects.

Germany allows abortions on request until 12 weeks provided the woman receives proper counselling three days before the procedure. The state-regulated counselling is required to inform the woman that the pre-born have a right to life and to try to convince her to continue her pregnancy.

We have drafted model legislation prohibiting abortion after 13 weeks' gestation. This legislation is modeled on the German Criminal Code and its restrictions are comparable with those of many European countries.

It has been nearly 30 years since the Supreme Court of Canada struck down Canada's abortion legislation. Madam Justice Bertha Wilson, who served on the bench at the time and rendered the most liberal opinion of the justices in favour of a legalized abortion, advocated an approach that would balance abortion access with the "state's interest in protecting the unborn."

The "Pre-born Protection Act" will bring Canada into line with every other democracy in the world by protecting pre-born human children in the later stages of pregnancy.

For more information please contact WNAL at 1-866-410-9625 or [info@weneedalaw.ca](mailto:info@weneedalaw.ca).

Mike Schouten  
Director, WeNeedALAW.ca

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<sup>1</sup> <http://www.arcc-cdac.ca/backgrounders/statistics-abortion-in-canada.pdf>

<sup>2</sup> <https://www.cihi.ca/en/types-of-care/hospital-care/induced-abortions-reported-in-canada-in-2014>

# INTERNATIONAL STANDARDS ABORTION LAW

This Bill repeals and replaces section 287 of the *Criminal Code* in order to bring Canadian law into line with international standards and our obligations under the United Nations Declaration of the Rights of the Child (1959) and the Convention on the Rights of the Child (1990). It is largely based on the German Criminal Code and its limits on the intentional termination of pregnancy are comparable with the limits enforced by many other European countries.

Some of the key changes compared to the current (constitutionally invalid) section 287 are:

1. changing the term “procure a miscarriage” to “terminate a pregnancy”;
2. decreasing the penalties;
3. adding a section for serious cases where abortions are performed recklessly or without consent;
4. removing all references to the Therapeutic Abortion Committees (TACs) and to approved hospitals;
5. making the health exception allowing a termination more stringent (s. 6(c));
6. adding a 13-week gestational limit (with an exception for extreme trauma or death);
7. adding a 48-hour independent counseling requirement;
8. adding a requirement to determine no coercion as best as possible;
9. adding a sexual assault exception (up to 13 weeks);
10. making reporting to the Minister of Health mandatory (if only “from time to time”);
11. adding definitions of termination of pregnancy and unborn child;
12. adding breach of medical duties subsection;

**What section 287 would look like in the *Criminal Code*, if all proposed amendments made:**

*Terminating pregnancy*

**287.** (1) Every one who, with intent to terminate the pregnancy of a female person, uses any means for the purpose of carrying out his intention is guilty of an indictable offence and liable to imprisonment for a term not exceeding five years.

(2) An act, the effect of which occurs before the implantation of the fertilized egg in the uterus, shall not qualify as termination of pregnancy within the meaning of this section.

*Serious cases*

(3) Every person who commits an offence under subsection (1) and

(a) acts against the will of the pregnant woman; or

(b) recklessly causes danger of death or serious harm to the pregnant woman

is guilty of an indictable offence and liable to imprisonment for life and to a minimum punishment of imprisonment for a term of five years.

*Woman terminating her own pregnancy*

(4) Every female person who, being pregnant, with intent to terminate her own pregnancy, uses any means or permits any means to be used for the purpose of carrying out her intention is guilty of an offence punishable on summary conviction.

*Definition of “means”*

(5) In this section, “means” includes

(a) the administration of a drug or other noxious thing;

(b) the use of an instrument; and

(c) manipulation of any kind.

*Exceptions*

(6) Subsections (1) and (4) do not apply to

(a) a qualified medical practitioner, who in good faith uses any means for the purpose of carrying out his intention to terminate the pregnancy of a female person, or

(b) a female person who, being pregnant, permits a qualified medical practitioner to use any means for the purpose of carrying out her intention to terminate her own pregnancy,

if, before the use of those means,

(c) the qualified medical practitioner has, by certificate in writing, stated that in his opinion, having considered the present and future living conditions of the pregnant woman, the termination of the pregnancy is advisable

(i) to save the life of a woman whose life is endangered by a physical disorder, physical illness, or physical injury, including a physical condition caused by or arising from the pregnancy itself; or

(ii) to prevent severe pathological physical morbidity of the woman, and

(d) has determined that not more than thirteen weeks have elapsed since the first day of the woman's last menstrual period, and

(e) has determined that the pregnant woman had independent counseling at least 48 hours before the operation pursuant to subsection (12), and

(f) has determined with reasonable certainty that the pregnant woman is not being coerced to have the abortion.

*Idem*

(6.1) The limitation in paragraph (6)(e) does not apply in the case of a medical intervention pursuant to paragraph 6(c) that, in the physician's best medical judgment, is immediately necessary.

*Exceptions for unlawful acts*

(7) Subsections (1) and (4) do not apply in relation to a termination of pregnancy performed by a physician with the consent of the pregnant woman if, according to the *bona fide* medical opinion of a qualified medical practitioner;

(a) an unlawful act has been committed against the pregnant woman under Sections 151-155, 265 or 271-273 of the *Criminal Code*;

(b) the pregnancy resulted from the unlawful act; and

(c) not more than thirteen weeks have elapsed since the first day of the woman's last menstrual period.

*Information requirement*

(8) The Minister of Health of a province shall by order annually require a medical practitioner who, in that province, has terminated the pregnancy of any female person named in a certificate described in paragraph (6)(c), to furnish him with a copy of that certificate, together with information described in paragraph (6)(c)-(f) and such other information relating to the termination of the pregnancy as he may require.

*Definitions*

(9) For the purposes of this section,

"Minister of Health" « *ministre de la Santé* »

"Minister of Health" means

- (a) in the Provinces of Alberta, British Columbia, Manitoba, New Brunswick, Saskatchewan and Nunavut, the Minister of Health,
- (b) in the Province of Ontario, the Minister of Health and Long-Term Care,
- (c) in the Province of Quebec, the Yukon and the Northwest Territories, the Minister of Health and Social Services,
- (d) in the Province of Newfoundland & Labrador, the Minister of Health and Community Services, and
- (e) in the Provinces of Nova Scotia and Prince Edward Island, the Minister of Health and Wellness.

“qualified medical practitioner” « *médecin qualifié* »

“qualified medical practitioner” means a person entitled to engage in the practice of medicine under the laws of the province in which the termination of pregnancy occurs;

“termination of pregnancy” « *interruption de grossesse* »

“termination of pregnancy” means the act of using or prescribing any instrument, medicine, drug or any other substance, device or means with the intent to end the clinically diagnosable pregnancy of a female person with knowledge that the termination by those means will cause the death of the unborn child.

“unborn child” « *enfant à naître* »

“unborn child” means the offspring of human beings from conception until birth.

*Requirement of consent not affected*

(10) Nothing in subsection (6) shall be construed as making unnecessary the obtaining of any authorization or consent that is or may be required, otherwise than under this Act, before any means are used for the purpose of carrying out an intention to terminate the pregnancy of a female person.

*Breach of medical duties*

(11) Whoever terminates a pregnancy:

(a) without having given the woman an opportunity to explain the reasons for her request for a termination of pregnancy;

(b) without having given the pregnant woman medical advice about the significance of the intervention, especially about the order of events, after-effects, risks, and possible physical or psychological consequences;

(c) without having determined, on the basis of a medical examination, the length of the pregnancy pursuant to paragraph (6)(d); or

(d) without obtaining a certificate pursuant to paragraph (6)(c) and (e),

is guilty of an indictable offence and liable to imprisonment for a term not exceeding two years if the act is not punishable under subsections (1) or (3).

*Idem*

(11.1) The pregnant woman shall not be punishable under subsection (11).

*Counseling of pregnant women*

(12) The counseling referred to in paragraph 6(e) must take place through a counselor, social worker or psychologist licensed by the province in which the procedure takes place.

*Idem*

(13) After the conclusion of the counseling referred to in subsection (12), the counseling agent must issue the pregnant woman a certificate including the date of the last counseling session and the name of the pregnant woman.

*Idem*

(14) The physician who performs the termination of pregnancy and his or her staff are excluded from being a counselor for the purpose of paragraph 6(e).

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