

Legal Analysis of Abortion Restrictions in Ohio

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Abortion Restriction Type: Mandatory Waiting Period

General Description of Restriction: Mandatory waiting periods are delays that require a person seeking an abortion to first make an appointment for an abortion and then wait an additional 24-72 hours before having the procedure. During this period, individuals may be provided with biased information regarding the procedure, its risks, and its alternatives.

Mandatory waiting periods place a huge barrier for those seeking an abortion. Based on one proximity to the nearest abortion clinic, someone seeking an abortion may have a significant travel burden or be required to pay for accommodations to stay near the clinic during the waiting period. For many young people, the waiting period may pose logistical challenges, requiring additional travel, time off work, childcare, and accommodation expenses.

Relevant Ohio Law: ORC 2919.12 mandates a 24-hour waiting period between the counseling session and the abortion procedure. During the counseling session, the abortion seeker is provided information on the development of the fetus, the medical procedure, and possible emotional responses.

States with Constitutional Protections for Abortion and Mandatory Waiting Periods

Location	Mandatory Waiting Period	Length of Waiting Period between Counseling and Procedure		In-Person Counseling Necessitates Two Trips to Clinic
Florida	Yes	24 hours	Yes	
Kansas	Yes	24 hours	No	
Michigan	Yes	24 hours	No	
Ohio	Yes	24 hours	Yes	

Based on upheld or unchallenged state legislation as of January 2024.

Pre-Dobbs Decision: Waiting Periods Where Abortion Rights in State Constitution

Florida – The Supreme Court of Florida applied strict scrutiny in finding the fundamental right to privacy implicated by the imposition of a waiting period to obtain an abortion. The Florida constitution provides for the right to "be let alone and free from governmental intrusion into [one's] private life." (Fla. Const. art. I, § 23). In April 2022, Judge Dempsey upheld the state law requiring a pregnant person to take two trips to a medical provider, one to a referring physician, and one to an abortion provider at least twenty-four hours later. Judge Dempsey noted that other medical procedures have similar waiting periods and other important decisions—getting married, getting divorced, and buying a gun—have longer waiting periods. According to Judge Dempsey, “Twenty-four hours is the minimum time needed to sleep on such an important decision.”

Kansas – The Kansas supreme court found that Section 1 of the state constitution protects personal autonomy, which it interpreted to include “our ability to control our own bodies, to assert bodily integrity, and to exercise self-determination.” ([Hodes & Nauser, MDS, P.A. v. Schmidt, 309 Kan. 610, 440 P.3d 461 \(2019\)](#)) The Court relies on the finding by Iowa Supreme Court that waiting periods do not change decisions on whether to have an abortion and agreed that such waiting periods are not narrowly tailored to the state’s compelling interest in promoting potential life and helping people make informed decisions about abortion.

Post-Dobbs Decisions on Waiting Periods Based on State Constitution Grounds:

Iowa – In upholding the state’s fetal heartbeat bill, the Iowa Supreme Court declined to strike the state’s 24-hour waiting period law. ([Planned Parenthood of the Heartland, Inc. v. Reynolds, 975 N.W.2d 710 \(Iowa 2022\)](#)). In its decision, the Court mentioned the state’s potential constitutional amendment and recommended giving Iowans “the time and voice to go through the full amendment process before rushing to overrule (the mandatory delay law). In 2018, the Court previously invalidated a 72-hour waiting period as unconstitutional.

Minnesota – A district court struck down Minnesota’s Mandatory Delay Law, requiring a 24-hour waiting period between mandated counseling and the abortion procedure. ([Doe v. State, 2022 Minn. Dist. LEXIS 9338](#)) Applying strict scrutiny, the law was invalidated because it was not narrowly tailored although it infringed on a pregnant woman's fundamental right to privacy. The court notes that the additional delay increases, rather than decreases maternal health risks, and does not substantially advance informed consent—which is already a requirement. The Mandatory Delay Law was also determined to be overly broad in that it applied to all pregnant people, regardless of degree of certainty.

South Carolina – The South Carolina Supreme Court has determined that its state constitution holds a right to privacy that extends to the decision to have an abortion. ([Planned Parenthood S. Atl. v. State, 438 S.C. 188, 882 S.E.2d 770 \(2023\)](#)) A mandatory waiting period was determined to be unreasonable in light of the state’s 6-week ban on abortion because of the delay caused by multiple appointments

Recommendation:

The Ohio Reproductive Care Act (Ohio HB 343) eliminates mandatory waiting periods and revises related portions of ORC 2919. Much like Michigan’s Reproductive Health Act, Ohio HB 343 undoes a number of harmful abortion restrictions that remain despite the passage of Issue 1 in November 2023. It is critically important that Ohio legislators take measures to mitigate the financial and logistical burdens associated with waiting periods.