Approved 4-2-90
Date

MINUTES OF THE Senate COMMITTEE ON Federal and State Affairs.

The meeting was called to order by Senator Edward F. Reilly, Jr. at
Chairperson

11:10 a.m./~~p.m.~~ on March 27, 1990 in room 254-E of the Capitol.

All members were present ~~except~~:

Committee staff present:

Mary Galligan, Legislative Research
Deanna Willard, Committee Secretary

Conferees appearing before the committee:

Scott Morgan, Attorney, Governor's Office
Beth Powers, Kansas Choice Alliance
Peggy Jarman, Women's Health Care Services

Hearing on: SB 778 - Concerning abortion; defining the crime of criminal abortion

Scott Morgan, Governor's office, said the spirit of SB 627 and SB 778 is the same. In reality, there is no law which prohibits abortion on demand up to delivery. The bill sets 22 weeks--the policy of the KU Med Center--as the cutoff for allowing abortions, except in cases of rape or incest, genetic defect, infectious disease or severe developmental anomaly of the fetus, or when necessary for the health of the mother. He said these provisions take care of constitutional concerns. He felt the Governor would not support changing "health" to "life" of the mother. He presented a balloon of SB 627, which he said is a combining of SB 778 and SB 627. (Attachment 1)

There was concern that genetic defect is not defined in statute though this is a criminal statute. Also, concern was expressed that the term "health" is too broad, but the Governor's staff said he doesn't wish to use a laundry list but rather to leave it to the discretion of the physician. There are many current methods which determine genetic defect.

Beth Powers, Kansas Choice Alliance, spoke against SB 778 because she believes 22 weeks is arbitrary. (Attachment 2)

Peggy Jarman, Women's Health Care Service, discussed policies at their clinic and said stopping abortions at 22 weeks will impact our youngest teens. (Attachment 3) She also distributed material entitled, "Public Health Policy Implications of Abortion." (Attachment 4)

Jodie Van Meter, NOW, gave written testimony expressing opposition to the bill. (Attachment 5)

Senator Strick requested a bill introduction pertaining to riverboat gambling. (Attachment 6)

A motion was made by Senator Vidricksen and seconded by Senator Anderson to introduce the bill. The motion carried.

The meeting was adjourned at 12:00 noon.

I

SENATE BILL No. 627

By Senator Winter

2-7

AN ACT concerning abortion; amending K.S.A. 21-3407 and 65-444 and repealing the existing sections.

Be it enacted by the Legislature of the State of Kansas:

Section 1. K.S.A. 21-3407 is hereby amended to read as follows: 21-3407. (1) Criminal abortion is the ~~purposeful and unjustifiable termination of the pregnancy of any female other than by a live birth~~, *except as provided by section 4*.

(2) A person licensed to practice medicine and surgery is justified in terminating a pregnancy if he believes there is substantial risk that a continuance of the pregnancy would impair the physical or mental health of the mother or that the child would be born with physical or mental defect, or that the pregnancy resulted from rape, incest, or other felonious intercourse; and either:

(a) Three persons licensed to practice medicine and surgery, one of whom may be the person performing the abortion, have certified in writing their belief in the justifying circumstances, and have filed such certificate prior to the abortion in the hospital licensed by the state board of health and accredited by the joint commission on accreditation of hospitals where it is to be performed, or in such other place as may be designated by law; or

(b) An emergency exists which requires that such abortion be performed immediately in order to preserve the life of the mother.

(3) For the purpose of this section pregnancy means that condition of a female from the date of conception to the birth of her child.

(4) For the purpose of subsection (2) of this section all illicit intercourse with a female under the age of sixteen (16) years shall be deemed felonious.

~~(3)~~ Criminal abortion is a class D felony.

Sec. 2. K.S.A. 65-444 is hereby amended to read as follows: 65-444. No hospital, hospital administrator or governing board shall be

termination of human pregnancy after viability, except as provided in section 4, with an intention other than to produce a live birth or to remove a dead embryo or fetus.

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required to permit the termination of human pregnancies within its institution and the refusal to permit such procedures shall not be grounds for civil liability to any person. A hospital may establish criteria and procedures under which pregnancies may be terminated within its institution, in addition to those which may be prescribed by licensing, regulating or accrediting agencies: *Provided*, No pregnancy shall be purposely terminated until the opinions of three (3) duly licensed physicians attesting to the necessity of such termination have been recorded in writing in the permanent records of the hospital, ~~except in an emergency as defined in section 21-3407 (2) (b) of the Kansas criminal code.~~

New Sec. 3. For the purposes of this act:

(a) "Physician" means an individual licensed in this state to practice medicine and surgery; and

(b) "viability" means the stage of gestation when, in the medical judgment of the attending physician, the fetus is capable of sustained survival outside the uterus.

New Sec. 4. ~~Abortion is an unlawful act in this state unless~~ performed by a physician before viability or, if performed after viability (1) is necessary to preserve the woman's health; ~~or (2) the fetus is afflicted with a severe abnormality as identified through reliable diagnostic procedures.~~

Criminal abortion does not include an abortion ...

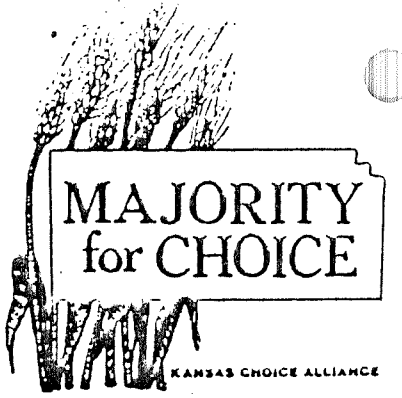
(2) there is significant evidence that the fetus is compromised by genetic defect, infectious disease or sever developmental anomaly; or (3) the pregnacy resulted from rape or incest.

New Sec. 5. This act is enforceable by the attorney general of this state in an action for injunctive relief or civil penalties, or both. No court shall assess civil penalties under this act unless the attorney general proves by clear and convincing evidence that the defendant acted knowingly and intentionally with regard to every element of the violation charged. Moreover, it shall be a defense under this act that the defendant exercised a good faith judgment that the defendant's actions were in compliance with this act. Civil penalties shall not exceed $500 for each violation of this act.

Sec. 6. K.S.A. 21-3407 and 65-444 are hereby repealed.

Sec. 7. This act shall take effect and be in force from and after its publication in the statute book.

Sec. 8. If any provisions of this act or the application thereof to any person or circumstances is held invalid , the invalidity does not affect other provisions or applications of this act which can be given effect without the invalid provisions or application. To this end the provisions of this act are severable.



For: Senate Federal and State Affairs Committee

RE: SB778

From: Beth Powers
Kansas Choice Alliance

Date: March 27, 1990

AAUW

ACLU OF KANSAS AND WESTERN MISSOURI

B'NAI B'RITH WOMEN

CHOICE COALITION OF GREATER KC

COMPREHENSIVE HEALTH FOR WOMEN

JEWISH COMMUNITY RELATIONS BUREAU

NCJW, GREATER KC SECTION

NOW (KANSAS)

NOW (KC URBAN)

NOW (SE KANSAS)

NOW (WICHITA)

NOW (CAPITOL CITY)

PLANNED PARENTHOOD OF GREATER KC

PLANNED PARENTHOOD OF KANSAS

PROCHOICE ACTION LEAGUE

RCAR OF KANSAS

WICHITA FAMILY PLANNING

WICHITA WOMENS CENTER

WOMENS HEALTH CARE CENTER

YWCA OF TOPEKA

YWCA OF WICHITA

The Kansas Choice Alliance is a coalition of groups from across the state of Kansas that are concerned with keeping government out of the reproductive decisions of the women of Kansas. We have a combined membership of over 85,000 Kansans.

The Alliance opposes SB778. Viability is a vague and indeterminate concept. Doctors do not have a standardized definition of viability to which they adhere. To impose 22 weeks arbitrarily as the point of viability is contrary to sound medical policy.

Only the individual physician, after consultation and examination of the individual pregnant woman, can determine whether or not her fetus is viable. If it is in the State's interest to protect a viable fetus, the State would best serve the women and physicians of Kansas by leaving the determination of viability to the attending physician who is best qualified to make such a determination.

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George R. Tiller M.D. DABFP Medical Director
Cathy Reavis R.N., **N.P.** Director of Nursing
Elana Fritchman Administrative Director
Peggy Jarman Public Relations

Women's Health
Care Services PA

5107 East Kellogg • Wichita, Kansas 67218 • (316) 684-5108

To: Members of the Senate Federal and State Affairs Committee
From: Peggy J. Jarman
Regarding: Senate Bill 778

Since abortion became legal nationwide, women have been able to make their abortion decisions earlier and earlier in pregnancy. Today, only 8% of all abortions are performed in the second or mid-trimester (13-26 weeks). Only 1% after 20 weeks, and only .1% after 26 weeks. Abortions after 22 weeks occur primarily in the following three situations:

First, teenagers tend to have later abortions because of the greater impediments they face in obtaining the procedure: low income, failure to recognize the symptoms of pregnancy, denial of the possibility of pregnancy, and irregular menses. If this bill were to become law, it would be a mandate from the state forcing parenthood upon an unwilling individual.

At Women's Health Care Services, all abortions for teens at this stage of pregnancy have parental consent, and in all but the most unusual circumstances, parents accompany the teen. There are support and help groups, goals groups following the "12 Step" approach, and counseling sessions for parents and other significant people who are with the patient.

All abortions, in the past two years, performed at our clinic for twelve year olds were late second trimester. One hundred percent of the abortions for 13 year olds were also late second trimester abortions. As the age increases, the percent of late abortions done for any particular age groups continues to decrease to less than 8% at age 40. Stopping abortions at 22 weeks will impact our youngest teens.

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The consequences of enduring an unwanted pregnancy because the state orders that it must be brought to term, are on their own chilling. I find it particularly ironic, in light of the recent actions of this committee concerning "parental rights," that you would now turn to these same parents and say, through this legislation, that they now do not have the right to consent and that their 12 year old or 14 year old must now become a mother.

Second, abortions performed because of fetal abnormalities. Although constituting only a tiny fraction of all abortions, they normally occur after 22 weeks because amniocentesis results are generally not available until then. All patients at our clinic for fetal abnormalities are referred from physicians and hospitals following extensive genetic counseling. It has been suggested to me that women just change their minds about wanting to be pregnant or due to some minor problem, decide to have an abortion. Those of you who would believe this, do a grave disservice to women in general and all women who have been through our program for this reason. Exceptions for abortions for fetal abnormalities into the third trimester are appropriate. The window for these procedures is generally 29 weeks. Third trimester abortions are rare. If they are necessary, it is usually the result of some mismanagement in the medical community such as lost or misread lab results. Anti-choice people often report that abortions are legal in Kansas from conception to birth. Technically, that is true, and I assume, the reason this issue is being address. In truth, however, abortions are NOT being performed in the third trimester, except for fetal abnormalities and to save the life or health of the woman.

The third reason for late abortions is to save the life or health of the woman. Physicians evaluate each of these situations on an individual basis. It has been suggested by some that "health of the woman" is an unnecessary exception and that with current medical practices, a woman's health is never at risk in a way that would require termination of a pregnancy. Attached to my testimony are four page from a publication entitled "Public Health Policy Implications of Abortion." It was published January, 1990 by The American College of Obstetricians and Gynecologists. It speaks to various complications of pregnancy including the adverse affects on the diabetic woman. "Health of women" is important and should be a part of any bill leaving this committee.

Some factors that contribute to the incidence of late abortions are avoidable by public policy mechanisms. Sexual shame and sexual ignorance are persistent themes in American culture. They reinforce each other and contribute to a social atmosphere in which young people are blocked from

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acquiring basic knowledge about sexuality and birth control. One result is the highest pregnancy rate in the developed world. A concerted effort to provide access to information and services for young people would be a major step toward a decrease among teenagers in unwanted pregnancies, in the total number of abortions, and, therefore, late abortions stemming from social factors. Other public policy measures to reduce abortions would be comprehensive prenatal care, available free or at low cost, to low income pregnant women; rejection of laws requiring parental consent or notification for teenagers seeking abortions; and free or low cost hospital based genetic counseling programs for pregnant women and their partners. If reducing the number of abortions, especially late abortions, is a goal of the state, these proposals are proven methods of lowering the incidence of unwanted pregnancy, and, therefore, the need for abortion. Legislators who are truly interested in abortion from a public policy standpoint should seriously consider these proposals.

multiparous woman and the single woman without support, and researchers found that women who had an abortion experienced minimal overt psychiatric disturbance.

Psychologic Effect of Unintended Pregnancy on the Child

When considering abortion's psychiatric risks to the woman, it is also important to consider the psychologic and other risks to an unwanted child carried to term. The consequences of abortion cannot be considered in isolation from the consequences of childbirth. Special problems are likely to develop between mother and child when the woman desired but was unable to obtain an abortion during pregnancy.

Children born to and raised by women who are refused abortion are often physically and mentally impaired and have a high incidence of psychiatric disorder, delinquency, criminal behavior, and alcoholism. They are more likely to depend on public assistance and to be exempted from military service for medical and psychiatric reasons. They also have less schooling. Researchers have concluded that children born of unwanted pregnancies will have greater difficulty in surmounting social and mental handicaps than their peers.

Complications of Pregnancy

Pregnant women may experience a wide range of adverse health effects. Many are part of a normal, healthy pregnancy and are not a cause for concern, but some adverse effects are serious. Timely and comprehensive prenatal care will minimize health risks and help to assure the best possible pregnancy outcome. Studies clearly show that women who desire their pregnancy are more likely to obtain early and continuous prenatal care.

Serious Complications of Pregnancy

In about 8–10% of pregnancies, the woman develops hypertension (high blood pressure). In most instances, this pregnancy-related hypertension can be controlled. However, hypertensive pregnant women are at increased risk of maternal (and fetal) death or severe morbidity from cerebrovascular accidents (strokes), abruptio placentae (premature separation of the placenta from the uterus), and disseminated intravascular coagulation (a severe bleeding disorder that results from a breakdown in the blood's system of coagulation).

About 0.1% of deliveries are complicated by eclampsia, a severe form of pregnancy-induced hypertension. Patients may experience headaches, visual disturbance, kidney failure, abdominal pain, and seizures. Eclampsia has a maternal mortality rate of up to 17%, depending on the adequacy of prenatal care (which can prevent a preeclamptic woman from becoming eclamptic) and access to health care facilities (for appropriate emergency response).

The pregnant woman also is at risk of hemorrhage during pregnancy, labor and delivery, and the postdelivery period. Third-trimester hemorrhaging or bleeding is of particular concern because of its potentially fatal outcome for both the pregnant woman and the fetus. Potential complications of uncontrolled hemorrhage for the pregnant woman include kidney failure, stroke, loss of pituitary gland function, and death. Treatments for third-trimester bleeding carry potentially serious risks of complications such as transfusion reactions, hepatitis, severe infections, and hysterectomy, the latter of which terminates the ability to bear children. There is also a higher risk of death to the infant when hemorrhage occurs.

Complications of Cesarean Delivery

If it is necessary for a woman to have a cesarean delivery, as one out of four women will, the woman may be subject to additional risks, including infection and anesthesia-related risks. It is important to note that cesarean delivery mortality is associated most often with underlying conditions leading to the cesarean delivery and not to the surgical procedure itself. In 25–50% of cesarean deliveries, the woman suffers some complication, including infection, hemorrhage, laceration of her reproductive, urinary, or intestinal tract, and pulmonary embolism. Anesthesia used during cesarean delivery carries its own risks, including aspiration or excessive paralysis of the nerves, leading to a significant decrease in blood pressure, loss of respiratory function, and even cardiac arrest. The death rate associated with cesarean delivery is two to four times greater than that associated with vaginal delivery.

Women with Preexisting Conditions

Pregnancy adversely affects the diabetic woman. In fact, pregnancy may bring on diabetes in otherwise healthy women. One and one-half million women of childbearing age are diabetics; 1–3% develop the disease as a result of pregnancy. In diabetic women, the likelihood of hypertensive disease increases fourfold; infection occurs more frequently and with greater severity; injury to the birth canal during vaginal delivery is more common because the diabetic's fetus may be larger than the fetus of a nondiabetic woman; cesarean deliveries are required more frequently; and hemorrhage after delivery is more likely.

Pregnancy may also aggravate preexisting illnesses. Several conditions that increase the risk of pregnancy to the woman make abortion strongly advisable. For example, a woman who suffers from various forms of heart disease may face a 50% or greater increase in her risk of death from the additional stress on her heart caused by the pregnancy. All pregnant women with heart disease have a higher risk of congestive heart failure, cardiac infections, and arrhythmias (abnormal heart rhythms).

Forty percent of women with myasthenia gravis (a degenerative nerve disease similar to polio) suffer an exacerbation during pregnancy; in 3.4% of women with myasthenia gravis, this exacerbation is fatal. Pregnancy can also be life-threatening for women with chronic renal failure or those who have had pulmonary embolism in a previous pregnancy (the rate of recurrence in subsequent pregnancies is high).

If a woman with cancer requires radiation or chemotherapy during pregnancy, a choice must be made between the life of the patient and that of the fetus, since both treatments are likely to result in fetal malformation or death.

Asthmatic women are at increased risk during pregnancy for eclampsia and hemorrhage. Moreover, certain asthma medications may be harmful to the fetus. A pregnant woman with arthritis may experience excessive pain because all of the antiinflammatory drugs generally prescribed present a substantial risk of harm to the fetus. The frequency of seizures increases in 24–45% of pregnant women with epilepsy, whose medication may be contraindicated during pregnancy because of negative effects on the fetus.

Rare Complications of Pregnancy

Three rare but life-threatening complications of childbirth are amniotic fluid embolism, pulmonary embolism, and disseminated intravascular coagulation. Amniotic fluid embolism occurs in less than 0.1% of deliveries, but because it is fatal in over 80% of cases, it is responsible for up to 10% of maternal deaths during childbirth. Pulmonary embolus is a leading cause of maternal death. It occurs when the blood vessels in the lungs are obstructed by blood clots that originate in the pelvis or legs. Pregnancy-induced changes in the bloodstream make blood clots (disseminated intravascular coagulation) more likely.

Risks of Childbirth in Adolescents

Teens face significant additional complications of pregnancy. At the present time, one in five births in this country are to women under the age of 20 years. Major complications in this group can be attributed not only to maternal age (primarily younger teens aged 13–15 years), but also to the lack of prenatal care and to race and socioeconomic and educational factors.

The lack of prenatal care is more devastating for teenagers than for adult women. Pregnant teens who receive no prenatal care suffer from more infections and anemia. Preeclampsia occurs more frequently, possibly due to poor nutrition. Underlying medical problems such as hypertension and diabetes are not discovered or treated if the teenager does not get care.

Compared to adult women, teens are 1.5–2.0 times more likely to give birth to a low-birth-weight infant. Low-birth-weight infants face a spectrum of physical problems, including increased

risk of illness and death from infection, traumatic delivery, hypoxia, lung problems, undeveloped enzyme systems, and problems delivering oxygen to bodily tissues, including the brain. Infants born earlier than the 32nd week of pregnancy and weighing less than 1,500 g (approximately 3 lb) have a higher incidence of respiratory distress syndrome, anemia, and infection. Those weighing less than 1,000 g (approximately 2 lb) at birth have the highest rates of illness and death, regardless of gestational age.

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KANSAS NOW NATIONAL ORGANIZATION FOR WOMEN

March 27, 1990

I am Jodie Van Meter, lobbyist for the Kansas chapters of the National Organization for Women. The women and men who are Kansas members of the National Organization for Women wish to be on record in opposition to Senate Bill 778.

Senate Bill 778, sometimes referred to as the third trimester abortion bill, does not limit abortion only in the third trimester of pregnancy. The period of gestation or pregnancy is 40 weeks. The third trimester would begin in the last part of the 26th week of pregnancy. Further, the determination of the moment of conception is difficult and speculative. The limitation of abortion at 22 weeks of gestation is an arbitrary and artificial limitation which places a physician in jeporady of being charged with a class D felony. It takes from physicians the discretion necessary to practice medicine as they have been trained. The effect of criminalizing abortions after 22 weeks will be to deny women abortions at a period in gestation earlier than 22 weeks as a physician will understandably be unwilling to place himself or herself in jeporady of being charged with a class D felony.

Pursuant to the provisions of Senate Bill 778, a physician is not protected from a spurious complaint by a member of the public at large to a district attorney or county attorney which would result in an investigation of the physician.

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The ultimate chilling effect of the Senate Bill 778 would be to deny women the full statutory entitlement granted by this law.

Senate Bill 778 at section b requires two physicians to consult and concur that the termination of a pregnancy is justified. The section is vague as it does not specify when such a consultation is required, from the moment of conception or after the difficult to determine 22nd week of pregnancy. As an abortion is a relatively simple procedure in most circumstances, this requirement is intended to make the justified termination of a pregnancy a more difficult procedure to accomplish by making it more expensive and by creating artificial obstacles. Many insurance policies will not pay the cost of a justified termination of a pregancy. Abortions would be delayed because of the logistics and expense of consulting with two physicians.

Senate Bill 778 is intended to deny women freedom of choice in regard to reproductive freedom by increasing the expense of terminating a pregancy and by denying physicians the ability to practice medicine as they have been trained because of the chilling effect of the artificial limitation of 22 weeks and vague consultation requirements. The ultimate goal of Senate Bill 778 is to eliminate legal abortions by imposing arbitrary and artificial limitations on the practice of medicine and by creating onerous circumstances for women who attempt to exercise freedom of choice in regard to reproductive freedom.

Jodie Van Meter
Lobbyist of Kansas Now
117 S.W. 10th
Topeka, Kansas 66612

DRAFT

SENATE CONCURRENT RESOLUTION NO. ____

By Senator Strick

A PROPOSITION to amend the constitution of the state of Kansas by adding a new section thereto authorizing the legislature to permit, regulate, license and tax the operation or conduct of offshore casino gambling on certain riverboats.

Be it resolved by the Legislature of the State of Kansas, two-thirds of the members elected (or appointed) and qualified to the Senate and two-thirds of the members elected (or appointed) and qualified to the House of Representatives concurring therein:

Section 1. The following proposition to amend the constitution of the state of Kansas shall be submitted to the qualified electors of the state for their approval or rejection: Article 15 of the constitution of the state of Kansas is amended by adding a new section thereto to read as follows:

" 3d. Regulation, licensing and taxation of riverboat gambling. Notwithstanding the provisions of section 3 of article 15 of the constitution of the state of Kansas, the legislature may permit, regulate, license and tax offshore casino gambling on regularly scheduled passenger vessels while operating on navigable rivers within or bordering on this state.

Sec. 2. The following statement shall be printed on the ballot with the amendment as a whole:

"Explanatory statement. This proposed amendment would authorize the legislature to permit, license, regulate and tax offshore casino gambling on scheduled passenger vessels operating on navigable rivers in or bordering the state.

"A vote for the proposed amendment would

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permit casino gambling on passenger boats on navigable rivers.

"A vote against the proposed amendment would continue the current prohibition against casino gambling on riverboats."

Sec. 3. This resolution, if approved by two-thirds of the members elected (or appointed) and qualified to the Senate and two-thirds of the members elected (or appointed) and qualified to the House of Representatives, shall be entered on the journals, together with the yeas and nays. The secretary of state shall cause this resolution to be published as provided by law and shall cause the proposed amendment to be submitted to the electors of the state at the general election in the year 1990 unless a special election is called at a sooner date by concurrent resolution of the legislature, in which case it shall be submitted to the electors of the state at such special election.