Approved April 30, 1992

MINUTES OF THE SENATE COMMITTEE ON FEDERAL AND STATE AFFAIRS.

The meeting was called to order by Sen. Edward F. Reilly, Jr. at 11:00 a.m. on March 9, 1992 in Room 313-S of the Capitol.

All members were present except:
All members were present

Committee staff present:
Mary Galligan, Legislative Research Department
Mary Torrence, Office of Revisor of Statutes
Jeanne Eudaley, Committee Secretary

Conferees appearing before the committee:
See attached list

Others attending: See attached list

Sen. Reilly called the meeting to order and directed attention to Sen. Vidricksen, who asked the committee to look at a draft of a bill (Attachment 1), which has been requested by the Veterans Organizations. Sen. Vidricksen moved the bill be introduced as a committee bill, and it was seconded by Sen. Ward. The motion passed.

The Chairman announced that the committee will be hearing testimony on HB 2778 today and tomorrow. He then set out rules for the hearing and thanked proponents for keeping their testimony brief.

The following testified as proponents on HB 2778:

Pat Ranson, Kansas Republicans for Choice, (Attachment 2);
Adele Hughey, Kansas Choice Alliance, (who didn't speak but submitted written testimony), (Attachment 3);
Rev. John Swomley, Prof. Emeritus, Christian Ethics, St. Paul School of Theology, United Methodist Church, (Attachment 4);
Sylvia, lives on East Coast, (No written testimony submitted). Sylvia stated she has a 3 1/2 year old daughter and in 1990, she suffered two miscarriages. When she became pregnant again, her and her husband, who are both Catholic, were happy; however, when she was 6 1/2 months pregnant an ultrasound test found the baby's left side of the heart had not formed and that diagnosis was confirmed by two doctors. She stated if she had stayed at that hospital, she would have had no choice but to have the baby and put it on life support systems. However, Sylvia and her husband realized they did have two options: (1) abortion; (2) have the baby and sustain its life by life supports. They made the decision to have an abortion, and she flew to Wichita last summer for that purpose.

Sylvia went on to recount days waiting in the car, because of anti-abortion protesters and pickets, in 109 degree temperature with other pregnant

women, all of whom had been raped (one an 11 year old child), because protesters had legally blocked their access to the clinic. Once inside the clinic, Sylvia stated she was treated kindly; she again went over their options with doctors and was counseled. She told about holding her baby and being comforted in her grief that her baby did go peacefully, without suffering, and how she and her husband knew they had done the right thing.

Sylvia ended her testimony by stating how bitter she was at their invasion of privacy on a subject that was private and how she hoped none of the members of the committee would have to go through such an ordeal as they did in Wichita.

The Chairman introduced the following who gave testimony as proponents of HB 2778.

Rev. Monty Smith, Clergy for Choice (Attachment 5);
Beverly Gering, Vice Mayor and City Commissioner, Newton, KS., (Attachment 6);
Barbara Reinert, League of Women Voters of Kansas, (Attachment 7);

The following submitted written testimony:

Carla Dugger, American Civil Liberties Union of Kansas, (Attachment 8);
Bill Ester, Women and Men for Choice, (Attachment 9);
Monica Parker, Janet Balk, Rachel Smit, Manhattan High School Students for Choice, (Attachment 10).

The following gave testimony:

Bonnie R. Funk, Junction City, (Attachment 11).

Sen. Reilly called the committee's attention to information given to them from the House (Attachment 12). Sen. Ward asked the Chairman if staff would brief the committee on the current statute and the status of the law if Roe v. Wade were overturned. Mary Torrence then explained the statute (K.S.A. 21-3407), amendments to HB 2778 and her memo to Rep. Sebelius. She also explained that the statute outlaws some forms of birth control in Sub Section 3, referring to the date of conception and fertilization.

Sen. Bond stated he has a problem understanding viability and asked Dr. Swomley for clarification. Dr. Swomley explained that viability means when the fetus can survive outside the womb and discussed the medical aspects. Sen. Daniels asked Dr. Swomley for the author and credentials.

Sen. Reilly reminded the committee of the meeting tomorrow to hear opponents and asked the committee to review the material from the House.

The meeting was adjourned at 11:55.

# GUEST LIST

COMMITTEE: Senate Federal & State Affairs DATE: 3-9-92

| NAME (PLEASE PRINT) | ADDRESS | COMPANY/ORGANIZATION |
|---|---|---|
| Amy C Bixler | Topeka | NOW |
| Betty M. Glover | Topeka | |
| Kent McCracken | Lawrence | Legis. Intern |
| Wendy J. Roach | Topeka | Legis. Intern |
| Lisa Schneider | Topeka | |
| Dave Schneider | Topeka | Legis Intern |
| Jim Inzeo | Topeka | Legis Intern |
| Amy Nafziger | Lawrence | KU Pro Choice Coalition |
| Cindy Robertson | Denison KS | Pro Life |
| Joe Adams | Topeka | Pro-life |
| Daniel J. Lentz | Holton · Ks | Pro-Life |
| Marjorie I. Ameke | Holton, KS | Pro Life |
| Kent Davis | Denison, KS | PRO-LIFE |
| Mark A. Will | Denison, KS | PRO-LIFE |
| [illegible] | W. Ks. | ——— |
| Denise Leonard | Topeka | NOW |
| Lucy Nichols Stein, R.N., M.Ed. | Topeka | Kansas NARAL member |
| Josh Rogers | Topeka | Ks. Republicans for Choice |
| Charli Stout | Topeka | KS Republicans for Choice |
| Cheryl Logan | Topeka | Ks Rep's for Choice |
| Patricia Lee | Concordia | |
| Sarah Foster | Belleville | |
| Jim [illegible] | Riley | |
| [illegible] | Belleville | |
| [illegible] | Concordia | Cloud County Community College |

GUEST LIST

COMMITTEE: Senate Federal & State Affairs DATE: 3-9-92

| NAME (PLEASE PRINT) | ADDRESS | COMPANY/ORGANIZATION |
|---|---|---|
| Annie Kuether | | Rep. Sebelius |
| Jenifer Brandeberry | | PCAR |
| Silva | | |
| John M Swomley | | Americans For Religious Liberty |
| Mary Smith | 1729 Galler Topeka | |
| Pat Ranson | 1701 Woodlawn Ct. Wichita Ks | KS. Republicans for Choice |
| Bev Gering, Vice Mayor Newton | 309 S.E. 13th Newton KS 67114 | Men + Women for Choice |
| Courtney Davis | Kansas City, KS | KUMC |
| Matt Brungardt | Lawrence | Int/ Vidkicksen |
| Debbie Green | Topeka | Senate Majority Leader |
| Kim Waters | Topeka | Sen Res |
| Robert Phelps | Lawrence | Sen Reilly |
| Kevin Yowell | Overland Park | KCCV Radio |
| Alison Jurey K | Kansas City | Legislative Intern |
| Janet Ball | Manhattan | MHS Students 4 Choice |
| Monica Parker | Manhattan | MHS Students for Choice |
| Rachel Smit | Manhattan | MHS Students for Choice |
| Justine Crawford | Manhattan | K-State Voices for CHOICE |
| Margaret H | Lawrence | KU Pro-Choice Coalition |
| Rebecca L Page | Lawrence | KU Pro-Choice Coalition |
| PAULA ANDERSON | Newton | [redacted] |
| Betty Armstrong | Overland Park | Comprehensive Health for Women |
| Sheila Kotos | Overland Park | Comprehensive Health for Women |
| Inge Rosenbaum | Overland Park | Ks Choice Alliance |
| Carol Scott | Topeka | Washburn Univ. |

GUEST LIST

COMMITTEE: Senate Federal & State Affairs DATE: 3-9-92

| NAME (PLEASE PRINT) | ADDRESS | COMPANY/ORGANIZATIO |
|---|---|---|
| Martha Jenkins | Topeka | AIA |
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Attach. 1

1 RS 2811

SENATE CONCURRENT RESOLUTION NO. ____

By

A CONCURRENT RESOLUTION revoking 1978 Concurrent Resolution No. 1661 concerning a request to the United States Congress to call a constitutional convention relating to balancing federal financing.

WHEREAS, 1978 senate concurrent resolution had a title as follows: "A CONCURRENT RESOLUTION requesting and applying to the Congress of the United States to propose, or to call a convention for the purpose of proposing an amendment to the Constitution of the United States which would require that, in the absence of a statutorily defined national emergency, total federal appropriations shall not exceed total estimated federal revenues in a fiscal year."; and

WHEREAS, It appears that at such a convention various amendments to the United States Constitution might be proposed, and that some might be quite dangerous or destructive; and

WHEREAS, The congress and the president are deemed to be capable of conducting our government properly, without the aid of a constitutional convention: Now, therefore,

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: That 1978 Senate Concurrent Resolution No. 1661 is hereby revoked, expunged, nullified and held for naught; and

Be it further resolved: That the Secretary of State be directed to transmit copies of this resolution to the Clerk of the United States House of Representatives, the Secretary of the United States Senate, and each member of the Kansas delegation in the United States Congress.

Att. 1

1

Attach. 2

# KANSAS REPUBLICANS FOR CHOICE



Remarks Prepared for Kansas Senate Committee, Federal and State Affairs, HB2778
March 9, 1992

Chairman Reilly, Vice-Chairman Morris, and Distinguished Members of the Committee:

My name is Pat Ranson. I live in Wichita, Ks. I was involved in legislation in 1969 when the law that now is in the statutes was passed and have followed this issue throughout these 20+ years. I currently am a businesswoman and community activist who has been Director and Chairman of the Wichita Airport Authority, Director and Chairman of the Wichita Convention and Visitors Bureau, Director of the Wichita Area Chamber of Commerce, and Director of WI/SE the public/private economic development organization in Sedgwick County. I have served on several state boards and presently am a member of the Federal Home Loan Board of Topeka. I have been active in the Republican Party for over 20 years and was administrative assistant to Governor Robert F. Bennett.

I present this background information to illustrate that I am not a one-issue person, but spend a good deal of my time trying to improve the quality of life for my community and my state. Last summer something happened in Wichita that expanded my area of concern and activism-Operation Rescue came to town and divided my community. A group of religious zealots, using tactics of harrassment and intimidation, managed to incite a dialogue of emotional confrontation between members of the governing bodies and their constituents, between churches and members of their congregations, and between neighbors, families and friends. Many concerned citizens, out of fear and/or disgust, took extended vacations or avoided public events. Because of the constant national publicity, visitors stayed away, groups cancelled meetings scheduled in Wichita, and the curious came to watch and wonder.

And many, like myself, mistakenly thought these protestors would make their point-and go away -and our community would resume its normal pursuit of trying to deal with drugs and crime, educational problems, increasing taxes, and downtown development-many of the same issues facing this committee and this legislature. But they didn't go away. They only became more aggressive and more disruptive until they could no longer be ignored and many of us who had hoped to avoid the controversy could no longer stay silent.

In addition to what was happening in Wichita, it was becoming obvious that reproductive rights were being threatened by legislative and court actions in state after state, and that Roe vs. Wade, and its protection at the national level, was being seriously challenged, and that the troubles we were having in Wichita and other states would soon have to be addressed by our own state legislature....which is what brings us all together today.

1701 Woodrow Ct./ Wichita, Ks 67203 / (316) 262-0606/ Fax: (316) 262-6676/ (316) 262-4062
Kansas Republicans for Choice Political Action Committee

And so , I respectfully appear before you, as a representative of the Kansas Republicans for Choice, an organization formed during this troubled summer, to speak out loud and clear, that reproductive rights and personal and religious views on family planning and abortion should not be a partisan issue, nor should government make these kind of private decisions for individuals and their families. Unfortunately, a vocal minority in this country have systematically and doggedly over a period of years determined to impose their religious beliefs on the majority of Americans who have their own very personal and diverse opinions about what government's role in family planning should be, if any.

**The real issue before you is not abortion, or is it right or wrong, or, when does life begin? These are theological and scientific questions about which there is much disagreement between churches and religions, and within the medical community itself. THE REAL ISSUE IS..."WHO DECIDES?"**

Most Americans and Kansans will agree that government must be very careful when it deals with such a private issue. In recent history we have seen the results of the state policy of Romania before the overthrow of the communist regime-a government policy that outlawed birth control and abortion. We have read and heard the horror stories of the many women who died or were maimed in botched illegal abortions, usually self-induced, in addition to the hundreds and possibly thousands who were imprisoned because they were accused of preventing or terminating their pregnancy. We have also seen the pictures of the abandoned and orphaned children of the women who were forced to bear children they could not care for. In contrast is the government population-control policy of The Republic of China that mandates the termination of pregancies after the family has one child, and imprisons and sterilizes those who disobey. A government powerful enough to prohibit abortion is a government powerful enough to force abortion. Most of us in the free world do not want a government that is that powerful!

But now, you the members of the Kansas legislature are being asked to determine what measure of reproductive freedom may be allowed for the women of Kansas. Because of the diverse opinions and strong emotions that surround this issue, your task is most difficult. How do you decide the proper course when you are asked to choose between-"no abortion under any circumstances", or -"abortion under any circumstances" ? I believe that House Bill 2778 is a reasonable compromise between these two sincere, but diverse positions, that can facilitate a constructive approach that would satisfy a majority of Kansans who believe that essentially the answer to this moral and medical delimma rests with the woman who is pregnant, her physician, and her conscience.

Although House Bill 2778 passed without a parental notification amendment, I understand that that issue may again be raised during the deliberations in the Senate so I want to briefly speak to that issue. Unfortunately all young women do not have a supportive family with two parents who are understanding and civilized in their approach to parenting. Many teenage girls have a well-founded fear of their parents These girls who find themselves pregnant will either search for a "back-alley" abortionist and risk their lives, or postpone a decision until the second trimester of pregnancy....**in Minnesota, after enactment of a parental notification law in 1982, second trimester abortions increased 18%. In Missouri, a parental consent law went into effect in 1985 and second trimester abortions increased from 19% in 1985 to 23% in 1988.** These statistics are included in research conducted by the Alan Guttmacher Institute that relate to the ability of adolescents to make their own decisions about abortion and other issues. The results of this research titled "Our Daughters' Decisions", by Patricia Donovan, a senior associate for law and public policy at the Alan Guttmacher Institute, is attached to a copy of this testimony. I hope that this research will answer questions you may have in regard to parent involvement.

I ask for your support for this House Bill 2778, without amendments, because it responds to the concerns about late-term abortions, a support-system and full information and counseling for minors, and the protection of patients and medical staffs who are conducting themselves in a lawful manner.

I believe the people of Kansas will thank you for dealing with this issue in a responsible manner and your passage of this legislation will win the heart-felt support of reasonable people of good will who want to see this issue resolved.

Thank you.

Respectfully submitted,

Pat Ranson

Patricia M. Ranson
Kansas Republicans for Choice

Att. 2
3

# LEAGUE OF WOMEN VOTERS OF KANSAS

March 9, 1992

TESTIMONY BEFORE THE SENATE COMMITTEE ON FEDERAL AND STATE AFFAIRS ON HB 2778

Senator Reilly, Senator Morris, and members of the Committee:

I am Barbara Reinert speaking for the League of Women Voters of Kansas.

The League supports HB 2778 as amended by the House. After studying the issue, Leaguers long ago concluded that the State should not become involved in the right of privacy to make reproductive decisions. We have tried to keep attention focussed on CHOICE, who makes the decisions, and the privacy of the decision making.

Thus, League has opposed every major abortion-restriction bill considered by the legislature in the past decade.

Because the League opposed those restrictive bills, as threats to privacy or choice, let us say today, that the requirements in HB 2778 placed upon those seeking late abortions, appear to be protective of personal privacy and appear to not impose undue hardship upon women trying to make troublesome decisions.

If any restrictions imposed by enactment of HB 2778 result in more barriers, undue hardship, or futher loss of privacy, the League of Women Voters would be among the first to seek legislative or judicial adjustments.

We are saddened to anticipate the possible erosion of the national blanket of protection provided by Roe vs Wade. Also, we are sorry for the need to now address this issue state by state. However, we do bring some enthusiasm for the codification of the right of Kansas women to make their own decisions.

The League is pleased to support HB 2778 and we urge you to pass this bill with no more restrictions.

Barbara Reinert

Barbara Reinert
LWVK Lobbyist

Att. 2
4

*Carla Dugger, Registered Lobbyist*
*American Civil Liberties Union of Kansas*
*201 Wyandotte, #209*
*Kansas City, MO 64105*

**TESTIMONY**
**HOUSE BILL 2778**
**SENATE FEDERAL AND STATE AFFAIRS COMMITTEE**
**Monday, March 9, 1992**
**Submitted by the American Civil Liberties Union of Kansas**

Although the ACLU can fully support three of the major provisions found in H.B. 2778, we have serious concerns about other portions of the bill as it was amended and passed by the House on Friday, February 28.

The policy of ACLU regarding choice in family planning is very clear. The ACLU believes that the whole question of human reproduction should be a matter of voluntary decision making with no governmental compulsion. Since no legislation restricting reproductive freedom has passed into law in Kansas since the 1973 Roe v. Wade decision legalizing abortion, any bill taking the first step toward defining any governmental role must be minutely scrutinized.

The provisions we support in HB 2778 are found in Sections 1–3 and 6–8. These sections include a codification of the Roe decision, the limitation of legislative jurisdiction over reproductive rights to the state alone, and the repeal of K.S.A. 21–3407, a pre–Roe criminal abortion statute. Section 5, which prohibits the deliberate obstruction of a health care facility, was favorably amended by the House Committee through the deletion of language infringing freedom of speech. However, ACLU opposes any provision which calls for no probation, parole or reduction of fines in criminal penalties, as found in Section 5 (d) (1) and (2), and would recommend striking Section 5 (b) (2), "unreasonably disturbing the peace within the facility," on the basis of vagueness.

Section 4 presents a direct conflict with ACLU's reproductive freedom policy. Subsection (2) (b), which now requires that an adult with "a personal interest in the minor's well–being" accompany the minor to the clinic, would delay and/or prevent access to abortion for many minors. Unworkable in practice (e.g., what happens if no adult is able or willing to accompany the minor, or the adult decides at the last moment to disappear or postpone?), this provision represents a completely unacceptable barrier to minors seeking abortion.

The ACLU of Kansas would strongly support a bill which included only Sections 1–3 and 6–8 of HB 2778. However, if passed in its current form, HB 2778 would worsen, not improve, current access to full reproductive health services in Kansas. We therefore must urge the rejection of Section 4 in its entirety, or at least Section 4 (2) (b). If it is not removed, or if additional restrictions such as parental notification are attached, we must urge the complete rejection of HB 2778.

Att. 2
5

# Our Daughters' Decisions

## The Conflict in State Law on Abortion and Other Issues

*By Patricia Donovan*

**The Alan Guttmacher Institute**

Att. 2
6

Patricia Donovan is senior associate for law and public policy at The Alan Guttmacher Institute.

**Acknowledgments**

The Alan Guttmacher Institute (AGI) is indebted to Janet Benshoof, Clinton Deveaux, Marcia Greenberger and Martin Guggenheim for their legal review of the manuscript.

The AGI also wishes to thank the law firm of Fried, Frank, Harris, Shriver & Jacobson and its associates Tricia Klosk and, especially, Audrey Samers for their assistance in researching state laws.

The David and Lucile Packard Foundation and the Robert Sterling Clark Foundation helped support the research and preparation of this publication.

The contributions of the following AGI colleagues are gratefully acknowledged: Jacqueline Darroch Forrest, Beth Fredrick, Rachel Benson Gold, Stanley K. Henshaw, Olivia Schieffelin Nordberg, Cory Richards and Jeannie Rosoff. The support of Erin O'Leary and Sydney West is also appreciated, and special thanks are owed to Anne Martin for her invaluable assistance.



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Att. 2
7

# Table of Contents





Att. 2
8

# Introduction: The Conflict

The idea that parents should be closely involved in a teenager's decision regarding whether to have an abortion strikes a responsive chord in most American adults. Indeed, opinion polls indicate that large majorities of the public approve of laws requiring parental involvement in such a decision.[1] Parental involvement statutes either require that parents give their consent before their daughter can obtain an abortion or stipulate that parents be informed before the procedure that their daughter has decided to terminate an unwanted pregnancy.

The reasons for the widespread public approval of parental involvement laws have not been fully examined, but they are not hard to understand. They likely are based on rather common assumptions: that parents have a right to guide and protect their child, and will usually act in their child's best interests; and that a teenager needs her parents' guidance and support as she moves through the turbulent years of adolescence, especially if she is faced with a stressful event like an unwanted pregnancy.[2] Some parents may also believe that their legal and financial responsibility for their child legitimately gives them the right to a certain degree of control over their child's actions, especially in such an important area of behavior as sexual activity and childbearing.

Since 1973, when the U.S. Supreme Court legalized abortion,[3] the question of whether states should mandate parental involvement in a minor's decision to terminate a pregnancy has been the subject of intense public debate. Hundreds of proposals to require parental consent or notification have been introduced in state legislatures throughout the country; of these proposals, 67 have become law in 31 states (although the courts have subsequently struck down most of these statutes, holding them to be unconstitutional).[4] On the other hand, since 1989, legislatures in at least 16 states have either defeated or failed to take action on proposals to require parental involvement in the abortion decision.[5] Moreover, the only time the issue of mandatory parental involvement was put directly before the voters—in a 1990 referendum on parental notification in Oregon—it was rejected.

To shed light on the continuing debate over whether states should require parents to be involved in their daughter's decision about abortion, The Alan Guttmacher Institute (AGI) has examined state laws that relate to the ability of adolescents to make their own decisions about abortion and other issues. The examination sought to answer questions in three areas:



Att. 2
9

- To what extent can a minor, without a parent's consent or knowledge, obtain medical care for pregnancy, birth control, sexually transmitted diseases (STDs) and other sensitive health problems?
- Can a minor, without the involvement of her parents, make independent decisions in other important areas of her life, such as the decision to drop out of school before the 12th grade, the decision to get married and, if she already has a child of her own, decisions about whether to authorize medical care for that child and whether to raise the child herself or place it for adoption?
- Do states treat a minor's decision regarding abortion differently from other decisions? If so, do public policy concerns justify the differential treatment?

The focus of the review was not whether laws should deny or encourage abortion, but how potentially conflicting yet equally legitimate concerns should be balanced: the concern that before making the abortion decision, a pregnant minor should receive thorough counseling about all her options from at least one supportive and knowledgeable adult; the concern that states should not inappropriately deny parents the responsibility for guiding and supporting their child; and the concern that a young woman should be protected from both the medical dangers of delayed abortion and the family conflict that can arise if a teenager is required to inform her parents that she is not only sexually active but also pregnant and wanting to terminate her pregnancy.

*"The focus of the review was not whether laws should deny or encourage abortion, but how potentially conflicting yet equally legitimate concerns should be balanced. . . ."*

In this report, we begin with a brief history of how the law has traditionally viewed minors, and a summary of key Supreme Court decisions pertaining to parental involvement for abortion. We then describe the major findings of the AGI review of state laws and, on the basis of the findings, discuss whether mandatory parental involvement for abortion constitutes good public policy. In the conclusion, we explore some approaches to the parental involvement issue that might promote the best interests of minors who are facing decisions about abortion and other sensitive areas of their lives.



Att. 2
10

# The Treatment of Minors Under the Law

## A Historical Overview

Under common law, children were originally viewed as the property of their parents, having few, if any, independent rights.[6] Over time, the law evolved, and it now views the parent-child relationship as a relationship based on reciprocal rights and responsibilities. Parents are generally responsible for their child's financial support, health, education and upbringing. In return, they are vested with the custody and control of their child, including the right to make decisions for the child that will help shape his or her values.[7] In general, parents are legally responsible for their child until the child reaches the age of majority—the age at which a person is considered an adult under the law. This age limit is established by each state separately.

States, as well as parents, impose certain restrictions on persons under the age of majority—or minors—on the presumption that before reaching majority, young people lack the experience, perspective and judgment to make fully informed decisions that take into account both the short- and the long-term consequences of their actions.[8] Restrictions on the behavior of minors vary from state to state, but all states bar them from voting, from serving on juries, from executing a will and from purchasing alcoholic beverages.[9]

States have traditionally required that a parent give consent before a minor receives medical treatment,[10] although there have long been exceptions to this rule. Many states, for example, authorize doctors to treat any minor involved in a medical emergency without first obtaining parental permission.[11] In addition, states often consider a minor who is married, serving in the armed forces or living apart from his or her parents and self-supporting to be "emancipated"; in such cases, a minor has the right to act on his or her own behalf, including the right to consent to medical treatment.[12] Furthermore, juvenile and family courts are authorized to make health care decisions for a minor who has been abused or neglected by his or her parents.[13]

Historically, the constitutional rights of minors have been subject to more stringent limitations than have the rights of adults.[14] But in a landmark 1967 decision relating to juvenile delinquency proceedings, the Supreme Court, concluding that "constitutional rights do not mature and come into being magically only when one attains the state-defined age of majority," held that the Bill of Rights and the Fourteenth Amendment's guarantee against the deprivation of

***WHAT IS INFORMED CONSENT?***

*The legal doctrine of informed consent recognizes the right of a patient to make decisions about the medical treatment he or she will receive.*

*It further recognizes that to allow a patient to make an informed choice as to how to proceed, physicians or other health professionals are required to give the patient sufficient information about the diagnosis and the proposed treatment—including the potential benefits and risks and alternative approaches.*

*A health care provider who fails to supply this information can be sued for malpractice if a patient suffers complications that he or she was not told could occur, or if a patient learns too late about an alternative approach that the patient might have preferred.*

*Under the common law, a minor was deemed legally incompetent to give informed consent to medical treatment. A physician therefore could not treat a minor without first obtaining the consent of the minor's parent.*

*As the AGI review shows, however, states have concluded that many teenagers are capable of making an informed decision on many issues, including health care.*

*Reflecting this judgment, states have passed laws specifically authorizing a minor to consent to certain types of health care and, in some cases, even to general medical care in nonemergency situations.*

*For any patient, of course, a doctor or health professional obtaining consent to treatment must be satisfied that the individual is sufficiently intelligent and mature to understand the significance of the information he or she is receiving and consents to the treatment freely and without coer-*

Att. 2
11

liberty without due process protect minors, as well as adults.[15] Building on that opinion, the Court subsequently ruled that minors have a constitutional right to privacy that includes the right to obtain contraceptives[16] and the right to decide to terminate an unwanted pregnancy.[17]

## Expansion of Minors' Decision-Making Powers

Spurred in part by these court decisions, a growing trend has emerged over the last 20–30 years to give teenagers wider authority to make decisions for themselves. The age of majority, for example, has been lowered from 21 to 18 in the District of Columbia and in all states except Alabama, Nebraska and Wyoming (where it is 19), and Mississippi (where it remains 21).[18] This move followed the ratification in 1971 of the Twenty-sixth Amendment to the Constitution, which gave 18-year-olds the right to vote in federal elections.

In the area of health care, recognition has been growing that age alone may not indicate a person's ability to make sound decisions. Some states, for example, have adopted the so-called mature minor rule. Under this rule, a minor who is sufficiently intelligent and mature to understand the nature and consequences of a proposed treatment can obtain (or consent to) medical treatment without consulting his or her parents or securing their permission.[19] In addition, some states have passed laws that specifically authorize a teenager to consent to (or obtain) medical treatment for health problems related to sexual activity, substance abuse and mental health.[20] In doing so, states have acknowledged that a teenager who is pregnant or infected with an STD, a teenager who abuses drugs or alcohol, and a teenager who suffers from emotional or psychological problems may avoid seeking necessary medical attention, in a timely fashion, if he or she must first tell a parent. In situations like these, the states have concluded, it is more important for a young person to have access to confidential medical services than it is to require that parents be informed of their child's condition.[21]

## Minors, Abortion and the Supreme Court

The trend toward giving minors greater freedom to make their own decisions about health care has generated little controversy and has aroused little organized opposition. That is, except in one area—the abortion decision. The question of whether states should require parental consent or notification when a minor seeks an abortion has been the subject of much protracted debate and of hundreds of legislative proposals. It has also been the focus of numerous legal challenges, some of which have reached the Supreme Court. In a line of decisions beginning in 1976, the Court has sought to define the limits of

*cion or pressure from family members, friends or members of the medical profession.*

*The American College of Obstetricians and Gynecologists (ACOG) discussed the information that should be provided to women faced with an unwanted pregnancy in its* Standards for Obstetric-Gynecologic Services, *published in 1985. ACOG specified that "the physician should counsel the patient about her options of continuing the pregnancy to term and keeping the infant, continuing the pregnancy to term and offering the infant for legal adoption or aborting the pregnancy" (p. 57).*



Att. 2
12

the states' power to require parental consent or notification of a minor's abortion decision.

The Court has ruled that a state may not give parents an absolute veto over their minor daughter's decision to terminate her pregnancy.[22] It has also held, however, that a state may require a teenager to obtain the consent of one or both parents if it provides her with an alternative to having to consult or inform her parents. Under this alternative procedure—commonly referred to as a judicial bypass—a young woman may obtain authorization for an abortion from a judge (or administrative agency) without letting her parents know what she is doing.[23] The Supreme Court has ruled that when a minor chooses to exercise the judicial-bypass option, the judge must authorize the abortion if he or she determines that the teenager is mature enough to make the decision by herself or, if the young girl is deemed immature, that an abortion is in her best interests. The bypass proceedings must be confidential and, at least in theory, expeditious, and the minor must have an opportunity to appeal if her petition is denied.[24]

The Court has also held that a state may require a doctor to notify one[25] or both[26] parents of their daughter's plans to terminate a pregnancy. This requirement may be imposed even if the parents are divorced or were never married, and even if one of the parents has never known or supported the young woman. So far, the Court has specifically declined to rule on whether a state must provide a judicial-bypass procedure if it requires the notification of only one parent.[27] However, the Court has held that a state must do so if it requires a doctor to inform both parents.[28]

Despite these rulings, mandatory parental involvement remains a highly charged issue. Proponents of parental involvement laws maintain that parents have a right to know about and play a role in major decisions facing their children.[29] They argue that since parental consent is often needed before a minor can go on a school trip, get her ears pierced or have her eyes examined,[30] parental involvement should certainly be mandatory for abortion, which, they contend, can have serious physical and psychological consequences.[31] Opponents of mandatory parental involvement, on the other hand, cite the importance of access to confidential services if a minor is to seek timely medical attention.[32] They further assert that abortion is a safe procedure,[33] and that it rarely causes serious psychological problems.[34] Mandatory parental consent or notification, they argue, could actually endanger the health of a teenager who, rather than tell her parents, will delay having an abortion until late in her pregnancy, when the risks increase.[35]

***WHAT IS "THE LAW"?***

*The term "the law" refers to many things: statutes, court decisions, common law, opinions promulgated by attorneys general and regulations issued by other executive agencies.*

*Statutes passed by state legislatures and Congress are probably the most common understanding of what is meant by the term. However, state and federal courts also make law when they interpret statutes, and when they interpret the federal and state constitutions. The body of law that has developed through court decisions is often referred to as case law.*

*When there is no statutory or case law to draw on, courts will look to the common law—the body of legal principles from England upon which the American legal system is based.*

*In addition, attorneys general are often asked to interpret the meaning or effect of a law or regulation, and these opinions have the force of law. So do regulations issued by the executive branch of government to implement a statute.*

*Traditionally, state legislatures and courts have decided family law issues, including the decision-making powers of minors.*



Aff. 2
13

# A Review of State Laws

To clarify the issues surrounding parental involvement for abortion, the AGI examined the state statutes that affect the right of an unmarried or otherwise unemancipated minor to obtain certain types of medical care. These are contraceptive services; prenatal care and delivery services; the diagnosis of and treatment for an STD, or venereal disease (VD), and human immunodeficiency virus (HIV) infection; treatment for drug and alcohol abuse; treatment for emotional problems; general medical and surgical care in nonemergency situations; and abortion services. The AGI also reviewed laws dealing with other areas in which a young person might have to make important or life-changing decisions—namely, dropping out of school, getting married, consenting to any medical care that a child might need and placing a child for adoption. The review involved analysis of two types of laws: statutes that might authorize a minor to make independent decisions in any of these areas, and statutes requiring parental involvement. The laws that were examined generally affect both boys and girls; the exceptions are those dealing with reproductive health services (in which states have traditionally been more restrictive than they have in other aspects of health care for minors) and those applying to a minor parent's decisions on behalf of a child. In these two areas, a teenage girl is probably more affected than a teenage boy.

*"The review involved analysis of two types of laws: statutes that might authorize a minor to make independent decisions in any of these areas, and statutes requiring parental involvement."*

Where the state has no law, there may have been relevant federal or state court decisions (or opinions of state attorneys general) that affect whether or not a minor can make confidential decisions without consulting or gaining permission from his or her parents. For example, under the Supreme Court rulings recognizing that minors have a fundamental constitutional right to privacy,[36] there is a presumption that a minor may make her own decision about abortion, unless the state has enacted a law that specifically requires parental consent or notification (and provides for a confidential alternative to parental involvement). Even when there are no relevant statutes or case law, physicians may commonly provide medical care to a mature minor without parental consent, particularly if state law authorizes a minor to consent to related services.

We summarize the major findings of the review of state laws in the next sections. More detailed information about the specific laws of each state and of the District of Columbia is presented in Appendix Table 1; the text of the appendix contains a description of the methodology used to collect this information.



Aff. 2
14

## Medical Decisions

The findings of the AGI review suggest that states understand that confidentiality is a critical factor if young people are to be encouraged to seek treatment for sensitive health problems. As Table 1 indicates, most states have laws authorizing a teenager to consent to medical treatment for STDs and substance abuse. About half have authorized a minor to consent to contraceptive services and prenatal care and delivery services. Moreover, no state mandates parental involvement for any of these services. In addition, more than one-third of the states have statutes that authorize a minor to consent to general medical and surgical care, at least under some circumstances.

### Contraceptive Services

By law, a minor in 24 states and the District of Columbia may give informed consent to contraceptive services. These services might include the provision of birth control pills, the insertion of an IUD, the prescription of a diaphragm, and the insertion of Norplant, the new long-acting contraceptive method.* In three of these states, the law specifies that a doctor may provide contraceptive services if he or she believes that without them, a teenager is likely to suffer a serious health problem. This condition is unlikely to constitute a barrier to the provision of services to a sexually active minor, in view of the well-documented health benefits that are associated with the use of contraceptives.[37]

### Prenatal Care and Delivery Services

A pregnant minor in 27 states and the District of Columbia may obtain prenatal care and delivery services without parental consent or notification.† The laws in these jurisdictions authorize regular medical visits during pregnancy and the routine services needed during normal labor and delivery. They also appear to permit a minor to consent to prenatal genetic screening (including amniocentesis and chorionic villus sampling, which involve a small risk to the fetus) and, except in Hawaii (where the law specifically excludes surgery), delivery by cesarean section and in utero procedures to treat a life-threatening condition of the fetus.

### Treatment for STDs and HIV

The District of Columbia and every state except South Carolina‡ authorize a minor to consent to the diagnosis and treatment of STDs.§ These diseases (syphilis, gonor-

*The law in one state—Oregon—permits a minor to consent to surgical sterilization if all other methods of contraception have proved unsuccessful or are not appropriate for some reason. Four other states—Florida, Maryland, North Carolina and Virginia—specifically exclude sterilization from the contraceptive services to which a minor may consent. However, it is extremely unlikely that any state statute authorizing a minor to consent to contraceptive services would be interpreted as including sterilization. Unlike other methods, tubal occlusion is usually irreversible, and it has been linked to the abuse of minors and of the mentally incompetent. For these reasons, federal regulations impose a number of restrictions on sterilizations carried out with federal funds, including a prohibition against sterilization performed on anyone under the age of 21, a 30-day waiting period and a detailed informed consent procedure. (See: *Federal Register*, 43:52146 [1978].)

†New York law authorizes a minor to consent to "medical, dental, health and hospital services relating to prenatal care." (See: N.Y. Public Health Law, sect. 2504(3)



Att. 2
15

rhea, chlamydia, and genital herpes, among others) afflict an estimated three million teenagers every year.[38] If untreated, STDs can lead to cancer, infertility, pelvic inflammatory disease, ectopic pregnancy and death.[39] The states that have enacted these statutes generally impose no restrictions on a minor's authority to consent to hospitalization, to the use of antibiotics and other prescription medications or to any other medical care needed to treat infection; the exceptions are a prohibition against consent to surgery in Hawaii and a parental notification requirement if a minor needs emergency hospitalization in Vermont.

Because HIV, the virus that causes AIDS, can be transmitted through sexual contact, laws permitting a minor to consent to STD services would appear to cover diagnosis of and treatment for HIV infection as well.** To avoid any ambiguity in this area, 11 states have explicitly authorized a minor to consent to HIV-related services, but in seven of these states, the statute covers only testing for the virus. In the remaining four, the law also applies to medical care for HIV infection. In these states, a teenager who is HIV-positive presumably may consent to the continuous testing that is needed to monitor the status of the infection, as well as to drug therapies such as AZT that are believed to slow the onset of AIDS.

*"... states understand that confidentiality is a critical factor if young people are to be encouraged to seek treatment for sensitive health problems."*

### Services for Substance Abuse

The District of Columbia and all but four states—Alaska, Arkansas, Utah and Wyoming—have laws that authorize a minor who abuses drugs or alcohol to consent to (or obtain) confidential medical care and counseling. In 36 states and the District of Columbia, an adolescent may obtain services in connection with both alcohol and drug abuse; in 10 other states, a teenager may consent to treatment for one of these addictions.

### Mental Health Services

Laws in 20 states and the District of Columbia authorize a minor to consent to outpatient mental health services; in 18 states and the District of Columbia, a minor may apply for hospitalization to receive treatment for mental health problems. About half of the statutes in the latter group specify that a minor must be at least 16 years old to be admitted for such treatment without parental knowledge or consent. If inpatient and outpatient services are grouped together (not shown in Table

[McKinney 1985].) We have assumed that the law allows a minor to consent to childbirth services.

‡However, South Carolina law permits a minor 16 or older to consent to general medical care, which would include treatment for an STD.

§Some state statutes use the term "venereal disease" rather than "sexually transmitted disease." Idaho does not have a statute pertaining expressly to STD or VD services, but does have a law authorizing minors to consent to treatment for infectious, contagious or communicable diseases.

**In addition to STD laws, 10 states (including Idaho) have statutes that authorize a minor to consent to diagnosis of and treatment for contagious, infectious or reportable diseases (not shown in Table 1). These laws also presumably allow a minor to consent to treatment for HIV infection.



Att. 2
16

# Table 1

| STATE LAW | MEDICAL CARE | | | | | |
|---|---|---|---|---|---|---|
| | Contraceptive services | Prenatal care and delivery services | STD/VD services | HIV testing and treatment | Treatment for drug and alcohol abuse | Mental Outpatient |
| Minor may consent or decide | 25 | 28 | 50 | 11 | 47 | 21 |
| Parent must consent | 0 | 0 | 0 | 0 | 0 | 0 |
| Parent must be notified | 0 | 0 | 0 | 0 | 0 | 0 |
| No law found or not applicable[6] | 26 | 23 | 1 | 40 | 4 | 30 |
| Total[7] | 51 | 51 | 51 | 51 | 51 | 51 |

1. In Alabama, the District of Columbia, Maine, and Maryland, where the law does not distinguish between outpatient and inpatient services, it was assumed that minors may consent to both.

2. States with no law relating specifically to unmarried and unemancipated minors may have a law authorizing married and emancipated minors or teenagers over the age of majority to consent to general medical care that, by implication, requires unmarried and unemancipated minors to have parental consent.

3. In addition to the consent of the minor mother, some states require the consent of the unwed father if he can be located or if paternity has been established, but others do not require the father to be informed of adoption proceedings.



2-17

**Number of states having laws affecting an unmarried, unemancipated minor's right to make decisions about medical care, abortion and other important issues**

| | | ABORTION SERVICES | DECISIONS ON MINOR'S OWN BEHALF | | DECISIONS ON BEHALF OF MINOR'S CHILD | |
|---|---|---|---|---|---|---|
| health services[1] Inpatient | General nonemergency medical care[2] | | Dropping out of school | Getting married | Medical care for child | Placing child for adoption[3] |
| 19 | 21 | 4 | 44 | 10 | 29 | 47[4] |
| 1 | 0 | 10[5] | 0 | 41 | 0 | 3 |
| 6 | 0 | 8[5] | 0 | 0 | 0 | 1 |
| 25 | 30 | 29 | 7 | 0 | 22 | 0 |
| 51 | 51 | 51 | 51 | 51 | 51 | 51 |

**4.** Includes the 13 states where the adoption laws make no distinction between adult and minor parents, and where it was therefore assumed that a minor parent may give legally binding consent to the adoption of her child.

**5.** Includes only parental consent and notification laws that are currently being enforced.

**6.** "Not applicable" refers to the seven states that have laws requiring young people to be 18 (the age of majority) before they drop out of school.

**7.** Includes the District of Columbia.



Att. 2
18

1), 28 states and the District of Columbia authorize a minor to consent to treatment for mental health problems.

In six states, a minor may obtain inpatient services, but parents must be notified upon their child's admission. One state requires parental consent for admission.

### General Nonemergency Medical Care

Statutes in 21 states authorize a minor to obtain general medical care in nonemergency situations. (As was pointed out earlier, states commonly permit a doctor to treat a minor in an emergency without obtaining parental consent.) In 10 of these states, the law applies to a minor who has reached a certain age (ranging from 14 to 16) or to a minor of any age who is sufficiently mature to understand the nature and consequences of the proposed treatment. In eight other states, a minor who is a parent may obtain general medical care. In the remaining three states, a minor may consent to general medical care if she is pregnant (Illinois), has ever been pregnant (Pennsylvania), or is either pregnant or a parent (Massachusetts).

These laws appear to authorize a minor to consent to virtually any type of medical and surgical treatment, except in South Carolina, where the law bars consent to operations. In the other states, the only statutory restrictions are a prohibition against consent to sterilization in Massachusetts and Nevada, and to brain surgery to relieve the symptoms of mental problems in Massachusetts. Nevertheless, it bears emphasizing that in states that both authorize a minor to consent to surgical care on her own and require parental involvement in the abortion decision, the laws clearly conflict.

## Abortion Services

As Table 1 suggests, states make a sharp distinction between abortion and other medical services related to reproduction and other sensitive health concerns. Whereas substantial numbers of states authorize a minor to make her own decisions about these latter services, only three states and the District of Columbia have statutes that permit a minor to obtain an abortion without parental involvement. Moreover, 18 states have laws mandating the involvement of at least one parent in the abortion decision: In 10 of these, a minor must have the consent of one or both parents; in the other eight, one or both parents must be notified prior to the abortion.

Nine states have parental consent or notification laws with a judicial bypass whose enforcement is under injunction (see Appendix Table 1). Some of these statutes, which were enacted within the last few years, are still on appeal and could go into effect in the future; others may never be enforced. We mention them because they reflect the states' view at the time the laws were passed—namely, that where

teenagers are concerned, the abortion decision should be treated differently from decisions regarding other medical services needed in connection with pregnancy and its prevention.

## Decisions on a Minor's Own Behalf

Some people consider abortion less a medical choice than a major life decision that can have a significant long-term impact on a woman's psychological and emotional well-being. For purposes of comparison, the AGI also examined state laws that affect a minor's authority to make other types of decisions—decisions that in some cases might have a dramatic and long-lasting effect on the course of a young person's life, decisions such as whether to quit school and whether to marry.

### Dropping Out of School

Most states allow a teenager to drop out of high school before graduation, despite strong statistical evidence that failure to earn a high school diploma can have long-range adverse consequences in terms of the ability to earn a living, find employment, maintain a stable marriage and have the number of children couples say they want, when they want them.* Although many teenagers probably do not fully understand the negative consequences that are associated with dropping out of school, 34 states and the District of Columbia allow a 16-year-old to leave school without any statutory requirement that the parents be involved in or approve of the decision. In eight other states, a teenager may drop out of school at age 17; in Washington, a minor may leave school at age 15 if he or she has a job.

### Getting Married

The District of Columbia and 40 states require parental consent before a minor may marry, and most states establish an age—usually 16—below which a minor generally may not marry even *with* parental consent. However, although early marriages are often unstable,† 10 states have statutes that permit a minor to marry without parental consent, at least under certain circumstances, such as pregnancy or the birth of a child.

*In 1988, for example, 20 percent of families in which the head of household had had only 1–3 years of high school had incomes below the federal poverty level—more than twice the proportion of families in which the household head had earned a high school diploma but had not gone on to college. (See: U.S. Bureau of the Census, *Statistical Abstract of the United States, 1990*, U.S. Government Printing Office, Washington, D.C., 1990, Table 749.) High school dropouts also are more likely to be unemployed than are individuals whose education ended with high school graduation. (Ibid., Table 654.) And they are more likely to experience marital disruption: Women who fail to finish high school are more likely than those who graduate to divorce or separate within five years of marriage. (See: T.C. Martin and L.L. Bumpass, "Recent Trends in Marital Disruption," *Demography*, 26:37, 1989.) On the other hand, the more years of school a young woman has completed, the more likely she is to delay childbearing and, therefore, to avoid the adverse consequences of adolescent childbearing. Teenage mothers are disproportionately poor and dependent on public assistance. (See: National Research Council, *Risking the Future: Adolescent Sexuality, Pregnancy and Childbearing*, National Academy Press, Washington, D.C., 1987, pp. 126, 129 and 132.)

†The younger a woman is when she marries, the greater the chance that she will divorce or separate within five years of marriage. Women who marry as teenagers are twice as likely to separate as those who marry after the age of 22. (See: T.C. Martin and L.L. Bumpass, "Recent Trends in Marital Disruption," *Demography*, 26:37, 1989.)



Att. 2
20

## Decisions on Behalf of a Minor's Child

### Medical Care for a Child

To a remarkable degree, if state laws can be interpreted as anything to go by, most states consider a minor who is a parent to be fully competent to make major decisions affecting the health and future of his or her own child.

The District of Columbia and 28 states, for example, have laws that authorize a minor parent to consent to medical care for his or her child. Since none of these statutes sets any limit on the type of services that a minor may authorize, a young parent presumably may consent to anything for an infant or child from routine monthly pediatric visits to open heart surgery. In principle, no state requires the involvement of the teenager's parents in any of these decisions; in practice, however, it is likely that without consulting or informing some older responsible adult, some physicians might be reluctant, for example, to perform major surgery on an infant whose mother is herself a teenager.

### Placing a Child For Adoption

Even more striking is the fact that in 46 states and the District of Columbia, a minor mother may place her child for adoption without her parents' permission or knowledge.* Specifically, 33 states and the District of Columbia have enacted laws that allow a teenage mother to make this decision without having to consult or obtain consent from her own parents. Only one of these states—Oklahoma—requires that a mother be a certain age (16) before she can decide by herself to relinquish her parental right to a child. In 13 other states, where the adoption laws make no distinction between minor and adult parents, it appears that the decision to place her child for adoption rests with the young mother.

Only four states—Michigan, Minnesota, Pennsylvania and Rhode Island—mandate that a teenager's parents either consent to the adoption of their grandchild or receive notice of a hearing on their daughter's decision to relinquish her child. (Whether the mother is a minor or an adult, all adoptions must be approved by a court, after the judge is satisfied that the mother's consent has been obtained without duress or fraud and that a home study of the adoptive parents has been properly carried out.[40])

In practice, it is likely that some adoption agencies require that a young woman's parents be involved in the adoption decision. In principle, however, virtually all states consider a teenage mother capable of making an independent decision about whether or not to place her child for adoption.

*The states handle the role of the unmarried father in the adoption process in a variety of ways. Some require the consent of both teenage parents, unless one cannot be located or has not voluntarily supported the child; others require the father's consent only if paternity has been established; some provide that an unmarried father is not entitled to be notified of the adoption hearing; still others specify that the putative father can be notified of a hearing, but that such notification is not required.



Att. 2
21

# Is Mandatory Parental Involvement for Abortion Good Public Policy?

State laws that make a minor's access to abortion services dependent upon the involvement of her parents are quite out of step with the common practices regarding other important areas of a teenager's life, as Figure 1 vividly illustrates. Generally, the review of state laws has shown, the states assure a minor confidentiality when he or she seeks sensitive medical services, and allow a teenager to make decisions on a number of other important issues.

States seem to understand very well how important it is to assure a young person of privacy in seeking care related to such sensitive areas as sexual activity, pregnancy and delivery, and STD treatment. What is more, state laws frequently authorize a minor to consent to surgery, drug therapies and hospitalization for physical and emotional problems—all of which may entail greater health risks than abortion. Yet, most states guarantee a teenager no such confidentiality when she is seeking an abortion.

In some states, doctors have the legal option of informing parents that their son or daughter has received or is seeking medical attention. However—in complete contrast to statutes mandating parental involvement for abortion—these laws leave the decision of whether or not to inform the parents entirely to the discretion of the physician. If a doctor believes that for medical reasons, it would be in the minor's best interests to inform the parents, he or she may do so. If, on the other hand, the doctor believes no such interests are served by getting in touch with a young patient's parents, treatment may continue in total confidentiality.

*"... no state requires a minor to have parental consent to continue a pregnancy to term."*

Particularly striking is the degree to which states allow a young woman to make her own decisions about all possible outcomes of pregnancy except abortion. A majority of states have laws that authorize a pregnant teenager to consent to prenatal care and labor and delivery services, and no state requires a minor to have parental consent to continue a pregnancy to term. Once a teenager has borne a child, she can decide whether to raise the child herself or put it up for adoption. Yet, in more than one-third of the states, unless she first consults her parents or goes to court to gain permission, a young woman cannot decide on her own that it would be best not to have a child, and then seek medical care to terminate a pregnancy.

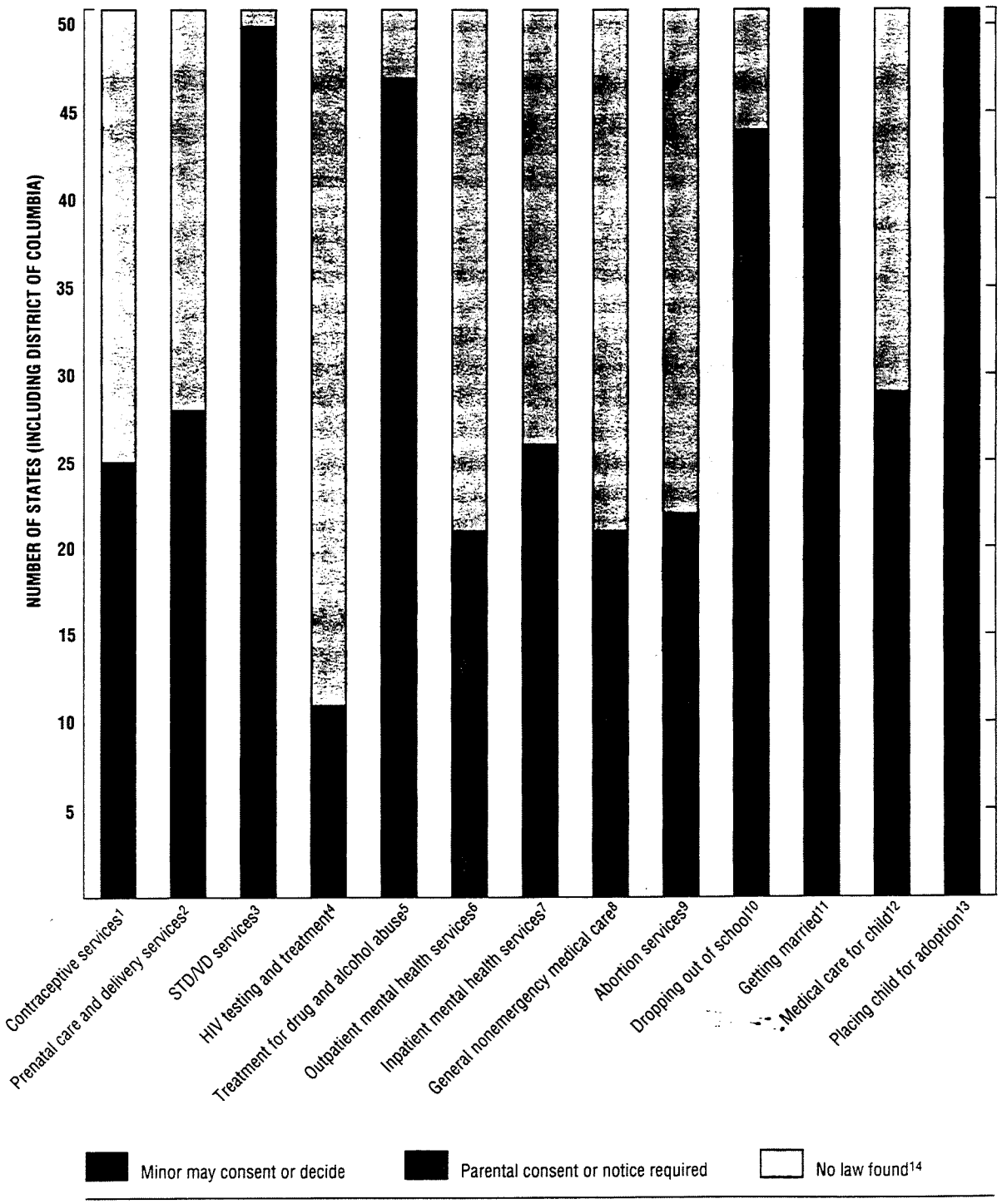
The AGI review has shown that states restrict a young teenager's access to abortion, but authorize an



Att. 2
23

# Figure 1

**Number of states having laws affecting an unmarried, unemancipated minor's right to make decisions about medical care, abortion and other important issues**






Att. 2
22

# Notes to Figure 1

**1.** Alaska, Arkansas, California, Colorado, Delaware, the District of Columbia, Florida, Georgia, Hawaii, Idaho, Illinois, Kansas, Kentucky, Maine, Maryland, Mississippi, Montana, New Mexico, New York, North Carolina, Oklahoma, Oregon, Tennessee, Virginia and Wyoming authorize a minor to consent to contraceptive services.

**2.** Alabama, Alaska, Arkansas, California, Delaware, the District of Columbia, Florida, Georgia, Hawaii, Illinois, Kansas, Kentucky, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Montana, New Jersey, New York, North Carolina, Oklahoma, Pennsylvania, Tennessee, Texas, Utah and Virginia authorize a minor to consent to prenatal care and delivery services.

**3.** The District of Columbia and all states except South Carolina authorize a minor to consent to STD/VD services.

**4.** California, Colorado, Delaware, Florida, Iowa, Maine, Michigan, New Mexico, New York, Ohio and Rhode Island authorize a minor to consent to HIV services.

**5.** The District of Columbia and all states except Alaska, Arkansas, Utah and Wyoming authorize a minor to consent to treatment for drug and alcohol abuse.

**6.** Alabama, California, Colorado, the District of Columbia, Florida, Illinois, Kentucky, Maine, Maryland, Massachusetts, Michigan, Montana, New Mexico, New York, North Carolina, Ohio, Oregon, Tennessee, Texas, Virginia and Washington authorize a minor to consent to outpatient mental health services.

**7.** Alabama, Colorado, Connecticut, the District of Columbia, Florida, Georgia, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Minnesota, Montana, Nevada, New York, South Carolina, Texas, Utah and Vermont authorize a minor to consent to inpatient mental health services. Idaho, Illinois, Kansas, New Mexico, Pennsylvania, Tennessee and Washington require parental consent or notification for these services.

**8.** Alabama, Alaska, Arkansas, Idaho, Illinois, Kansas, Kentucky, Louisiana, Maryland, Massachusetts, Minnesota, Mississippi, Missouri, Montana, Nevada, New Hampshire, New York, Oklahoma, Oregon, Pennsylvania and South Carolina authorize a minor to consent to general medical care in nonemergency situations. States with no law relating specifically to unmarried and unemancipated minors may have a law authorizing married and emancipated minors or teenagers over the age of majority to consent to general medical care that, by implication, requires unmarried and unemancipated minors to have parental consent.

**9.** Connecticut, the District of Columbia, Maine and Wisconsin authorize a minor to consent to abortion services. Alabama, Arkansas, Georgia, Idaho, Indiana, Louisiana, Massachusetts, Michigan, Minnesota, Missouri, Nebraska, North Dakota, Ohio, Rhode Island, South Carolina, Utah, West Virginia and Wyoming require parental consent or notification for abortion services.

**10.** The District of Columbia and all states except California, Hawaii, Kentucky, Ohio, Oklahoma, Utah and Virginia allow a minor to drop out of school. These seven states require a teenager to stay in school until he or she is 18 or has graduated.

**11.** Delaware, Florida, Georgia, Kentucky, Louisiana, Maryland, Mississippi, Nebraska, Oklahoma and Texas allow a minor to marry without parental consent.

**12.** Alabama, Alaska, Arkansas, Colorado, Connecticut, Delaware, the District of Columbia, Florida, Georgia, Idaho, Illinois, Kansas, Kentucky, Louisiana, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Montana, Nevada, New Jersey, New York, Oklahoma, Pennsylvania, Rhode Island, South Carolina and Utah authorize a minor to consent to medical care for her children.

**13.** The District of Columbia and all states except Michigan, Minnesota, Pennsylvania and Rhode Island authorize a minor to consent to her child's adoption. These four states require parental involvement in the teenage mother's decision.

**14.** "No law found" does not necessarily mean a minor may not consent to the medical services included in this figure. As noted in the text, there may be case law or an attorney's general opinion, that authorizes a teenager to do so. Even in the absence of explicit authority, it may be general practice for a physician to treat a mature minor who can give informed consent. And a minor parent may be able to consent to treatment for her child, even without explicit statutory authority to do so, under the common-law rule that in general, a doctor must obtain parental consent before treating a minor.

adolescent to obtain other sensitive health services and make other important decisions. This discrepancy raises the question of whether laws mandating parental consent or notification for abortion are justified on public policy grounds. Are such laws necessary to safeguard a young woman's health? Are they needed to protect a teenager from making a decision that could lead to long-term psychological problems? Do they improve communication between a teenager and her parents?

## Do Parental Involvement Laws Protect a Pregnant Teenager's Health?

Proponents of parental involvement laws contend that abortion can entail such serious health risks as infection, hemorrhage, perforation of the uterus and complications from use of anesthesia, and that a teenager needs her parents' help in assessing these risks. They also assert that a teenager who undergoes an abortion is much more likely than an older woman to suffer such complications as endometriosis (the growth of uterine tissue in other parts of the body) and injury to the cervix, as well as to experience complications in future pregnancies.[41]

The facts, however, do not substantiate these claims. Abortion is one of the safest common surgical procedures, particularly when it is performed in the first 12 weeks of pregnancy.[42] Fewer than one percent of abortion patients suffer a uterine perforation or experience a serious infection.[43] Furthermore, there is no evidence that women who have a single early abortion are at any greater risk of subsequent infertility or ectopic pregnancy than women who carry their first pregnancy to term.[44]

Moreover, strong evidence suggests that for women of all ages, childbirth is considerably more dangerous than abortion: Women giving birth are 100 times more likely than women having abortions to need major abdominal surgery for complications,[45] and they are 11 times more likely to die.[46]

These statistics, and the overall safety of early abortion, undercut the argument that parental involvement is needed to protect a minor's health. In fact, it appears that state laws mandating parental involvement might actually serve to increase the health risks for teenage women. Laws requiring parental consent or notification can cause a minor to carry her pregnancy to term, and thus to face the potential increased hazards of childbirth; they can also cause an adolescent to delay getting an abortion.[47] A pregnant teenager might decide to travel out of state for the procedure but need time to make travel arrangements. She might decide to use the judicial bypass, but keep postponing the day she has to talk to the judge. She might also postpone telling her parents about the pregnancy. All these delays can increase the risks of the procedure, par-



A-H.2
25

ticularly if the abortion is delayed beyond the first trimester.[48]

Evidently, in fact, some parental consent and notification laws have caused minors to postpone having abortions until the second trimester: In Minnesota, the proportion of second-trimester abortions among minors terminating their pregnancies increased by 18 percent following enactment of a parental notification law.[49] And since Missouri's parental consent law went into effect in 1985, the proportion of abortions among minors that occur in the second trimester has increased, from 19 percent in 1985 to 23 percent in 1988.[50]

There is always some risk—albeit a very small one—that a teenager will develop a complication following an abortion. But the same possibility exists for many of the confidential services that states authorize a minor to obtain on his or her own consent, such as surgery and the use of prescription medications. In all cases involving the risk of complications, health professionals have a special responsibility to make sure that their young patients recognize the signs of possible problems and know what to do in the event they occur.

*"... childbirth is considerably more dangerous than abortion.... state laws mandating parental involvement might actually serve to increase the health risks for teenage women."*

## Do Parental Involvement Laws Help a Teenager Avoid a Decision She Might Later Regret?

Advocates of mandatory parental involvement contend that many minors are too young and immature to appreciate the long-term implications of the decision to terminate a pregnancy, and that they therefore need the benefit of their parents' perspective and maturity to help them avoid making a choice that could cause serious long-term emotional distress.[51] Some women do experience short-term feelings of sadness, regret, guilt or anger after an abortion, but for the vast majority of women who terminate their pregnancies, there is no evidence that abortion results in serious psychological problems. Indeed, after a yearlong evaluation, former U.S. Surgeon General C. Everett Koop, who is an outspoken critic of legal abortion, concluded that the negative impact of abortion on women's mental health is "minuscule from a public health perspective."[52]

Furthermore, only four states mandate that parents play a role in a teenage daughter's decision to place her child for adoption, and two-thirds of the states explicitly recognize a minor's authority to make that decision by herself. It is hard to reconcile these facts with the argument that parental involvement in the abortion decision is necessary to help young women avoid possible mental anguish. The decision to relinquish motherhood after giving birth would seem to have at least as great a potential to cause long-lasting sadness and regret as the decision not to bear a child in the first place.

Some advocates might claim that the common practice of requiring parental consent before a minor may



Att. 2
2 6

marry is comparable to state laws mandating parental involvement in the abortion decision. However, the decision to marry and the decision to terminate a pregnancy differ in one significant respect: If a young person's parents will not give their consent to a teenage marriage, the marriage can be postponed until the minor has reached the age of majority, with no ill effect. But, as the Supreme Court has observed, "a pregnant adolescent... cannot preserve for long the possibility of aborting, which effectively expires in a matter of weeks from the onset of pregnancy."[53] If a pregnant teenager does not act in a timely manner, the point at which she can obtain a legal abortion will pass, and by default, she will be forced to make a quite different and highly significant decision—the decision to become a teenage parent.

## Do Parental Involvement Laws Improve Communication Between Parents and Their Adolescent Daughter?

Supporters of laws mandating parental involvement for abortion often justify those statutes as an effective way of improving communication between adolescents and their parents. They argue, for example, that a teenager who fears her parents' reaction to the news of a pregnancy often gets a far more supportive response than she had anticipated.[54]

Some minors undoubtedly do misjudge how their parents will react. However, experts in family counseling and family communication say that while family relationships generally benefit from voluntary and open communication, forced communication can be disastrous, particularly if a parent is abusive.[55] And court officials who are experienced in dealing with minors say that teenagers usually assess their family circumstances quite accurately.[56]

Furthermore, laws that require involvement of both parents can actually inhibit a minor from discussing her situation with one parent, since she knows she must still go to court to get authorization from a judge if she is not willing to consult with the other parent. The situation is exacerbated for a young woman whose parents are separated or divorced and who has little or no relationship with the noncustodial parent.[57] Under these circumstances, it is hard to believe that compulsory communication about a minor's pregnancy will improve parent-child communication.

Even where no law mandates parental involvement, teenagers generally do consult with their parents. A majority of the roughly 180,000 young women under 18 who have abortions each year[58] say that at least one parent knows of their decision, usually because the minor has told that parent voluntarily. The younger the teenager, the more likely her parents are to know.[59]



Att. 2
2 7

# Conclusion: Our Daughters' Decisions

The findings of the AGI review demonstrate quite dramatically the wide discrepancy that exists between state laws that make a minor's access to abortion conditional upon her willingness to consult with her parents, and state laws that specifically authorize an adolescent to make her own decisions about other types of medical care. State laws mandating parental involvement in the abortion decision also run totally counter to the common approach states take in other important areas of a teenager's life—such as leaving school or placing a child for adoption.

For some advocates of these more stringent approaches to parental involvement in the abortion decision, abortion may seem intrinsically different from other areas in which a minor may make her own decisions because it involves ending a fetus's potential for life, an act some people find morally unacceptable. If abortion is immoral, however, it is no less so if a parent or a judge sanctions the decision. For people who believe that abortion is morally wrong, the issue of parental involvement, logically, should be irrelevant.

Others might contend that abortion is different from other choices a minor may make for herself because it is an irrevocable decision. But so is the decision to have a baby. Few of those who might approve of parents' preventing their teenage daughter from having an abortion would argue that those same parents also have the right to force a teenager to have a baby. Moreover, once a teenager has a child, she is then permitted in most states to make another irrevocable decision: whether to raise the baby herself or place it for adoption. In the case of adoption, while she may have a brief period to change her mind, once the grace period ends, her parental rights are terminated.

*"What steps can states take to promote a minor's best interests, with respect both to abortion and to other decisions a teenager may face?"*

Those who believe abortion is morally unacceptable might support laws mandating parental involvement as a way of preventing a minor from having an abortion altogether. Indeed, parental consent or notification requirements are often part of legislation designed to restrict overall access to abortion, and parental involvement statutes are usually introduced by opponents of legal abortion. However, the majority of Americans who support parental consent or notification laws probably do not share these special-interest political goals. Rather, they are more likely to want to ensure that a pregnant teenager receives adult guidance and support when considering all the options available to her, so that she can make a decision that is in her best interests. Yet, the evidence shows that mandatory parental involvement does not accom-



Att. 3
28

plish this objective and might actually be contrary to a minor's best interests. What steps can states take to promote a minor's best interests, with respect both to abortion and to other decisions a teenager may face?

## Ensuring Clarification and Consistency in State Laws

The clear trend in state law is to expand the right of a mature minor to make important decisions about his or her own health care and future and the future of his or her child. Statutes are an important means of clarifying and affirming the right of a minor to make important life decisions. As regards medical care, for example, state laws guarantee a minor confidentiality and remove a teenager's possible fear of being "found out" as an obstacle to seeking care and obtaining it without delay. For doctors and other health professionals who treat adolescents, statutes authorizing a minor to consent are a guarantee (except, of course, in cases of negligence) that these health providers can offer services to a teenager without fear of prosecution. (Even where state laws specifically authorize a minor to consent to health care, however, individual providers and health care agencies may refuse to treat a teenager without parental consent, probably largely out of concern about who is responsible for paying for the treatment.)

Some states have been less diligent than others in clarifying and adopting a consistent approach to teenagers' decision-making authority (see Appendix Table 1). For example, in a number of states, a minor may consent to treatment for STDs, but not to other services related to sexual activity. Certain states authorize a minor to consent to prenatal care and childbirth services, but not to obtain confidential contraceptive services that could enable her to avoid an unplanned pregnancy. States that require parental involvement for abortion often allow a minor to place her child for adoption, without assigning any role in the decision to the grandparents. Some states permit a teenage mother to consent to her child's adoption, but not to medical care for the child. And other states leave a teenage mother in the anomalous position of being able to consent to medical care for her child, but not for herself.

The implementation of a clear and consistent approach to the whole area of legal rights for minors who might be faced with important medical or life decisions would result in two significant benefits: It would assure access to confidential health services for teenagers who feel that they cannot tell their parents about their health problems, thereby encouraging them to seek prompt medical treatment. It would also give health care providers and other professionals working with young people unambiguous guidelines as to the extent

***WHAT THE AGI STUDY SHOWS***

- *Nearly half the states (24) and the District of Columbia have laws authorizing a minor to consent to contraceptive services. No state has a law that requires a minor to obtain parental consent for these services.*
- *A majority of states (27) and the District of Columbia have statutes authorizing a teenager to consent to prenatal care and delivery services. No state has a law that requires a minor to obtain parental consent for these services.*
- *The District of Columbia and all but one state have laws affirming a minor's right to consent to the diagnosis of and treatment for STDs. No state has a law that requires a minor to obtain parental consent for these services.*
- *Most states (46) and the District of Columbia have laws that authorize a minor to consent to treatment for substance abuse.*
- *The District of Columbia and more than half of the states (28) authorize a minor to consent to treatment for emotional and psychological problems without parental involvement.*
- *More than one-third (21) of the states authorize a minor to consent to general medical and surgical care in nonemergency situations. In nearly half of these states, a minor who has reached a specified age (14–16) or who is mature enough to understand the nature and consequences of the proposed treatment may give consent.*
- *The District of Columbia and all but seven states allow a minor to drop out of school, despite the negative consequences associated with failure to earn a high school diploma.*
- *Most states (40) and the District of Columbia require parental consent before a minor can get married.*



Att. 2.
29

to which they can serve minors or act on their instructions, without involving the parents.

## Creating Balanced Alternatives

In a dissent to the Supreme Court's 1990 decision upholding two-parent notification with a judicial bypass for abortion, Justice Thurgood Marshall noted that "if a state were concerned about ensuring that all minors consult with a knowledgeable and caring adult, it would provide for some form of counseling rather than for a judicial procedure in which a judge merely gives or withholds his consent."[60] A few states have enacted procedures other than a judicial bypass that seek to address the potential conflicts between the call for parental involvement and the teenager's right to confidentiality. Some of these identify professionals who, because of their training and experience in working with young people, may be better qualified than a judge, or even a physician, to counsel a pregnant adolescent about her options:

- West Virginia allows a doctor—who must be other than the physician who will perform the abortion and who may not have any professional or financial association with that physician—to waive the state's mandatory notification requirement (which includes a judicial bypass option) if he or she concludes that a minor is mature enough to make her own decision, or that notification would not be in her best interests.[61] This approach is broadly consistent with a basic principle of medical ethics that a doctor must assess a patient's competence to give informed consent; however, the attending physician, rather than someone who is not involved in treating the patient, usually makes that determination.

- A 1991 Maryland notification law permits the attending physician to waive the parental notice requirement (which does not include a judicial bypass) if he or she believes that a minor is mature enough to make the abortion decision, that notice may lead to physical or emotional abuse of the minor or that it would otherwise not be in the minor's best interest; if the minor does not live with a parent; or if a "reasonable" effort to give notice has been unsuccessful.[62] The law is not being enforced, pending a statewide referendum to be held in November 1992.

- A 1990 Connecticut statute requires a teenager under 16 to be counseled by a doctor or other qualified professional (a psychiatrist, psychologist, social worker, family therapist, minister, physician's assistant, nurse or guidance counselor). The minor must be told of all her options for resolving an unplanned pregnancy, and must be informed that she can change her mind about having an abortion at any time

*• In the District of Columbia and 28 states, a mother under the age of majority may consent to medical care for her child. No state mandates parental involvement in a minor's decision to authorize medical care for her child.*

*• In the District of Columbia and all but four states, a mother under the age of majority may consent to the adoption of her child without her parents' knowledge or consent.*

*• Only three states and the District of Columbia have statutes that permit a minor to obtain an abortion without her parents' knowledge or consent.*

*• More than one-third (18) of the states have laws that mandate parental consent or notification for a minor's abortion.*



Att. 2
30

before the procedure. The counselor must discuss with her the possibility of involving her parents or another adult family member, and must give the minor an opportunity to ask questions. After the counseling is completed, both the teenager and the counselor must sign a statement confirming that she has received the required information.[63]

▪ A 1989 Maine statute contains similar counseling provisions.[64] That law gives the teenager two options: the traditional approach of obtaining parental consent or judicial authorization for an abortion, or the option of receiving extensive counseling from a qualified professional.

By providing for thorough counseling for pregnant teenagers, Connecticut and Maine have recognized that the decision to have an abortion is a serious matter that—like the decision to give birth to a child and the decision to raise a child alone or place it for adoption—requires careful and thoughtful consideration.

While parents can often help a pregnant daughter resolve these difficult issues, ultimately the young woman herself must make each of these decisions, because it is her life that will be most affected by the choice she makes. The whole theory of informed consent is, after all, rooted in such respect for the rights and responsibilities of the individual.



Att. 2

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Att. 2
33

# Appendix

## How the Study Was Conducted

The AGI compiled information on state statutes relating to an unmarried and unemancipated minor's authority to consent to contraceptive services, prenatal care and delivery services, services in connection with STDs and HIV infection, drug and alcohol abuse treatment, mental health care, general nonemergency medical care, abortion and, in the case of a minor parent, medical care for her child. We used three sources: J. Gittler, M. Quigley-Rick and M. J. Saks, *Adolescent Health Care Decision Making: The Law and Public Policy,* Carnegie Council on Adolescent Development, Washington, D. C., 1990; J. M. Morrissey, A. D. Hofmann and J. C. Thrope, *Consent and Confidentiality in the Health Care of Children and Adolescents: A Legal Guide,* Free Press, New York, 1986; and AGI's files of state laws and its *State Reproductive Health Monitor: Legislative Proposals and Actions.* Data on the age at which minors may marry without parental consent and drop out of school was collected from M. Guggenheim and A. Sussman, *The Rights of Young People,* Bantam, New York, 1985.

We then wrote a summary of the relevant laws and age limits for each state and sent this to the state's attorney general with a request for confirmation of the accuracy and currency of the information or for needed changes and the most recent statutory citation. In addition, we asked the attorneys general whether state law allowed a minor parent to consent to the adoption of her child and, if so, to provide the statute and the statutory citation.

The attorneys general of 30 states and the corporation counsel of the District of Columbia responded to our request for information. The accuracy and currency of our information for the remaining 20 states was checked through the bound volumes of state statutes and, in a few instances, through Westlaw, a computerized data base of state laws; Audrey Samers, an associate in the law firm of Fried, Frank, Harris, Shriver & Jacobson, conducted this check.

Information on the age of majority was compiled by Anne Martin of the AGI, through a telephone survey of state attorneys general conducted in August and September of 1991. For the few states that would not respond to our request for this information, the age of majority was obtained through research of state statutes.

To the best of our knowledge, the information in this report is accurate as of January 1, 1991. In some instances, we have included more recent information.



Att. 2
3

# Appendix Table 1

| STATE | AGE OF MAJORITY | MEDICAL CARE | | | | |
|---|---|---|---|---|---|---|
| | | Contraceptive services | Prenatal care and delivery services | STD/VD services | HIV testing and treatment | Treatment for drug and alcohol abuse |
| ALABAMA | 19 | NL | MC | MC[4,5] | NL | MC |
| ALASKA | 18 | MC | MC | MC | NL | NL |
| ARIZONA | 18 | NL | NL | MC | NL | MC[4] |
| ARKANSAS | 18 | MC | MC[14] | MC | NL | NL |
| CALIFORNIA | 18 | MC | MC | MC[4] | MC[4,18] | MC[4] |
| COLORADO | 18 | MC | NL | MC | MC | MC |
| CONNECTICUT | 18 | NL | NL | MC | NL | MC |
| DELAWARE | 18 | MC[4] | MC[4,14] | MC | MC[4,18] | MC[4,25] |
| D.C. | 18 | MC | MC | MC | NL | MC |
| FLORIDA | 18 | MC[28,29] | MC[15] | MC | MC | MC |
| GEORGIA | 18 | MC | MC | MC[5] | NL | MC[5] |
| HAWAII | 18 | MC[5,14,22,33] | MC[5,14,22,33] | MC[5,22,33] | NL | MC[5,34] |
| IDAHO | 18 | MC | NL | MC[22,35] | NL | MC |
| ILLINOIS | 18 | MC[29] | MC[15] | MC[4] | NL | MC[4,39] |
| INDIANA | 18 | NL | NL | MC | NL | MC |
| IOWA | 18 | NL | NL | MC | MC | MC |
| KANSAS | 18 | MC[44] | MC[45] | MC[5] | NL | MC[46] |

**NL**=No law found **MC**=Minor may consent **PC**=Parental consent required **MD**=Minor may decide **PN**=Parental notice required **NA**=Not applicable

**1.** Includes only parental consent and notification laws that are currently being enforced. These laws include a judicial bypass except where indicated.
**2.** States with no law relating specifically to unmarried and unemancipated minors may have a law authorizing married and emancipated minors or teenagers over the age of majority to consent to general medical care that, by implication, requires unmarried and unemancipated minors to have parental consent.
**3.** In addition to the consent of the minor mother, some states require consent of the unwed father if he can be located or if paternity has been established, but others do not require the father to be informed of adoption proceedings.
**4.** Minor must be 12 or older; in Arizona, applies to a minor seeking treatment for drug abuse but not for alcohol abuse.
**5.** Physician may notify parents; in Maryland, the law prohibits disclosure of information about an abortion; in Georgia, notification provision applies to treatment for drug abuse only.
**6.** Law does not distinguish between outpatient and inpatient services; it was therefore assumed that a minor may consent to both.
**7.** Minor must be 14 or older, a high school graduate, married, pregnant or a parent.
**8.** Minor must be 16 or older; in Vermont, minor under 16 may drop out of school after completing 10th grade.
**9.** Minor must be represented by an attorney.
**10.** Minor may consent if she has a child.
**11.** Law makes no distinction between minor and adult parents, and it was therefore assumed that the consent of a minor parent is sufficient.
**12.** Enforcement of a law requiring parental consent or judicial bypass is enjoined.
**13.** Minor may drop out at age 14 if employed and, in the District of Columbia, after completing eighth grade.
**14.** Law excludes abortion.
**15.** Law includes surgery; in Massachusetts, law excludes psychosurgery.
**16.** Minor may consent if mature enough to understand the nature and consequences of the proposed treatment.
**17.** Both parents must be notified unless one parent is not readily available; in Minnesota, a "diligent" effort must be made to locate both parents (see: Minn. Stat., sect. 144.343(2)–(6)); in Arkansas, a "reasonably diligent effort"



Att. 3
35

**Laws affecting an unmarried, unemancipated minor's right to make decisions about medical care, abortion and other important issues, 50 states and the District of Columbia**

| | | | ABORTION SERVICES[1] | DECISIONS ON MINOR'S OWN BEHALF | | DECISIONS ON BEHALF OF MINOR'S CHILD | |
|---|---|---|---|---|---|---|---|
| Mental health services Outpatient | Inpatient | General nonemergency medical care[2] | | Dropping out of school | Getting married | Medical care for child | Placing child for adoption[3] |
| MC[6,7] | MC[6,7] | MC[7] | PC | MD[8] | PC | MC | MC[9] |
| NL | NL | MC[10] | NL | MD[8] | PC | MC | MC[11] |
| NL | NL | NL | NL[12] | MD[8,13] | PC | NL | MC |
| NL | NL | MC[15,16] | PN[17] | MD[8] | PC | MC | MC[11] |
| MC[4,19] | NL | NL | NL[12] | NA[20] | PC | NL | MC |
| MC[5,21] | MC[5,21] | NL | NL | MD[8] | PC | MC | MC |
| NL | MC[22] | NL | MC[23] | MD[8,13] | PC | MC | MC[24] |
| NL | NL | NL | NL[26] | MD[8] | MD[27] | MC | MC |
| MC[6] | MC[6] | NL | MC | MD[8,13] | PC | MC | MC |
| MC[4,30] | MC[30,31] | NL | NL[12] | MD[8] | MD[27] | MC | MC[11] |
| NL | MC[4,32] | NL | PN | MD[8] | MD[27] | MC | MC |
| NL | NL | NL | NL[26] | NA[20] | PC | NL | MC |
| NL | PN[36] | MC[37] | PN[17,38] | MD[8] | PC | MC | MC |
| MC[4,5,40] | PN[36] | MC[15,41] | NL[42] | MD[8] | PC | MC | MC |
| NL | NL | NL | PC | MD[31] | PC | NL | MC[43] |
| NL | NL | NL | NL | MD[8,13] | PC | NL | MC[11] |
| NL | PN[36] | MC[8,15,47] | NL | MD[8] | PC | MC | MC |

must be made (see Ark. Code Ann., sect. 20-16-801 et seq.).
**18.** Law applies to testing only.
**19.** Law applies to a minor who is mature enough to participate "intelligently" in treatment or counseling and would present a danger to himself or herself or others, or is an alleged victim of incest or child abuse; parents shall be involved unless health professional thinks involvement would be inappropriate.
**20.** State law does not allow a minor to drop out of school before graduation.
**21.** Minor must be 15 or older.
**22.** Minor must be 14 or older.
**23.** Minor under 16 must receive intensive counseling from physician or other qualified professional, who must discuss the possibility of involving the minor's parents.
**24.** Minor parent must have court-appointed guardian (guardian *ad litem*).
**25.** Law applies to treatment for alcohol abuse only.
**26.** Law authorizing a minor to consent to prenatal care and delivery services excludes abortion; however, this condition imposes a blanket prohibition on abortion without parental consent and therefore appears to be unconstitutional under Supreme Court decisions.
**27.** Minor who is pregnant or has a child may marry without parental consent; in Florida, a judge must authorize a marriage in such circumstances; in Maryland, the minor must be at least 16.
**28.** Law excludes sterilization.
**29.** Minor may consent if she is pregnant or a parent, or if a doctor believes she may suffer a health hazard if services are not provided. Illinois law also authorizes minor to consent if referred by a physician or Planned Parenthood clinic; Maine law does not apply to pregnant minors.
**30.** Law requires hearing to determine voluntariness.
**31.** Minor must be 17 or older.
**32.** Minor may consent to observation and diagnosis only; parental consent needed for treatment.
**33.** Law excludes surgical procedures.
**34.** Minor may consent to counseling services only.
**35.** Minor may consent to diagnosis and treatment of contagious, infectious and reportable diseases.



Att. 2
36

# Appendix Table 1

| STATE | AGE OF MAJORITY | MEDICAL CARE | | | | |
|---|---|---|---|---|---|---|
| | | Contraceptive services | Prenatal care and delivery services | STD/VD services | HIV testing and treatment | Treatment for drug and alcohol abuse |
| KENTUCKY | 18 | MC | MC | MC | NL | MC |
| LOUISIANA | 18 | NL | NL | MC[5] | NL | MC[5,46] |
| MAINE | 18 | MC[29] | NL | MC[5] | MC[18] | MC[5] |
| MARYLAND | 18 | MC[5,28] | MC[5] | MC[5] | NL | MC[5] |
| MASSACHUSETTS | 18 | NL | MC[14] | MC | NL | MC[4,46,53] |
| MICHIGAN | 18 | NL | MC | MC[5,15] | MC[5,15] | MC[5,15] |
| MINNESOTA | 18 | NL | MC[5] | MC[5] | NL | MC[5] |
| MISSISSIPPI | 21[58] | MC[59] | MC[15] | MC | NL | MC[5,21] |
| MISSOURI | 18 | NL | MC[5,14,15] | MC[5,15] | NL | MC[5,61] |
| MONTANA | 18 | MC[5] | MC[5,15] | MC[5,15] | NL | MC[5,15] |
| NEBRASKA | 19 | NL | NL | MC | NL | MC |
| NEVADA | 18 | NL | NL | MC | NL | MC[46] |
| NEW HAMPSHIRE | 18 | NL | NL | MC[22] | NL | MC[4,46] |
| NEW JERSEY | 18 | NL | MC[5,15] | MC[5,15] | NL | MC[5,66] |
| NEW MEXICO | 18 | MC | NL[67] | MC | MC[18] | MC[46] |
| NEW YORK | 18 | MC | MC[70] | MC | MC[18] | MC[25] |
| NORTH CAROLINA | 18 | MC[14,28] | MC[14,28] | MC | NL | MC |

**NL**=No law found **MC**=Minor may consent **PC**=Parental consent required **MD**=Minor may decide **PN**=Parental notice required **NA**=Not applicable

**36.** Minor may consent, but parent must be notified upon minor's admission. In Illinois and Tennessee, minor must be 16 years old to consent to admission; in Idaho, Kansas and Pennsylvania, 14 years; in Washington, 13 years.
**37.** The state's medical consent statute permits "any person of ordinary intelligence and awareness" to consent to hospital, medical, surgical or dental care (see: Idaho Code, sect. 39-4302). However, a later section of the law appears to give parents the authority to consent for a minor child (sect. 39-4303). According to the attorney general's office, the agency "frequently" interprets the law as authorizing minors to consent. (R. Hardin, deputy attorney general, personal communication to P. Donovan, AGI, Oct. 22, 1990.)
**38.** Law does not include judicial bypass.
**39.** "Reasonable" efforts must be made to involve minor's family in treatment for drug abuse; physician must notify parents within three months of initiation of treatment for alcohol abuse (see: Ill. Rev. Stat., ch. 111, pars. 4504, 4505).
**40.** Minor may consent to five outpatient sessions.
**41.** Minor may consent if she is pregnant.
**42.** Enforcement of a law requiring parental notice or judicial bypass is enjoined.
**43.** Minor may consent unless court determines that it is in the best interests of the child being adopted to require the consent of a minor parent's parent.
**44.** State law permits family planning services to be provided to "any person who is over 18 years of age and who is married or who has been referred . . . by a person licensed to practice medicine and surgery." (See: Kan. Stat. Ann., sect. 23-501 [1981].) According to the Kansas attorney general, a city or county would not be subject "to any liability for providing contraceptive services to minors [without parental consent] that does not exist with respect to providing such services to adults." (See: letter from Attorney General Robert T. Stephan to Thomas R. Powell, city attorney, and Henry H. Blase, county counselor, Wichita, Kans., Dec. 6, 1989; and Attorney General Opinion No. 87-66.)
**45.** Minor may consent when parent is not "available." The statute does not define available. (See: Kan. Stat. Ann., sect. 38-123 [1981].)



Att. 2
37

**Laws affecting an unmarried, unemancipated minor's right to make decisions about medical care, abortion and other important issues, 50 states and the District of Columbia (continued)**

| Mental health services | | General nonemergency medical care[2] | ABORTION SERVICES[1] | DECISIONS ON MINOR'S OWN BEHALF | | DECISIONS ON BEHALF OF MINOR'S CHILD | |
|---|---|---|---|---|---|---|---|
| Outpatient | Inpatient | | | Dropping out of school | Getting married | Medical care for child | Placing child for adoption[3] |
| MC[8] | MC[8] | MC[10] | NL[12] | NA[20] | MD[48] | MC | MC[24] |
| NL | MC[8] | MC[5,15,49] | PC | MD[31] | MD[50] | MC | MC[11] |
| MC[5,6] | MC[5,6] | NL | MC[51] | MD[31] | PC | NL | MC[11] |
| MC[5,6,8] | MC[5,6,8] | MC[5,10] | NL[52] | MD[8] | MD[27] | MC | MC[11] |
| MC[8] | MC[8] | MC[10,14,15,28,41] | PC[54] | MD[8] | PC | MC | MC[11] |
| MC[22,55] | NL | NL | PC | MD[8] | PC | MC | PC[56] |
| NL | MC[8] | MC[10] | PN[17] | MD[8,57] | PC | MC | PC |
| NL | NL | MC[15,58] | NL[12] | MD[31] | MD[60] | MC | MC |
| NL | NL | MC[10] | PC | MD[8] | PC | MC[62] | MC |
| MC[8] | MC[8] | MC[5,10,15] | NL | MD[8,63] | PC | MC[5] | MC[64] |
| NL | NL | NL | PN | MD[8] | MD[31] | NL | MC[11] |
| NL | MC | MC[10,16,28] | NL[42] | MD[31] | PC | MC | MC |
| NL | NL | MC[16] | NL | MD[8] | PC | NL | MC[65] |
| NL | NL | NL | NL | MD[8] | PC | MC | MC |
| MC[68] | PC | NL | NL | MD[8,69] | PC | NL | MC |
| MC | MC[8] | MC[10] | NL | MD[8,71] | PC | MC | MC |
| MC | NL | NL | NL[26] | MD[31] | PC | NL | MC |

**46.** Law applies to treatment for drug abuse only.
**47.** Minor may consent if parent is not "immediately available." (See: Kan. Stat. Ann., sect. 38–123b [1981].)
**48.** A pregnant minor may marry without parental consent, but with court approval.
**49.** Minor who believes he or she is afflicted by an "illness or disease" may consent to treatment. (See: La. Rev. Stat. Ann., sect. 40:1095 [1977].)
**50.** Judge may authorize marriage of minor of any age without parental consent "when there is a compelling reason." (See: La. Rev. Stat. Ann., sect. 9:212 (Supp. 1991).)
**51.** Minor must have the consent of parent or other adult family member, or use the judicial bypass, or be counseled by the attending physician or a counselor, who can be a psychiatrist, psychologist, social worker, ordained clergyman, physician's assistant, nurse practitioner, guidance counselor or nurse.
**52.** Law requires notification of one parent with no bypass. However, a physician may waive notification if the minor does not live with a parent; if the doctor determines that the minor is mature enough to give informed consent or that notification may lead to physical or emotional abuse of the minor, or otherwise be contrary to her best interests; or if reasonable effort to give notice was unsuccessful. The statute is not being enforced, pending a statewide referendum on the law in November 1992.
**53.** Minor may consent if found drug-dependent by two doctors; bars consent to methadone maintenance therapy and treatment with antipsychotic medication.
**54.** Both parents must consent. If parents are divorced, only the custodial parent must consent; in Massachusetts, the same is true if one parent is "unavailable." (See: Mass. Gen. Laws c. 112, s. 12F.)
**55.** Law excludes abortion referral services and chemotherapy; minor may consent to 12 sessions or to services over a period of four months.
**56.** Minor must have the consent of parent, guardian or court-appointed guardian.
**57.** Age will change to 18 in the year 2000.
**58.** General age of consent to medical care is 18; however, any minor who is mature enough to understand the nature and consequences



Att. 2
38

# Appendix Table 1

| STATE | AGE OF MAJORITY | MEDICAL CARE | | | | |
|---|---|---|---|---|---|---|
| | | Contraceptive services | Prenatal care and delivery services | STD/VD services | HIV testing and treatment | Treatment for drug and alcohol abuse |
| NORTH DAKOTA | 18 | NL | NL | MC[22] | NL | MC[22] |
| OHIO | 18 | NL | NL | MC | MC[18] | MC |
| OKLAHOMA | 18 | MC[73] | MC | MC | NL | MC |
| OREGON | 18 | MC[5,75] | NL | MC | NL | MC[22,46] |
| PENNSYLVANIA | 18 | NL | MC | MC | NL | MC |
| RHODE ISLAND | 18 | NL | NL | MC | MC[18] | MC |
| SOUTH CAROLINA | 18 | NL[77] | NL[77] | NL[77] | NL[77] | MC |
| SOUTH DAKOTA | 18 | NL | NL | MC | NL | MC |
| TENNESSEE | 18 | MC | MC | MC | NL | MC[5,46] |
| TEXAS | 18 | NL | MC[14,15] | MC[15] | NL | MC |
| UTAH | 18 | NL | MC | MC | NL | NL |
| VERMONT | 18 | NL | NL | MC[4,80] | NL | MC[4,80] |
| VIRGINIA | 18 | MC[28] | MC[28] | MC | NL | MC[81] |
| WASHINGTON | 18 | NL[84] | NL[84] | MC[22] | NL | MC[22,81] |
| WEST VIRGINIA | 18 | NL[87] | NL | MC | NL | MC |
| WISCONSIN | 18 | NL | NL | MC | NL | MC[4] |
| WYOMING | 19 | MC[91] | NL | MC | NL | NL |

**NL**=No law found **MC**=Minor may consent **PC**=Parental consent required **MD**=Minor may decide **PN**=Parental notice required **NA**=Not applicable

of the proposed medical or surgical treatment may consent.
**59.** Minor may consent if referred by a doctor, clergyman, family planning agency, school or state agency.
**60.** Females 15 or older and males 17 or older may marry without parental consent; however, parents must be notified if either party is under age 21.
**61.** Law includes surgical care and hospital admission.
**62.** Minor parent may also consent to medical care for any child in his or her legal custody.
**63.** Minor must have completed eighth grade.
**64.** Another statute bars a minor from entering into contracts, so attorney general's office reported that parental consent is usually required. (S. Nelson, Montana Juvenile Justice Bureau, personal communication to P. Donovan, AGI, Dec. 2, 1990.)
**65.** Court may require consent of minor parent's parent.
**66.** Parents must be notified if minor is admitted to a facility for alcohol abuse.
**67.** Minor may consent to testing and examination to confirm pregnancy.
**68.** Any minor may consent to counseling or psychotherapy; a minor 14 or older may consent to psychotropic (mind-affecting) medication or behavior modification program unless the parent objects.
**69.** Minor may drop out if authorized by local school board.
**70.** Law refers to prenatal care; includes medical and hospital services.
**71.** Minor must be 17 in New York City.
**72.** Law excludes use of medications; covers period of 30 days or six sessions, after which parent must consent to further treatment.
**73.** Minor may consent if she has ever been pregnant.
**74.** Minor may marry without parental consent if she has given birth to an illegitimate child or is pregnant and the marriage has been authorized by a court.
**75.** A minor 15 or older may consent to sterilization if "all less drastic alternative contraceptive methods . . . have proved unworkable or inapplicable or are medically counter-indicated." (See: Or. Rev. Stat., sect. 436.205(c) [1989].)
**76.** Minor may drop out at age 16 if employed.



Att. 2
39

**Laws affecting an unmarried, unemancipated minor's right to make decisions about medical care, abortion and other important issues, 50 states and the District of Columbia (continued)**

| Mental health services: Outpatient | Mental health services: Inpatient | General nonemergency medical care[2] | ABORTION SERVICES[1] | OTHER IMPORTANT DECISIONS ON MINOR'S OWN BEHALF: Dropping out of school | OTHER IMPORTANT DECISIONS ON MINOR'S OWN BEHALF: Getting married | DECISIONS ON BEHALF OF MINOR'S CHILD: Medical care for child | DECISIONS ON BEHALF OF MINOR'S CHILD: Placing child for adoption[3] |
|---|---|---|---|---|---|---|---|
| NL | NL | NL | PC[54] | MD[8] | PC | NL | MC |
| MC[22,72] | NL | NL | PN | NA[20] | PC | NL | MC |
| NL | NL | MC[10] | NL | NA[20] | MD[74] | MC | MC[8] |
| MC[22] | NL | MC[5,15,21] | NL | MD[76] | PC | NL | MC[11] |
| NL | PN[36] | MC[73] | NL[12] | MD[31] | PC | MC | PN |
| NL | NL | NL | PC | MD[8] | PC | MC | PC |
| NL[77] | MC[8] | MC[8,77] | PC[78] | MD[8] | PC | MC | MC |
| NL | NL | NL | NL | MD[8] | PC | NL | MC[11] |
| MC[8] | PN[36] | NL | NL[12] | MD[8] | PC | NL | MC |
| MC | MC[8] | NL | NL[26] | MD[31] | MD[79] | NL | MC[11] |
| NL | MC[8] | NL | PN[17,38] | NA[20] | PC | MC | MC |
| NL | MC[22] | NL | NL | MD[8] | PC | NL | MC |
| MC | NL | NL | NL[82] | NA[20] | PC | NL[83] | MC |
| MC[85] | PN[36] | NL | NL[84] | MD[86] | PC | NL | MC[24] |
| NL | NL | NL | PN[88] | MD[8] | PC | NL | MC[89] |
| NL | NL | NL | MC[90] | MD[8] | PC | NL | MC[11] |
| NL | NL | NL | PC | MD[8] | PC | NL | MC |

**77.** Minor 16 or older may consent to any legal health services except operations.
**78.** Consent may be given by grandparent.
**79.** Minor 16–18 may petition court for permission to marry, but must be represented by a court-appointed guardian to speak for or against the petition, and the parents must be notified. The court may authorize the marriage if it determines it to be in the minor's best interest.
**80.** Parents must be notified if minor needs immediate hospitalization.
**81.** Minor may consent to outpatient services only.
**82.** Attorney general says statutory history of law authorizing a minor to consent to services in connection with birth control, pregnancy and family planning indicates that the law is intended to encompass abortion. (C. S. Nance, assistant attorney general, personal communication to J.I. Rosoff, AGI, Aug. 28, 1990.)
**83.** According to attorney general, since nothing in the Code of Virginia defines the age at which a person is capable of giving consent, "it would appear that a minor parent may provide consent to medical care for his or her child." (Ibid.)
**84.** Mature minor is authorized to consent under *State* v. *Koome*, 84 Wn. 2d 901, 530 P. 2d 260 (1975).
**85.** Minor must be 13 or older.
**86.** Minor may drop out at age 15 if employed or if school superintendent determines that minor is proficient in grades 1–9.
**87.** State law bars minor from consenting to sterilization.
**88.** Notification (or use of judicial bypass) can be waived if second physician determines that minor is mature enough to give consent or that notice would not be in her best interests.
**89.** Minor may consent unless court concludes minor's age precludes informed consent.
**90.** Abortion provider must "strongly encourage" minor "to consult" her parents or another family member or appropriate person. Every provider must have a policy on parental involvement that includes information on the availability of services to assist the minor in involving her parents. (See: Wis. Stat. Ann., sect. 146.78(5).)
**91.** State-supported family planning services may be provided to "any person who may benefit from these services." (See: Wyo. Stat., sect. 42-5-101(a).)



Att. 2
40

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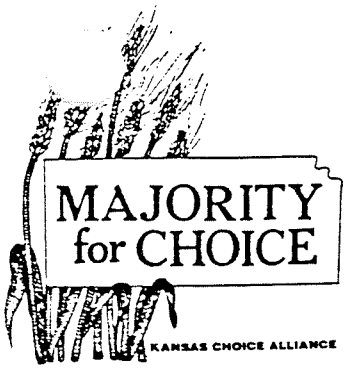
Att. 2
41




**Testimony submitted to the Senate Federal and State Committee**
**Adele Hughey for the Kansas Choice Alliance**
**Supporting Senate Bill 2778**
**March 9, 1992**



The Kansas Choice Alliance urges you to support Senate Bill 2778 without amendments.

The bill represents a mid-point to the pulls exerted by both sides of this issue. The bill defines viability and limits late term abortion. It clarifies that no political subdivision of the State shall interfere with the right of a woman to terminate a pregnancy. This ensures uniformity of laws.

One of the most important sections of SB 2778 is the mandated counseling for minors. The provision ensures that minors receive information on all alternatives. This provision allows the minor to make the best choice for herself without coercion. It is for this reason the Kansas Choice Alliance would oppose the addition of any parental notification wording. Parental notification is widely considered a potentially dangerous enterprise because of the widespread prevalence of sexual and physical abuse against minor children.

Maintaining clinic access is a direct response to the activities in Wichita last summer. That display of total disregard of the Wichita Police Department and the judicial process can not be tolerated. The bill does not infringe on a person's right to free speech and at the same time it enables a woman the freedom to enter a clinic without undue harassment.

SB 2778 also answers the question of what to do with the old abortion laws. Those dormant laws would be repealed by this bill and the void filled with what, in its current form, is a reasonable and balanced law.

The Kansas Choice Alliance represents a broad spectrum of organizations that strongly believe a woman's right to choose abortion is a private matter and should not be interfered with by the State. Senate Bill 2778, in its current form, provides for this, and the State can be confidant that the delivery of abortion services will be regulated in a balanced way.

Att. 2
42

Statement in support of the counseling provision of House Bill #2778. Presented to the Senate Federal and State Affairs Committee by Rev. Monty Smith, J.D., M.Div. 1729 Oakley, Topeka, Kansas, 66604 Telephone: 232-2196

Our respect for fetal/potential life collides with the needs and values of actual persons in no area more painfully than in the case of teenage pregnancy. Put theologically, what are we to do when the continuation of pregnancy will obstruct God's loving intentions for a twelve or thirteen-year-old child who becomes pregnant? Nowhere is a fundamentalist, political ideology of compulsory pregnancy more unworkable than in the case of a fertile twelve-year-old child who cannot yet take care of herself, let alone another life.

The inequity of the idea that females, once pregnant, must remain so while males, who are equally responsible for conception, may never even be identified is nowhere so disproportionate as in the case of teenage boys and girls.

Confounding these issues even more is the terrible reality of violence and incest. The National Center for Child Abuse and Neglect states that there are at least 100,000 cases of incest-rape each year (25% of these may result in pregnancy). Other estimates are as high as 250,00. There are no good statistics on non-rape physical abuse. For every reported case there are over 200 unreported cases.

Studies of teenagers in Massachusetts reveal that 70% of those seeking abortions involve their parents. Those who do not, may have good reason. An already vulnerable and troubled child may face rejection and exile from the family, physical battering, or worse.

The counseling provision of House Bill #2778 is a wise mediation of these issues. When compared to parental notification with judicial bypass, the counseling provision appears particularly strong. Counseling provides a relational and supportive decision-making and follow-up environment. Parental notification may mean an appearance before a stranger-judge with no follow-up support after the decision process. There is no state expense in counseling. Parental notification requires state expense and burdening an already over-burdened judicial system. Counseling maintains confidentiality. Parental notification can jeopardize confidentiality. Parental notification in Massachusetts has lead to an increase in the number of second trimester abortions and an enormous hardship for minors. Counseling addresses a contemporary social and healthcare issue with compassion.

March 9, 1992

Senate Federal and State Affairs Committee

REF: HB2778 (The Abortion Bill)

I am Beverly Gering, Vice Mayor and City Commissioner of Newton, Kansas. I have lived all my life in Kansas and am very proud of our state. But, I do have a hard time with the acceptance of having to deal with the Parental Notification proposed ordinance, that the citizens of Newton will be voting on in April.

Why should each city in the state act on this issue? Can you imagine what a patchwork of ordinances we will have if this is enacted on at the local levels?

Newton was presented with the petition on February 15, 1992. We, the city commissioners had two choices; (a) we could move to accept the proposed ordinance and it would become effective after publication, or (b) we could not act on the proposed ordinance and it would automatically go to the voters of the city of Newton.

We chose to send it to the voters of Newton, at a cost to the taxpayers. Needless to say this was not a popular decision with the pro-life group. There has been harassment to all of the commissioners. In the forms of; letters to the editor, telephone calls, physical damage to vehicles and I could go

on and on. I have attached copies of some of the letters as examples.

All of this could have been avoided if the state legislature would 'take the bull by the horns' and act on the bill and if necessary override the veto that has been threatened by Governor Finney. This should be a federal or state issue not a city issue. This effects all individuals not just those living in a city (especially cities that do not do abortions or have abortions clinics). Operation Rescue last summer was a good example of time and money spent. The cities across the state should not have to spend time and money on this issue. This time and money needs to be spent on city business.

Thank you for letting me speak this morning and I would like to leave you with the request to please accept your responsibility and act on the abortion issue at the state level.

Thank you.

Beverly Gering, Vice Mayor
307 S.E. 13th
Newton, KS. 67114
316-283-8140

Att. 2
46

Wichita 2-92

# Newton delays action on abortion ordinance

**By Joe Rodriguez**
*The Wichita Eagle*

NEWTON — After more than two hours of arguments Wednesday, the Newton City Council took no action on a petition seeking an ordinance to require a parent of a girl younger than 18 to be notified if she sought an abortion.

The petition, circulated by the Central Kansas Pro-Family Political Action Committee and the Harvey County chapter of Kansans for Life, bore more than 1,000 signatures. Although only 786 signatures were validated, the group needed just 665 to bring the referendum to the city council.

If the council does not pass the parental notification ordinance within 20 days, a special election must be held, unless a regular city election is scheduled in the next 90 days, said Robert Myers, the city attorney.

Petition organizers said they felt the action was necessary even though there are no clinics or hospitals in either Newton or Harvey County that perform aboritons.

"We wanted to prevent any abortion provider from coming here," said Mike Stieben, chairman of the Central Kansas Pro-Family Political Action Committee "If there are regulations, then those communities aren't going to look attractive to those who perform abortions."

Stieben said the group saw the petition drive as a way to demonstrate its views on abortion, while at the same timepressuring state legislators to pass a strict parental-notification bill.

In the end, council members were reluctant to vote.

Council member Beulah Day said she didn't want to "act as King Solomon."

Finally, the mayor adjourned the meeting. "There is no motion. We can take no further action," said Mayor Don Anderson.

Wichita Eagle Mon Feb 10 1992

# Urgent Abortion bill would end the risk of cities abusing lawmaking powers

Want a good example why the abortion bill before the House Federal and State Affairs Committee deserves to become law? Look no further than the Newton City Commission's decision last week to let Newtonians vote on whether to restrict teen abortions.

The proposed restriction, requiring women younger than 18 to notify their parents before obtaining an abortion, may or may not be a good idea. But such proposals should be made to the Legislature, which has the authority to enact laws statewide.

To adopt a municipal approach is to go about the task piecemeal. Piecemeal restrictions are easily evaded, therefore legally meaningless. In Newton's case, a parental notification ordinance also would be an abuse, for the sake of symbolism, of the city's authority to make laws: There are no abortion providers in the city.

The House bill, among other things, would bar local governments from using home-rule powers to restrict abortion. The bill also would enact restrictions that most Kansans — pro-life and pro-choice — support: ban late-term abortions of healthy fetusus and require girls under 16 to receive counseling before obtaining abortions.

The bill also would protect cities from the devastating financial consequences of lengthy illegal protests — such as those that plagued Wichita last summer. It would impose stiff fines and jail terms for blocking access to abortion facilities.

The bill's main objective is to create a moderate abortion climate — one that discourages frivolous and unnecessary abortions while preserving the right of women to control their bodies. The action in Newton underscores how urgent it is that the Legislature put this law on the books.

Att. 2
47

# Letters to the editor



## A no-win situation

To the editor:

I want to express my appreciation to the five members of the Newton City Commission for the caring way they dealt with both the petitioners, and the opponents of the petition, proposing an ordinance on Parental Notification. Their demeanor in the face of a difficult situation was exemplary and worthy of our gratitude as a community.

The city commissioners were placed in a no-win situation by the representatives of Kansas for Life, in that the action that they could take was severely limited. Their decision to take no action on the petition and thus allow it to go to a city-wide referendum was probably the wisest course of action under the circumstances. As citizens, we need to remember that when options are severely limited, as they were in this case, good decisions are hard to come by.

We, members of Citizens for Choice, commend the Newton City Commission and their staff for the gracious way we were received at the meeting, for the extra amount of time granted to the discussion of the petition and proposed ordinance, and for the thoughtful and caring attitude shown by the commissioners during the meeting.

**...When options are severely limited... good decisions are hard to come by.**
Bill Ester, Citizens for Choice

We are indeed fortunate to have five persons of your caliber serving our city.

**Bill Ester**
Citizens for Choice
Newton

## Right vs. wrong

To the editor:

Last night for the first time I attended a meeting of our Newton Commissioners. I was told that never before had so many people attended a hearing, which should tell us that our community is greatly interested in the pro-life issue.

The issue discussed was: Should parents be notified when their teenaged daughter is being convinced to have an abortion by our tax-payed counselors?

The case was well presented by the Newton pro-lifers. The first of the city officials to answer was the vice mayor who complained about the costs involved in making it legal to notify parents when their teenager daughter was to have a major surgery.

One of the commissioners later in the meeting seemed to give the common understanding of the rest of the officials when he argued that the pro-lifers did not represent the majority of our community even though all speakers present admitted that abortion was wrong.

The real issue before the house was neglected by the commissioners. The right and wrong of the issue was not given so much attention as to the fact of who was on who's side. The commissioners wanted us to believe that they were open and had friends on both sides of the issue, yet when one of the commissioners "blew his top" with some pretty strong language against one of the Newton citizens because he was putting too much importance on the pro-life issue, it showed clearly that there was no pro-life voice among our city officials. It would have been better if our commissioners would have been concerned for what is right and what is wrong rather than who is on whose side.

**Our city commissioners have a responsibility to decide right from wrong.**
Elmer Klassen

The pro-lifers made a very convincing case for their position. The rejection of their request by the commissioners has now gone on record. I have lived in Germany 30 years with two generations who went along with what the masses wanted. It is now on record what the Nazis have done. It is now also on record what the masses, influenced by the left-winged socialistic/communistic people through the efforts of the Stasis (former East German secret police), have done. Great effort is now being made to bring healing to the depressed for having done the wrong thing.

What happened last night went on record. Our commissioners were faced with a right or wrong issue. I have lived a major part of my life with people who regret their past. I am now witnessing actions which will be regretted in the years to come. Our city commissioners have a responsibility to decide right from wrong. If they are not able to tell the difference now they, too, will know better after it is too late.

Even if I do not agree with what our city commissioners are doing I will support them whenever I can. However, at the polls we need to make the pro-life position an issue.

**Elmer G. Klassen**
North Newton

Att. 2
48

## Gering criticized

2/12/92

To the editor:

Recently the Newton City Commission considered a city ordinance which would require that a minor girl, under the age of 18, must first notify her parents prior to having an abortion.

If the commissioners would have simply adopted the ordinance that evening there would not have to be a special election. However, one city commissioner worked overtime to stop the parental notification ordinance.

That pro-abortion commissioner was Beverly Breneman Gering.

Ms. Gering, while pretending to be an objective and fair commissioner at the meeting, established her pro-abortion record the night before. Ms. Gering helped to lead the Citizens for Choice committee meeting held by Bill Ester at Trinity Heights United Methodist Church.

Ms. Gering campaigned against parents being notified. She doesn't think parents should know prior to their daughter obtaining an abortion. Many citizens of Newton didn't know that Ms. Gering was such a liberal feminist before she ran during the last election.

We didn't realize that Commissioner Gering approved of the current law which allows abortion as a method of birth control into the seventh, eighth and ninth month of pregnancy. We didn't realize that she even is opposed to parents being notified prior to an abortion on a minor child.

I hope all citizens will remember that we now have a city commissioner who is willing to campaign in favor of abortion, Bev Gering. Election day is coming and the parents of Newton will remember.

**Lillian Fangman**
Newton

**If the commissioners would have simply adopted the ordinance that evening there would not have to be a special election. However, one city commissioner worked overtime to stop the ordinance.**

Lillian Fangman

## It's time to clean house at City Hall

2-18-92

To the editor:

In an article in your newspaper, Father Linnebur was identified as the "Pastor of Our Lady of Guadalupe Church in Wichita." Father Linnebur is from Newton. He has resided in Newton for nine months, I think.

I am wondering if it's legal for non-expert persons to address the city commission about a proposed city ordinance. At least two of the persons who represented the pro-abortion side at the city commission meeting on Feb. 5 do not live in Newton! They were there as private citizens and not as experts on the matter at hand.

In a letter to the editor which appeared in your newspaper on Feb. 10, a local pastor said that the "demeanor" of the city commission "was exemplary." Evidently he left the meeting early. There were at least two reporters from the newspaper at the meeting. Evidently, they left early, also.

The meeting, probably, ought to have been moved to a larger room in order to accommodate the crowd. We had to stand outside in the cold, "security" having sealed off seven-eights of the hallway. The eighth of the corridor that was open had people lined up against the walls.

As the commission took care of items on the agenda, people left; and by the end of the meeting, everyone had gotten inside the building.

Following the presentation by the pro-abortion advocates, non-residents and all, during the discussion, the commissioners gave the spokesman for the pro-life crowd, a layman, the old un-American runaround. The city manager tried to intimidate him, and two commissioners settled personal scores with the spokesman. It appears to me that the city clerk was in collusion with a conspiracy by the commissioners to thwart the democratic efforts of the petition signers. The commissioners, the city attorney and the manager finally seemed to admit that the petition signers had abided by the letter of the law. But the commissioners and city staff seemed to be violating the spirit of the law. I did not hear the city clerk attempt to defend herself. I wish that she would have said something like, "My workload prevented me from signing the document in a timely manner" or "I was unfamiliar with the procedure. I don't see such petitions, every year; this is why I postdated the document."

There is another legal document which reads that all U.S. residents are guaranteed "life, liberty, and the pursuit of happiness." Yes, in that order. If the femi-Nazis have their way, our Constitution will be changed to read "pursuit of happiness, liberty, and life." Abortions are crimes of convenience.

One commissioner angrily accused us of being one-issue voters. Many issues concern quality of life. Abortion concerns life itself. What is more important than life?

This is a free country. If the commissioners don't want to pass such an ordinance, they can choose the more-difficult and costlier route. That's their prerogative.

If there are so many pro-choice people residing within the city limits of Newton, why weren't there more at the meeting, or didn't they want to stand outside in the cold? If there are so many pro-death voters with clear consciences, why don't they solicit hundreds of signers in their uppity, white churches for an advertisement in our local newspaper every year? Can't they let go of $2 and admit what they believe? Catholics, Mennonites, Fundamentalists, among others, put their money where their mouths are.

It appears to me that city voters need to clean house from the city clerk on up.

**Terence Hanna,** Newton

Att. 2
49

# Ordinance to go before voters

**By Matt Bartel**
Kansan staff writer

Newton residents will vote on whether to have a local parental notification ordinance at the same time as the April 7 Kansas presidential primary, Newton City Commissioners decided this morning.

The ordinance would require doctors in Newton to notify the parents before performing abortions on girls under the age of 18.

If passed, the ordinance would be largely symbolic because no elective abortions are performed in Harvey County.

Sponsors of the ordinance — Harvey County Kansans for Life — have said the ordinance is important to prevent doctors who perform abortions from setting up clinics here. They plan to take the ordinance to other cities in Harvey County.

Although City Manager Phil Kloster said state legislators questioned the legality of a local ordinance, he recommended proceeding under the guidelines of an opinion by Kansas Attorney General Bob Stephan.

In that opinion, Stephan said cities in Kansas may regulate abortion on the local level because the state legislature had not yet precluded or superseded such ordinances.

Local ordinances still are bound by existing federal law, including the Supreme Court's 1973 Roe vs. Wade decision legalizing abortion, Stephan said.

"I got jumped by a number of legislators questioning our legal right to do this," said Kloster. "But that's not for me to determine one way or another."

Although none of the legislators contacted was familiar with why a local ordinance would not be legal, the League of Kansas Municipalities has told legislative staffers that they disagree with Stephan.

"Our opinion is that legislation by local government on this issue is outside the purview of local government," said Don Moler of the League.

"As a result, we think that this kind of ordinance would have no force of law," he said.

Moler said the disagreement with Stephan appeared to be based on a different interpretation of the Kansas Constitution outlining "home rule" powers for cities.

He said abortion was not an issue pertaining to "local affairs" as mentioned in article 12, section 5 of the state constitution.

By "piggybacking" the local referendum with the state primary, the city will save much of the cost of such an election. City commissioners appeared to view cost as a significant factor in setting the election date.

"Does anybody have an idea what this will cost?" asked Commissioner Larry Mathews.

County Clerk Margaret Wright said the city will pay for publication of the notice of election and the printing of the ballots. If additional time is required to count the city referendum ballots, the city also would pay for that.

According to estimates compiled this morning from Wright, City Clerk Sharon Peterson and The

**See Ordinance/**page 2



## Ordinance

**From**/Page 1

Newton Kansan, the city's total cost could range from $300 to as high as $600 or $700.

"It's not a lot of cost," said Wright.

Among the costs will be ballots for the referendum. Wright said she will recommend paper ballots, printed separately from the presidential primary ballots, a move that she said will save money for the city.

They will be counted by hand by local election workers but Wright said paying for the count likely will run less than $10 per precinct for Newton's 12 precincts because the counting typically "goes very quickly."

The final cost, publication, will depend upon the size of the publication. For example, 10 column inches of space in The Kansan, run twice as required by law, would cost the city just more than $100.

City Manager Phil Kloster said the city will pay for the referendum out of its general fund.

This morning'd action, which took only a few minutes, generated little attendance from either pro-life or pro-choice advocates and was in sharp contrast to the overflow crowd that gathered for the Feb. 5 commission meeting, where the ordinance was first considered.

# The Newton Kansan

Established in 1872

A locally-managed division of Stauffer Communications, Inc.

**Doug Anstaett**
Editor and Publisher

| | | |
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# Letters to the editor

## Boston lauded, Samuelson chided over votes

To the editor:

On Friday, the Kansas House of Representatives voted on HB 2778. This bill would legalize any abortion for any reason in the state of Kansas. While the bill claimed to have restrictions for late-term abortions the language included exceptions for "physical and mental health" even for late term abortions. Thus, even the bills so-called restrictions on late term abortions were hopelessly full of loopholes. Rep. Darlene Cornfield of Valley Center calls this bill the "Abortion Clinic Protection Act" because it is so weighed against women and their unborn children in favor of doctors who perform abortions for huge profits.

HB2778 is a bill of the abortionists, for the abortionists, by the abortionists. It should have been soundly defeated. However, many of our representatives are given strong financial support by Dr. George Tiller who regularly performs abortions in the seventh, eighth and ninth month of pregnancy.

Three amendments were offered to the bill. One amendment would have required that a doctor must first notify at least one parent or legal guardian prior to performing an abortion. The second amendment would have banned late term abortions by making them illegal except to save the life of the mother. The third amendment would have required that women must be fully informed of all their medical options prior to receiving an abortion.

Rep. Garry Boston of Newton should be commended by all pro-life citizens with letters and phone calls as he represented our pro-life community of Newton well. He supported all of the amendments and also voted against the pro-abortion bill on final action.

Rep. Ellen Samuelson, sadly, voted completely in favor of abortion. She opposed parental notification, she opposed a real ban on late-term abortions, and she also opposed giving women information they need to make an informed choice about the abortion decision. Then on final action, she voted for the defective pro-abortion industry bill. Was she representing you? If not, I urge residents of her district to let her know her immoral vote was shocking and appalling to our conservative family-minded community.

**Mike Stieben**
Newton

Att. 2

51

WOMEN AND MEN FOR CHOICE
1200 Boyd, P.O. Box 232
Newton, KS 67114

Senator Ed Reilly
Senate Committee on Federal and State Affairs
State Capitol, Third Floor
Topeka, KS 66612

Senator Reilly and Members of the Committee:

Thank you for the opportinity to share with you my support of House Bill 2778, a comprehensive bill dealing with abortion. After learning that a member of the Newton City Commission, Mrs. Beverly Gering, will be appearing before you, and being aware of the brevity of the scheduled hearing, I have chosen not to appear before you today.

I urge your support of House Bill 2778 because it is comprehensive in its scope and because I believe that it represents the views of most Kansans on the issue of abortion.

-Most Kansans feel that reproductive choice should be given to the women of Kansas. This bill provides for that.

-Most Kansans feel that some limits should be placed on abortions sought during the last trimester of pregnancy. This bill provides for that.

-Most Kansans feel that stiffer penalties would be appropriate for persons who block access to clinics who are providers of legal medical services to women. This bill provides for that.

-Most Kansans, and especially those of us in Newton, feel that cities should be restricted from making ordinances in the area of abortion. This bill provides for that.

-Most Kansans believe that a young woman under the age of sixteen should receive counseling before receiving an abortion. This bill provides for that.

Att. 2
52

Most Kansans believe in reproductive choice for women and that these issues should be dealt with privately by women in consultation with their physicians, their families, and other appropriate counselors. Most Kansans were appalled and angered by the tactics of intimidation and harassment brought forth in the clinic blockades in Wichita last summer. Criminally blockading access to legal clinics cannot be considered within the realm of non-violent resistence or public demonstrations.

I appreciate the willingness of the Senate to take up this important issue, and urge the Committee on Federal and State Affairs to pass it out to the full Senate in its present form. Thank you for your attention to, and consideration of my statement.

Gilbert W. (Bill) Ester
Co-chair
Women and Men for Choice
Newton, Kansas
316-283-6410

Att. 2

# Bill #2778

We are 3 high school students who have come before you today to voice our opinions concerning Bill #2778.

As you are well aware, this bill covers three main areas: prohibiting the interference of the operation of a medical facility, prohibiting abortions in the third trimester (except in extreme cases), and requiring anyone under the age of 16 to receive counseling before terminating her pregnancy.

We strongly support counseling for minors. Counseling insures that women will have access to resources which allow them to make an informed decision that is best for them in the long and short term.

Counselors insure that the woman's options are presented in a clear and objective manner. When assisted by a counselor, the young woman wishing to terminate her pregnancy will clearly understand her options, including alternatives to abortion. If the young woman chooses to terminate her pregnancy, she will still have the option of changing her decision up to the time that the abortion is performed.

Another benefit of counseling is information that is provided may prevent future unwanted pregnancies, ~~in the future~~. Understanding birth control is important for a sexually active teenager. A counselor would help the young woman to understand how to prevent pregnancy. As teenagers, we realize the importance of this.

Counseling helps the young woman sort out her feelings and decide which is the ideal choice for her. For these reasons we feel that counseling is important and should be required for women under the age of 16.

We encourage you to vote against any amendments presented that would be added to the bill. We strongly oppose any amendment requiring parental notification. A young woman should not be forced to tell her parents. When the young woman has sex, she does not have to notify her parents. When the young woman becomes pregnant she does not have to notify her parents. No matter how many laws are passed, a young woman may still terminate her pregnancy without informing her parents, even if they must get a back alley abortion. These are illegal but they will occur if a notification bill is passed. Any amendments added would vitiate this bill.

Please vote to pass this bill. Bill #2778 must be passed without any further restrictions, and it must be passed with enough votes to override a veto. You may be personally opposed to abortion, but ask yourself if you have the right to choose for all Kansas women?

We hope that you will condsider our views when casting your vote. Thank you for your time.

Members of MHS Students for Choice:
Monica Parker, sophomore
Janet Balk, freshman
Rachel Smit, freshman

att. 2
54

printed on recycled paper

Testimony on Senate Bill No. 2778

March 9, 1992

Dear Chairman Reilly and Members of the Committee:

Government should not try to control women with laws that force a certain set of views on all women.

We are capable of making decisions based on conscience and personal religious beliefs.

God allows women to make decisions.. Will you?

Bonnie R. Funk
Junction City, Kansas

Att. 2
5-5

RELIGIOUS COALITION FOR ABORTION RIGHTS • PRAYERFULLY PRO-CHOICE •

# Religious Coalition for Abortion Rights in Kansas

1248 Buchanan Topeka, KS 66604 (913) 354-4823

SENATOR REILLY AND MEMBERS OF THE SENATE FEDERAL & STATE AFFAIRS COMMITTEE:

I am Darlene Stearns, State Co-ordinator for the Religious Coalition For Abortion Rights in Kansas. I appear in support of HB 2778 as passed by the full House of Representatives.

RCAR was formed in 1973 to support Roe v. Wade and has consistently opposed any efforts to change that decision on both national and state levels.

Therefore, we view HB 2778 as compromise legislation that would impose some restrictions on abortion but retain it as a legal option for women.

In principle we agree that all women should have counseling available before any medical procedure. We agree minors should have an adult advocate help them face difficult decisions. For any governmental entity to mandate these as requirements before receiving medical care they deem necessary we see as unacceptable interference in their private lives.

However, given the realities of the abortion debate, we understand the need for compromise, and, in that climate, agree HB 2778 will protect a woman's right to a safe and legal abortion in Kansas.

This bill was carefully written by thoughtful, conscientious people who listened to citizens on both sides of the issue. We cannot speak for those opposing abortion but we can speak for those of the religious community who are willing to compromise to protect desperate women from taking desperate measures to obtain what they, individually, feel necessary for their health.

Darlene Greer Stearns

Darlene Greer Stearns Att. 2

56




BOARD OF CHURCH & SOCIETY, KANSAS EAST CONFERENCE
UNITED METHODIST CHURCH

UNION OF AMERICAN HEBREW CONGREGATIONS
MID-WEST COUNCIL

PRESBYTERY OF NORTHERN KANSAS
PRESBYTERIAN CHURCH USA

UNITED CHURCH OF CHRIST, KANSAS-OKLAHOMA DSITRICT

COMMITTEE ON WOMEN'S CONCERNS, SYNOD OF MID-AMERICA, PRESBYTERIAN CHURCH USA

UNITARIAN UNIVERSALIST PRAIRIE STAR DISTRICT

NATIONAL FEDERATION OF TEMPLE SISTERHOODS

TOPEKA YOUNG WOMEN'S CHRISTIAN ASSOCIATION

KANSAS EAST CONFERENCE, UNITED METHODIST CHURCH

UNITARIAN UNIVERSALIST SERVICE COMMITTEE
UNIT OF KANSAS

Att. 2
57

Planned Parenthood®
Of Kansas, Inc.

**Testimony to the Senate Federal and State Affairs Committee**
**March 9, 1992**

As the Executive Director of Planned Parenthood of Kansas, I am urging your support of House Bill 2778. This bill addresses issues which are critical to many citizens in Kansas.

This bill will help address issues that are sure to arise if and when Roe is overturned. The right to safe, legal abortions would be assured to the women of Kansas. While at the same time limiting third trimester abortions which cause concerns for many individuals.

House Bill 2778, in its present form, would place restrictions on minors seeking abortions. For the health and welfare of our adolescents, please do not place further restrictions upon them. Young women facing an unintended pregnancy need to have access to all options and be able to take advantage of whichever option they choose immediately.

Not only must the right to choose an abortion be guaranteed to the women of Kansas but access to that service must also be guaranteed. The section of this bill dealing with clinic blockades will help ensure the accessibility of abortion services.

Wichita — 2226 East Central, Wichita, Kansas 67214-4494 316 263-7575
Hays — 122 East 12th, Hays, Kansas 67601 913 628-2434

Att. 2
58

The provisions of House Bill 2778 are important to the mission of Planned Parenthood of Knasas, to women of childbearing age, and to the future generations of Kansas women. Please support this bill. Thank you very much.

Kris A. Wilshusen

Kris Wilshusen, Executive Director
Planned Parenthood of Kansas, Inc.

Att. 2
59.

Attach 3

MAJORITY for CHOICE

KANSAS CHOICE ALLIANCE

AMERICAN ASSOCIATION OF UNIVERSITY WOMEN

ACLU OF KANSAS AND WESTERN MISSOURI

B'NAI B'RITH WOMEN

CHOICE COALITION OF GREATER KC

COMPREHENSIVE HEALTH FOR WOMEN

FLINT HILLS COALITION FOR CHOICE

HADASSAH

JACKSON COUNTY CITIZENS FOR CHOICE

JEWISH COMMUNITY RELATIONS BUREAU/ AMERICAN JEWISH COMMITTEE

K.U. PRO-CHOICE COALITION

KANSAS REPUBLICANS FOR CHOICE

KANSAS STATE VOICES FOR CHOICE

NATIONAL COUNCIL OF JEWISH WOMEN, GKC 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

RELIGIOUS COALITION FOR ABORTION RIGHTS OF KS

WICHITA FAMILY PLANNING

WICHITA WOMENS CENTER

WICHITA VOICES FOR CHOICE

WOMEN'S HEALTH CARE SERVICE

YWCA OF TOPEKA

YWCA OF WICHITA

**Testimony submitted to the Senate Federal and State Committee**
**Adele Hughey for the Kansas Choice Alliance**
**Supporting Senate Bill 2778**
**March 9, 1992**

The Kansas Choice Alliance urges you to support Senate Bill 2778 without amendments.

The bill represents a mid-point to the pulls exerted by both sides of this issue. The bill defines viability and limits late term abortion. It clarifies that no political subdivision of the State shall interfere with the right of a woman to terminate a pregnancy. This ensures uniformity of laws.

One of the most important sections of SB 2778 is the mandated counseling for minors. The provision ensures that minors receive information on all alternatives. This provision allows the minor to make the best choice for herself without coercion. It is for this reason the Kansas Choice Alliance would oppose the addition of any parental notification wording. Parental notification is widely considered a potentially dangerous enterprise because of the widespread prevalence of sexual and physical abuse against minor children.

Maintaining clinic access is a direct response to the activities in Wichita last summer. That display of total disregard of the Wichita Police Department and the judicial process can not be tolerated. The bill does not infringe on a person's right to free speech and at the same time it enables a woman the freedom to enter a clinic without undue harassment.

SB 2778 also answers the question of what to do with the old abortion laws. Those dormant laws would be repealed by this bill and the void filled with what, in its current form, is a reasonable and balanced law.

The Kansas Choice Alliance represents a broad spectrum of organizations that strongly believe a woman's right to choose abortion is a private matter and should not be interfered with by the State. Senate Bill 2778, in its current form, provides for this, and the State can be confidant that the delivery of abortion services will be regulated in a balanced way.

Attach. 4

TESTIMONY BEFORE SENATE COMMITTEE ON FEDERAL AND STATE AFFAIRS, KANSAS MARCH 9,1992

My name is John M. Swomley. Iam an ordained minister, member of the Kansas East Conference of the United Methodist Church and Professor Emeritus of Christian Ethics, St. Paul School of Theology. I have also taught Bio Medical Ethics both at that school and at the Kansas University Medical Center where I team taught some seminars with a member of the medical faculty.

I am here representing a national organization, Americans for Religious Liberty of which I am president. Our organization has published an authoritative book in this field, ABORTION RIGHTS AND FETAL PERSONHOOD. It includes Roman Catholic and Southern Baptist theologians, legal experts, Professors of Biology, Neuroscience, Psychology, Anthropology Human Embryology and Medical Ethics and a developmental psychologist.

I have three concerns. The first is to indicate that while many religious denominations have officially endorsed the legalization of abortion a few have opposed it. We are concerned with the freedom of women in those denominations that have an official position against abortion, notably the Roman Catholic Church.

It is worth noting that Catholic women are 38% more likely to have an abortion than Protestants. I exclude from these figures black Protestants and Hispanic Catholics where abortion rates tend to be higher but even including them the rate is a third higher than that of Protestant women.( Abortion and Women's Health by Rachel Benson Gold published by Alan Guttmacher Institute, 1990)

Catholic nuns are closer to the women of the church than is the male leadership. In 1982 the 24 member board of the National Coalition of American nuns adopted a statement opposing legislation that would outlaw abortion and gave their implicit support of a woman's right to make a choice in the matter: "While we continue to oppose abortion in principle and in practice, we are likewise convinced that the responsibility for decisions in this regard resides primarily with those who are directly and personally involved."

I attach an article I wrote that was published in a newsletter of the Sisters of Loretto, a Roman Catholic order.

My second concern is with respect to minors who are the most misunderstood group in relation to abortion . One percent of abortion patients are under the age of 15, some of them as young as 13. Eleven percent are 15-17 years of age.(Ibid) Most teenagers do consult at least one parent before having an abortion. Some cannot because of incest rape or child abuse in the home or because they fear they would be beaten, kicked out of the home or killed. Some prefer suicide to confronting their parents or having them know. They may feel they cannot consult a friend or relative of their parents or even their priest or minister if he is known to be judgmental about sexual misconduct or abortion.

I urge you to cause no harm to minors who seek an abortion because having to seek a counsellor and the delay in finding one increases the trauma and desperation. When I was in the age range of 12 to 16 I would not have known where to find any of those defined as counsellors except a minister and at 13 or 14 I knew only one or two in my local church. The judicial bypass, although not in this bill is also heartless, if only because a child under 16 has little knowledge how to find a judge or the courage to present her case.

Att. 4

Finally, I want to commend the House Bill in general and you for considering it. It is a great step forward not to include in any bill religious judgments about conception or when human life begins. This is true not only because of our long constitutional doctrine of separation of church and state but because religious judgments ought not to be applied to people of other religions or none in our religiously pluralist society.

Moreover, religious judgments formulated years ago do not keep pace with medical science. For example there is no known "moment of conception." Conception is not complete until implantation in the uterus, which may take 10 days to two weeks after ovulation. Up to 50% of fertilized eggs do not implant and in those cases there is no knowledge of conception. Except in cases of <u>in vitro fertilization</u> there is no knowledge of conception until implantation occurs.

This bill shows not only medical sophistication but more concern for religious liberty.

I attach also an article I wrote that deals directly withreligious questions and Biblical items relating to the abortion controversy.

october 1[illegible]0

COURAGE

newsletter
of the
loretto
women's network

# ABORTION: A NONVIOLENT CHOICE

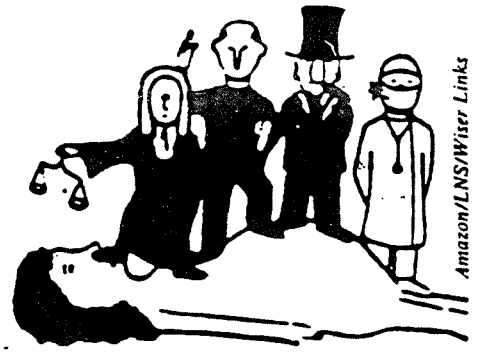
**John M. Swomley**

Why have most major U. S. peace organizations committed to nonviolence not joined the anti-abortion movement? Is it perhaps because women--and some men--in these movements realize that when women are not free to make choices with respect to pregnancy, they often experience violence?

In our society, there are at least two types of violence against women. The overt type includes such acts as rape, spouse abuse and sexual harrassment. The covert type (frequently hidden behind the myth that motherhood and care of children define a woman's role) has been institutionalized in religious, economic and political systems, and enforced by legislation and by custom.

One illustration of this covert violence against women is inherent in what is, in fact, compulsory pregnancy. A woman made pregnant through rape or incest has no choice; others have controlled her body and well-being. Another no-choice situation involves women compelled to remain pregnant because of a failed contraceptive. (The failure rate of "natural family planning" runs as high as 35%.) Compulsory pregnancy, like compulsory labor (labeled by the Constitution as "involuntary servitude") is a denial of freedom and hence a form of violence.

There is violence also in the idea embodied in some legislation that a woman may have an abortion only if the pregnancy endangers her life. This means that any damage to a woman's health short of death is "acceptable" violence; suffering brought on by exacerbation of existing health problems such as




diabetes or heart disease and the shortening of her life thereby are "acceptable" violence. The imperiling of a woman's mental health is also a type of violence.

What about fetal deformity? Legislators considering banning of abortions do not generally consider this an exception, however severe. Yet such a birth, besides being a serious psychological blow to a woman, might involve for her full-time child care for twenty or more years.

There is also covert violence in the idea that women should not have sexual intercourse if they don't want children. An act of sexual intercourse is not an implied contract to have children. While this may be the belief of those who accept the doctrine that every sexual act must be open to procreation, it would be violent for any government to decide that such a sectarian doctrine should be en-

Att 4
3

ges, juries and executioners who .lict the death penalty, and CIA agents or military personnel who kill again and again are not excommunicated or held up to scorn. Thus, the "consistent life ethic" is chiefly directed against pregnant women, and is a form of covert violence.

The complexities of the abortion controversy have kept nonviolent groups from condemning what is clearly the termination of potential human beings through abortion. One peace-minded group, the General Committee of the Friends' Committee on National Legislation, as early as 1975 adopted the following statement that recognizes the dilemma in the abortion controversy:

**"Members of the Religious Society of Friends have an historic position and witness in opposition to killing of human beings, whether in war or capital punishment or personal violence. On the basis of this tradition, some Friends believe that abortion is always wrong.**

**"Friends also have a tradit[illegible] of respect for the individual [illegible] a belief that all persons should be free to follow their own consciences and the leading of the Spirit. On this basis, some Friends believe that the problem of whether or not to have an abortion, at least in the early months of pregnancy, is one primarily of the pregnant woman herself, and that it is an unwarranted denial of her moral freedom to forbid her to do so.**

**"We do not advocate abortion. We recognize there are those who regard abortion as immoral while others do not. Since these disagreements exist in the country in general as well as within the Society of Friends, neither view should be imposed by law upon those who hold the other.**

**"Recognizing that differences among Friends exist, nevertheless we find general unity in opposing the effort...to say that abortion shall be illegal.**

John Swomley is Professor Emeritus of Social Ethics at St. Paul School of Theology in Kansas City. He is an internationally known peace activist.

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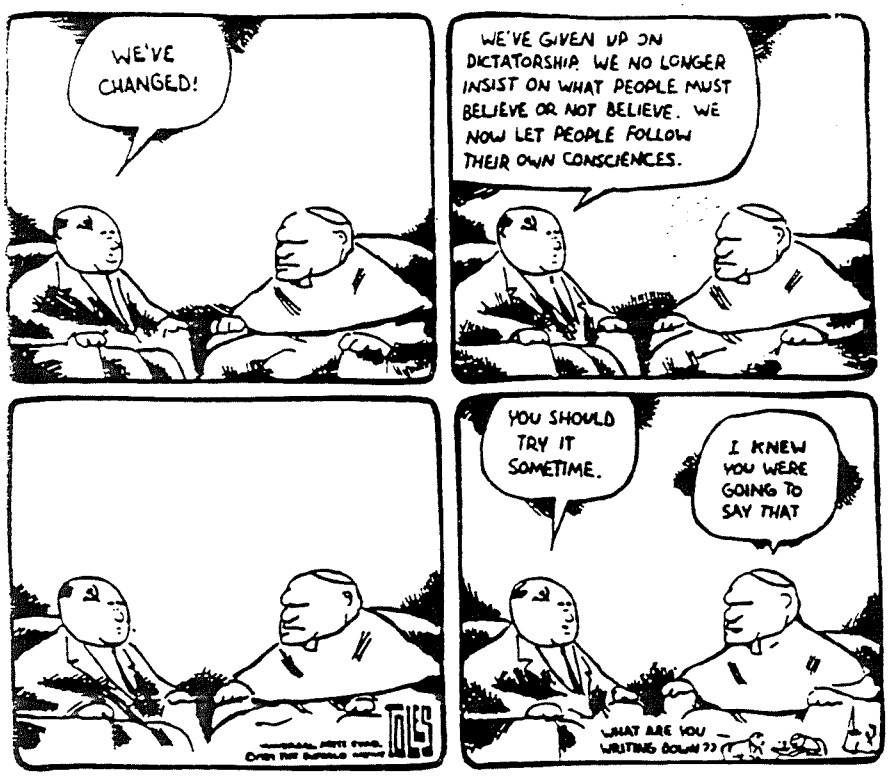


## *etc... etc.. etc..*

8: BIOGRAPHY—"Madam Chiang Kai-Shek—Eva Peron." The women who influenced history in China and Peru. —*TV listing in the Louisville Courier-Journal.*

Don't cry for her, Machu Picchu.

She stressed the importance of women completing their education and considers an open mind and deep thought essential to raising a family.

Hafen is an enthusiastic reader and claims "Lame is Rob" by Victor Hugo as her favorite book.—*The Scroll, newspaper of Ricks College, in Rexburg, Idaho.*

So much for educating women.

Att. 4

4

# Human Beings: In God's Image

*"A key question in the abortion controversy is, 'When does human life begin?' The Bible's clear answer is that human life begins at birth with breathing."*

"The Vatican assumption that human life begins at conception is derived from Greek philosophy, rather than the Bible, and implies that a human being is created at a specific moment instead of by a process that takes about nine months."

**by John M. Swomley**

The tragedy of an unwanted pregnancy that threatens a woman's life or health existed in the ancient world, as it does today. At the time the Bible was written, abortion was widely practiced in spite of heavy penalties. The Assyrian code prohibited abortion with this statement: "Any woman who causes to fall what her womb holds. . .shall be tried, convicted and impaled upon a stake and shall not be buried." In Assyria the fetus was given more value than the woman.

Although the Hebrews were influenced by many of the laws of their Assyrian, Sumerian and Babylonian neighbors, all of which forbade abortion, the Hebrew scriptures had no laws forbidding abortion. This was chiefly because of the higher value placed upon women. There are, however, some references to the termination of pregnancy. In Exodus 21:22-25 a pregnant woman has a miscarriage as a result of a fight between two men. The penalty for the loss of the fetus was a fine; if the woman was killed, the penalty was "life for life." It is obvious from this passage that the men who terminated the woman's pregnancy are not regarded as murderers unless they killed the woman. The woman, undeniably, had greater moral and religious worth than the fetus.

There is also reference in the Mosaic law to "abortion on request" (Numbers 5:11-31) if a husband suspects his wife is pregnant by another man. The "husband shall bring his wife to the priest" who shall mix a drink that was intended to make her confess or be threatened with a miscarriage if she had been unfaithful to her husband.

## No Biblical Condemnation

Aside from these passages, the Bible does not deal with the subject of abortion. Although both Testaments generally criticized the practices of their neighbors, such as idol worship and prostitution, as well as various immoral acts in their own land, there is no condemnation or prohibition of abortion anywhere in the Bible in spite of the fact that techniques for inducing abortion had been developed and widely used by the time of the New Testament.

A key question in the abortion controversy is, "When does human life begin?" The Bible's clear answer is that human life begins at birth with breathing. In Genesis 2, God "breathed into his nostrils the breath of life and man became a living being" (in some translations, "a living soul"). The Hebrew word for a human being or living person is *nephesh*, the word for breathing. "Nephesh" occurs hundreds of times in the Bible as the identifying factor in human life. This is consistent with modern medical science, as a group of 167 distinguished scientists and physicians told the Supreme Court in 1989 that "the most important determinant of viability is lung development," and "viability has not advanced to a point significantly earlier than 24 weeks of gestation" because critical organs, "particularly the lungs and kidneys, do not mature before that time."

In the Christian scriptures, the Incarnation, or "the Word made Flesh" was celebrated at Jesus' birth, not at a speculative time of conception. The biblical tradition is followed today by counting age from the date of birth rather than from conception, a date people do not know or seek to estimate. The state issues no conception certificates, only birth certificates.

The Vatican assumption that human life begins at conception is derived from Greek philosophy, rather than the Bible, and implies that a human being is created at a specific moment instead of by a process that takes about nine months. To focus on the biological realities of genes and chromosomes present at conception or to think of personhood solely in materialist or biological terms neglects the spiritual nature and characteristics of humans, which the Bible describes as created "in the image of God" (Genesis 1:26-27). This does not refer to biological similarities but to the abilities to love and to reason, self awareness, transcendence, and freedom to choose, rather than to live by instinct.

The brain is crucial to such human abilities. The 167 scientists mentioned above said, "It is not until sometime after 28 weeks of gestation that the fetal brain has the capacity to carry on the same range of neurological activity as the brain in a full-term newborn."

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5

## "Conflict of Life with Life"

Fifty-one percent of all abortions in the United States occurs before the eighth week of pregnancy; more than 91 percent by the 12th week, in the first trimester; and more than 99 percent by 20 weeks, which is about four weeks before the time of viability when 10 to 15 percent of fetuses can be saved by intensive care. This means that in the "tragic conflict of life with life that may justify abortion" (from the United Methodist Social Principles) there is no brain or neo-cortex, and hence no pain in cases of early abortion.

make wrong choices, God's grace is available as judgment and forgiveness.

Humans, by the grace of God, have developed medicine, surgery and psychiatry to prolong and enhance life. These same medical approaches can be chosen to prolong or enhance the life of a woman for whom a specific birth would be dangerous.

### Integrity and Welfare of Women

Another comparatively recent emphasis in theological ethics is concerned with the integrity and welfare of women. Women, whose lives and freedom have been largely at the mercy of men for centuries, must make or be involved in decisions that affect their lives, their futures, their families. To refuse on principle to permit a woman to consider her life or welfare when it seems threatened by pregnancy is to say that only men are the recipients of God's grace in terms of freedom and responsibility. It is also to say that the primacy of the right to bodily life of the fetus places all other considerations, including the health, worth and dignity of women, on a lower level.

Thus far I have contrasted Catholic and Protestant doctrine at two basic points. One is the issue of legalism. Must all of us obey the rules formulated by the Pope or are Protestants still free by grace and justified by faith? Given these differences about legalism, the phrase "sacredness of life" means one thing to Catholic bishops — that the life of the fetus is all-important. But to most Protestants and many others it means that there is a presumptive right to life which is not absolute but conditioned by the claims of others. For us the right to life and the sacredness of life mean that there should be no absolute or unbreakable rules which take precedence over the lives of existing human persons.

The prolife position is really a pro-fetus position and the pro-choice position is really pro-woman. Those who take the pro-fetus position define the woman in relation to the fetus. They assert the rights of the fetus over the right of a woman to be a moral agent or decision maker with respect to her life, health, and family security.

### Controlling Procreation: Women or Church?

The second doctrinal issue in both the abortion and the birth control controversy is who is to have the power to control procreation: women in consultation with their partners and their physicians, or the church. The historic natural law position of the Catholic Church was not concerned about feticide, but about the sin of sexuality if it interfered with procreation as contraception and abortion do. Since the Pope and the bishops have been unable to persuade women to accept control by the church over their sexuality, their only hope for reasserting that control is to persuade the state through political power to make a church sin into a crime affecting all women. The low view of women, which keeps them from being ordained and insists that their proper role is that of mother, is not simply Catholic theology but fundamentalist political ideology, which is also anti-woman. The key phrase is not simply "pro-life," but "pro-family" which is always defined as a patriarchal family.

A Southern Baptist ethicist, Paul Simmons, wrote: "Those Protestants who stress the biblical notion of the priesthood of all believers will be inclined to stress the right and responsibility of the woman in making the abortion decision. Those who rely more on rules and church or religious leader authority models will advocate legal controls."

Is there a right to life in law or in biblical faith? In answering this question, we must distinguish between a virtue — doing something we ought to do — and a right. If I am walking along the bank of a river or lake and someone who cannot swim falls or jumps in, we could argue that I ought also to jump in, to rescue the drowning person, even if my own life is at stake. But the person who jumps or falls in cannot claim that I *must* jump in because he/she has a right to life. The mere fact that I *ought* to rescue another does not give that other person a right against me.

The common law rule is that we have no duty to save the life of another person unless we voluntarily undertake such an obligation as a lifeguard does in contracting to save lives at a swimming pool. Neither is there a biblical mandate that each of us is morally required to risk our lives to save the life of another. Jesus treated as highly exceptional and an evidence of great love the act of a person who "lay down his life for his friends" (John 15:130).

No one is legally or morally required to give his/her life for another or to make large sacrifices of health or money to save the life of another person unless willingly contracting to do so. Even an identical twin is not legally required to donate a kidney or blood to his/her brother or sister to save his/her life. The virtue of the Good Samaritan was precisely in doing something he was not obligated to do.

No woman should be required to give up her life or health or family security to save the life of a fetus that is threatening her well-being. At the very least she is entitled to self-defense. On the other hand, many women are willing to sacrifice their health and future in order to have one or more children. The religious community that respects the autonomy of women must respect equally their freedom of choice. ■

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*Dr. Swomley, a well-known United Methodist social ethicist, is professor emeritus of social ethics, St. Paul School of Theology, Kansas City, Missouri. Last month* Christian Social Action *included his article on the right to die.*

Att. 4
6

Att 4-4.5

Statement in support of the counseling provision of House Bill #2778. Presented to the Senate Federal and State Affairs Committee by Rev. Monty Smith, J.D., M.Div. 1729 Oakley, Topeka, Kansas, 66604 Telephone: 232-2196

Our respect for fetal/potential life collides with the needs and values of actual persons in no area more painfully than in the case of teenage pregnancy. Put theologically, what are we to do when the continuation of pregnancy will obstruct God's loving intentions for a twelve or thirteen-year-old child who becomes pregnant? Nowhere is a fundamentalist, political ideology of compulsory pregnancy more unworkable than in the case of a fertile twelve-year-old child who cannot yet take care of herself, let alone another life.

The inequity of the idea that females, once pregnant, must remain so while males, who are equally responsible for conception, may never even be identified is nowhere so disproportionate as in the case of teenage boys and girls.

Confounding these issues even more is the terrible reality of violence and incest. The National Center for Child Abuse and Neglect states that there are at least 100,000 cases of incest-rape each year (25% of these may result in pregnancy). Other estimates are as high as 250,00. There are no good statistics on non-rape physical abuse. For every reported case there are over 200 unreported cases.



Att. 5
1

Studies of teenagers in Massachusetts reveal that 70% of those seeking abortions involve their parents. Those who do not, may have good reason. An already vulnerable and troubled child may face rejection and exile from the family, physical battering, or worse.

The counseling provision of House Bill #2778 is a wise mediation of these issues. When compared to parental notification with judicial bypass, the counseling provision appears particularly strong. Counseling provides a relational and supportive decision-making and follow-up environment. Parental notification may mean an appearance before a stranger-judge with no follow-up support after the decision process. There is no state expense in counseling. Parental notification requires state expense and burdening an already over-burdened judicial system. Counseling maintains confidentiality. Parental notification can jeopardize confidentiality. Parental notification in Massachusetts has lead to an increase in the number of second trimester abortions and an enormous hardship for minors. Counseling addresses a contemporary social and healthcare issue with compassion.



Att. 5
2

Attach.

March 9, 1992

Senate Federal and State Affairs Committee

REF: HB2778 (The Abortion Bill)

I am Beverly Gering, Vice Mayor and City Commissioner of Newton, Kansas. I have lived all my life in Kansas and am very proud of our state. But, I do have a hard time with the acceptance of having to deal with the Parental Notification proposed ordinance, that the citizens of Newton will be voting on in April.

Why should each city in the state act on this issue? Can you imagine what a patchwork of ordinances we will have if this is enacted on at the local levels?

Newton was presented with the petition on February 15, 1992. We, the city commissioners had two choices; (a) we could move to accept the proposed ordinance and it would become effective after publication, or (b) we could not act on the proposed ordinance and it would automatically go to the voters of the city of Newton.

We chose to send it to the voters of Newton, at a cost to the taxpayers. Needless to say this was not a popular decision with the pro-life group. There has been harassment to all of the commissioners. In the forms of; letters to the editor, telephone calls, physical damage to vehicles and I could go

Att. 6

on and on. I have attached copies of some of the letters as examples.

All of this could have been avoided if the state legislature would 'take the bull by the horns' and act on the bill and if necessary override the veto that has been threatened by Governor Finney. This should be a federal or state issue not a city issue. This effects all individuals not just those living in a city (especially cities that do not do abortions or have abortions clinics). Operation Rescue last summer was a good example of time and money spent. The cities across the state should not have to spend time and money on this issue. This time and money needs to be spent on city business.

Thank you for letting me speak this morning and I would like to leave you with the request to please accept your responsibility and act on the abortion issue at the state level.

Thank you.

Beverly Gering, Vice Mayor
307 S.E. 13th
Newton, KS. 67114
316-283-8140

Att. 6
2

Wichita 2: 92

# Newton delays action on abortion ordinance

**By Joe Rodriguez**
*The Wichita Eagle*

NEWTON — After more than two hours of arguments Wednesday, the Newton City Council took no action on a petition seeking an ordinance to require a parent of a girl younger than 18 to be notified if she sought an abortion.

The petition, circulated by the Central Kansas Pro-Family Political Action Committee and the Harvey County chapter of Kansans for Life, bore more than 1,000 signatures. Although only 786 signatures were validated, the group needed just 665 to bring the referendum to the city council.

If the council does not pass the parental notification ordinance within 20 days, a special election must be held, unless a regular city election is scheduled in the next 90 days, said Robert Myers, the city attorney.

Petition organizers said they felt the action was necessary even though there are no clinics or hospitals in either Newton or Harvey County that perform aboritons.

"We wanted to prevent any abortion provider from coming here," said Mike Stieben, chairman of the Central Kansas Pro-Family Political Action Committee "If there are regulations, then those communities aren't going to look attractive to those who perform abortions."

Stieben said the group saw the petition drive as a way to demonstrate its views on abortion, while at the same timepressuring state legislators to pass a strict parental-notification bill.

In the end, council members were reluctant to vote.

Council member Beulah Day said she didn't want to "act as King Solomon."

Finally, the mayor adjourned the meeting. "There is no motion. We can take no further action," said Mayor Don Anderson.

Wichita Eagle Mon Feb 1 1993

# Urgent Abortion bill would end the risk of cities abusing lawmaking powers

Want a good example why the abortion bill before the House Federal and State Affairs Committee deserves to become law? Look no further than the Newton City Commission's decision last week to let Newtonians vote on whether to restrict teen abortions.

The proposed restriction, requiring women younger than 18 to notify their parents before obtaining an abortion, may or may not be a good idea. But such proposals should be made to the Legislature, which has the authority to enact laws statewide.

To adopt a municipal approach is to go about the task piecemeal. Piecemeal restrictions are easily evaded, therefore legally meaningless. In Newton's case, a parental notification ordinance also would be an abuse, for the sake of symbolism, of the city's authority to make laws: There are no abortion providers in the city.

The House bill, among other things, would bar local governments from using home-rule powers to restrict abortion. The bill also would enact restrictions that most Kansans — pro-life and pro-choice — support: ban late-term abortions of healthy fetusus and require girls under 16 to receive counseling before obtaining abortions.

The bill also would protect cities from the devastating financial consequences of lengthy illegal protests — such as those that plagued Wichita last summer. It would impose stiff fines and jail terms for blocking access to abortion facilities.

The bill's main objective is to create a moderate abortion climate — one that discourages frivolous and unnecessary abortions while preserving the right of women to control their bodies. The action in Newton underscores how urgent it is that the Legislature put this law on the books.

Att. 6
3

# Letters to the editor



## A no-win situation

To the editor:

I want to express my appreciation to the five members of the Newton City Commission for the caring way they dealt with both the petitioners, and the opponents of the petition, proposing an ordinance on Parental Notification. Their demeanor in the face of a difficult situation was exemplary and worthy of our gratitude as a community.

The city commissioners were placed in a no-win situation by the representatives of Kansas for Life, in that the action that they could take was severely limited. Their decision to take no action on the petition and thus allow it to go to a city-wide referendum was probably the wisest course of action under the circumstances. As citizens, we need to remember that when options are severely limited, as they were in this case, good decisions are hard to come by.

We, members of Citizens for Choice, commend the Newton City Commission and their staff for the gracious way we were received at the meeting, for the extra amount of time granted to the discussion of the petition and proposed ordinance, and for the thoughtful and caring attitude shown by the commissioners during the meeting. We are indeed fortunate to have five persons of your caliber serving our city.

**Bill Ester**
Citizens for Choice
Newton

**...When options are severely limited... good decisions are hard to come by.**
Bill Ester, Citizens for Choice

## Right vs. wrong

To the editor:

Last night for the first time I attended a meeting of our Newton Commissioners. I was told that never before had so many people attended a hearing, which should tell us that our community is greatly interested in the pro-life issue.

The issue discussed was: Should parents be notified when their teenaged daughter is being convinced to have an abortion by our tax-payed counselors?

The case was well presented by the Newton pro-lifers. The first of the city officials to answer was the vice mayor who complained about the costs involved in making it legal to notify parents when their teenager daughter was to have a major surgery.

One of the commissioners later in the meeting seemed to give the common understanding of the rest of the officials when he argued that the pro-lifers did not represent the majority of our community even though all speakers present admitted that abortion was wrong.

The real issue before the house was neglected by the commissioners. The right and wrong of the issue was not given so much attention as to the fact of who was on who's side. The commissioners wanted us to believe that they were open and had friends on both sides of the issue, yet when one of the commissioners "blew his top" with some pretty strong language against one of the Newton citizens because he was putting too much importance on the pro-life issue, it showed clearly that there was no pro-life voice among our city officials. It would have been better if our commissioners would have been concerned for what is right and what is wrong rather than who is on whose side.

**Our city commissioners have a responsibility to decide right from wrong.**
Elmer Klassen

The pro-lifers made a very convincing case for their position. The rejection of their request by the commissioners has now gone on record. I have lived in Germany 30 years with two generations who went along with what the masses wanted. It is now on record what the Nazis have done. It is now also on record what the masses, influenced by the left-winged socialistic/communistic people through the efforts of the Stasis (former East German secret police), have done. Great effort is now being made to bring healing to the depressed for having done the wrong thing.

What happened last night went on record. Our commissioners were faced with right or wrong issue. I have lived a major part of my life with people who regret their past. I am now witnessing actions which will be regretted in the years to come. Our city commissione have a responsibility to decide right from wrong. If they are not able to tell the difference now they, too, wi know better after it is too late.

Even if I do not agree with what our city commissioners are doing I will support them whenever I can. However, at the polls we ne to make the pro-life position an issue.

**Elmer G. Klassen**
North Newton

Att. 6
4

## Gering criticized

2/12/92

To the editor:

Recently the Newton City Commission considered a city ordinance which would require that a minor girl, under the age of 18, must first notify her parents prior to having an abortion.

If the commissioners would have simply adopted the ordinance that evening there would not have to be a special election. However, one city commissioner worked overtime to stop the parental notification ordinance.

That pro-abortion commissioner was Beverly Brenneman Gering.

Ms. Gering, while pretending to be an objective and fair commissioner at the meeting, established her pro-abortion record the night before. Ms. Gering helped to lead the Citizens for Choice committee meeting held by Bill Ester at Trinity Heights United Methodist Church.

Ms. Gering campaigned against parents being notified. She doesn't think parents should know prior to their daughter obtaining an abortion. Many citizens of Newton didn't know that Ms. Gering was such a liberal feminist before she ran during the last election.

We didn't realize that Commissioner Gering approved of the current law which allows abortion as a method of birth control into the seventh, eighth and ninth month of pregnancy. We didn't realize that she even is opposed to parents being notified prior to an abortion on a minor child.

I hope all citizens will remember that we now have a city commissioner who is willing to campaign in favor of abortion, Bev Gering. Election day is coming and the parents of Newton will remember.

**Lillian Fangman**
Newton

**If the commissioners would have simply adopted the ordinance that evening there would not have to be a special election. However, one city commissioner worked overtime to stop the ordinance.**

Lillian Fangman

## It's time to clean house at City Hall

2-18-92

To the editor:

In an article in your newspaper, Father Linnebur was identified as the "Pastor of Our Lady of Guadalupe Church in Wichita." Father Linnebur is from Newton. He has resided in Newton for nine months, I think.

I am wondering if it's legal for non-expert persons to address the city commission about a proposed city ordinance. At least two of the persons who represented the pro-abortion side at the city commission meeting on Feb. 5 do not live in Newton! They were there as private citizens and not as experts on the matter at hand.

In a letter to the editor which appeared in your newspaper on Feb. 10, a local pastor said that the "demeanor" of the city commission "was exemplary." Evidently he left the meeting early. There were at least two reporters from the newspaper at the meeting. Evidently, they left early, also.

The meeting, probably, ought to have been moved to a larger room in order to accommodate the crowd. We had to stand outside in the cold, "security" having sealed off seven-eights of the hallway. The eighth of the corridor that was open had people lined up against the walls.

As the commission took care of items on the agenda, people left; and by the end of the meeting, everyone had gotten inside the building.

Following the presentation by the pro-abortion advocates, non-residents and all, during the discussion, the commissioners gave the spokesman for the pro-life crowd, a layman, the old un-American runaround. The city manager tried to intimidate him, and two commissioners settled personal scores with the spokesman. It appears to me that the city clerk was in collusion with a conspiracy by the commissioners to thwart the democratic efforts of the petition signers. The commissioners, the city attorney and th manager finally seemed admit that the petition si ers had abided by the letter of the law. But the commissioners and city staff seemed to be violating the spirit of the law. I did not hear the city clerk attempt to defend herself. I wish that she would have said something like, "My workload prevented me from signing the document in a timely manner" or "I was unfamiliar with the procedure. I don't see such petitions, every year; this is why I postdated the document."

There is another legal document which reads that all U.S. residents are guaranteed "life, liberty, and the pursuit of happiness." Yes, in that order. If the femi-Nazis have their way, our Constitution will be changed to read "pursuit of happiness, liberty, and life." Abortions are crimes of convenience.

One commissioner angrily accused us of being one-issue voters. Many issues concern quality of life. Abortion concerns life itself. What is more important than life?

This is a free country. If the commissioners don't want to pass such an ordinance, they can choose the more-difficult and costlier route. That's their prerogative.

If there are so many pro-choice people residing within the city limits of Newton, why weren't there more at the meeting, or didn't they want to stand outside in the cold? If there are so many pro-death voters with clear consciences, why don't they solicit hundreds of signers in their uppity, white churches for an advertisement in our local newspaper every year? Can't they let go of $2 and admit what they believe? Catholics, Mennonites, Fundamentalists, among others, put their money where their mouths are.

It appears to me that city voters need to clean house from the city clerk on up.

**Terence Hanna,** Newton

Att. 6
5

# Ordinance to go before voters

**By Matt Bartel**
Kansan staff writer

Newton residents will vote on whether to have a local parental notification ordinance at the same time as the April 7 Kansas presidential primary, Newton City Commissioners decided this morning.

The ordinance would require doctors in Newton to notify the parents before performing abortions on girls under the age of 18.

If passed, the ordinance would be largely symbolic because no elective abortions are performed in Harvey County.

Sponsors of the ordinance — Harvey County Kansans for Life — have said the ordinance is important to prevent doctors who perform abortions from setting up clinics here. They plan to take the ordinance to other cities in Harvey County.

Although City Manager Phil Kloster said state legislators questioned the legality of a local ordinance, he recommended proceeding under the guidelines of an opinion by Kansas Attorney General Bob Stephan.

In that opinion, Stephan said cities in Kansas may regulate abortion on the local level because the state legislature had not yet precluded or superseded such ordinances.

Local ordinances still are bound by existing federal law, including the Supreme Court's 1973 Roe vs. Wade decision legalizing abortion, Stephan said.

"I got jumped by a number of legislators questioning our legal right to do this," said Kloster. "But that's not for me to determine one way or another."

Although none of the legislators contacted was familiar with why a local ordinance would not be legal, the League of Kansas Municipalities has told legislative staffers that they disagree with Stephan.

"Our opinion is that legislation by local government on this issue is outside the purview of local government," said Don Moler of the League.

"As a result, we think that this kind of ordinance would have no force of law," he said.

Moler said the disagreement with Stephan appeared to be based on a different interpretation of the Kansas Constitution outlining "home rule" powers for cities.

He said abortion was not an issue pertaining to "local affairs" as mentioned in article 12, section 5 of the state constitution.

By "piggybacking" the local referendum with the state primary, the city will save much of the cost of such an election. City commissioners appeared to view cost as a significant factor in setting the election date.

"Does anybody have an idea what this will cost?" asked Commissioner Larry Mathews.

County Clerk Margaret Wright said the city will pay for publication of the notice of election and the printing of the ballots. If additional time is required to count the city referendum ballots, the city also would pay for that.

According to estimates compiled this morning from Wright, City Clerk Sharon Peterson and The

**See Ordinance/**page 2



## Ordinance

**From**/Page 1

Newton Kansan, the city's total cost could range from $300 to as high as $600 or $700.

"It's not a lot of cost," said Wright.

Among the costs will be ballots for the referendum. Wright said she will recommend paper ballots, printed separately from the presidential primary ballots, a move that she said will save money for the city.

They will be counted by hand by local election workers but Wright said paying for the count likely will run less than $10 per precinct for Newton's 12 precincts because the counting typically "goes very quickly."

The final cost, publication, will depend upon the size of the publication. For example, 10 column inches of space in The Kansan, run twice as required by law, would cost the city just more than $100.

City Manager Phil Kloster said the city will pay for the referendum out of its general fund.

This morning'd action, which took only a few minutes, generated little attendance from either pro-life or pro-choice advocates and was in sharp contrast to the overflow crowd that gathered for the Feb. 5 commission meeting, where the ordinance was first considered.

# The Newton Kansan

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# Letters to the editor

## Boston lauded, Samuelson chided over votes

To the editor:

On Friday, the Kansas House of Representatives voted on HB 2778. This bill would legalize any abortion for any reason in the state of Kansas. While the bill claimed to have restrictions for late-term abortions the language included exceptions for "physical and mental health" even for late term abortions. Thus, even the bills so-called restrictions on late term abortions were hopelessly full of loopholes. Rep. Darlene Cornfield of Valley Center calls this bill the "Abortion Clinic Protection Act" because it is so weighed against women and their unborn children in favor of doctors who perform abortions for huge profits.

HB2778 is a bill of the abortionists, for the abortionists, by the abortionists. It should have been soundly defeated. However, many of our representatives are given strong financial support by Dr. George Tiller who regularly performs abortions in the seventh, eighth and ninth month of pregnancy.

Three amendments were offered to the bill. One amendment would have required that a doctor must first notify at least one parent or legal guardian prior to performing an abortion. The second amendment would have banned late term abortions by making them illegal except to save the life of the mother. The third amendment would have required that women must be fully informed of all their medical options prior to receiving an abortion.

Rep. Garry Boston of Newton should be commended by all pro-life citizens with letters and phone calls as he represented our pro-life community of Newton well. He supported all of the amendments and also voted against the pro-abortion bill on final action.

Rep. Ellen Samuelson, sadly, voted completely in favor of abortion. She opposed parental notification, she opposed a real ban on late-term abortions, and she also opposed giving women information they need to make an informed choice about the abortion decision. Then on final action, she voted for the defective pro-abortion industry bill. Was she representing you? If not, I urge residents of her district to let her know her immoral vote was shocking and appalling to our conservative family-minded community.

**Mike Stieben**
Newton

Att. 6
7

Attach. 7

# LEAGUE OF WOMEN VOTERS OF KANSAS

March 9, 1992

TESTIMONY BEFORE THE SENATE COMMITTEE ON FEDERAL AND STATE AFFAIRS ON HB 2778

Senator Reilly, Senator Morris, and members of the Committee:

I am Barbara Reinert speaking for the League of Women Voters of Kansas.

The League supports HB 2778 as amended by the House. After studying the issue, Leaguers long ago concluded that the State should not become involved in the right of privacy to make reproductive decisions. We have tried to keep attention focussed on CHOICE, who makes the decisions, and the privacy of the decision making.

Thus, League has opposed every major abortion-restriction bill considered by the legislature in the past decade.

Because the League opposed those restrictive bills, as threats to privacy or choice, let us say today, that the requirements in HB 2778 placed upon those seeking late abortions, appear to be protective of personal privacy and appear to not impose undue hardship upon women trying to make troublesome decisions.

If any restrictions imposed by enactment of HB 2778 result in more barriers, undue hardship, or futher loss of privacy, the League of Women Voters would be among the first to seek legislative or judicial adjustments.

We are saddened to anticipate the possible erosion of the national blanket of protection provided by Roe vs Wade. Also, we are sorry for the need to now address this issue state by state. However, we do bring some enthusiasm for the codification of the right of Kansas women to make their own decisions.

The League is pleased to support HB 2778 and we urge you to pass this bill with no more restrictions.

Barbara Reinert

Barbara Reinert
LWVK Lobbyist

Att. 7

Attach 8

*Carla Dugger, Registered Lobbyist*
*American Civil Liberties Union of Kansas*
*201 Wyandotte, #209*
*Kansas City, MO 64105*

**TESTIMONY**
**HOUSE BILL 2778**
**SENATE FEDERAL AND STATE AFFAIRS COMMITTEE**
**Monday, March 9, 1992**
**Submitted by the American Civil Liberties Union of Kansas**

Although the ACLU can fully support three of the major provisions found in H.B. 2778, we have serious concerns about other portions of the bill as it was amended and passed by the House on Friday, February 28.

The policy of ACLU regarding choice in family planning is very clear. The ACLU believes that the whole question of human reproduction should be a matter of voluntary decision making with no governmental compulsion. Since no legislation restricting reproductive freedom has passed into law in Kansas since the 1973 Roe v. Wade decision legalizing abortion, any bill taking the first step toward defining any governmental role must be minutely scrutinized.

The provisions we support in HB 2778 are found in Sections 1–3 and 6–8. These sections include a codification of the Roe decision, the limitation of legislative jurisdiction over reproductive rights to the state alone, and the repeal of K.S.A. 21–3407, a pre–Roe criminal abortion statute. Section 5, which prohibits the deliberate obstruction of a health care facility, was favorably amended by the House Committee through the deletion of language infringing freedom of speech. However, ACLU opposes any provision which calls for no probation, parole or reduction of fines in criminal penalties, as found in Section 5 (d) (1) and (2), and would recommend striking Section 5 (b) (2), "unreasonably disturbing the peace within the facility," on the basis of vagueness.

Section 4 presents a direct conflict with ACLU's reproductive freedom policy. Subsection (2) (b), which now requires that an adult with "a personal interest in the minor's well–being" accompany the minor to the clinic, would delay and/or prevent access to abortion for many minors. Unworkable in practice (e.g., what happens if no adult is able or willing to accompany the minor, or the adult decides at the last moment to disappear or postpone?), this provision represents a completely unacceptable barrier to minors seeking abortion.

The ACLU of Kansas would strongly support a bill which included only Sections 1–3 and 6–8 of HB 2778. However, if passed in its current form, HB 2778 would worsen, not improve, current access to full reproductive health services in Kansas. We therefore must urge the rejection of Section 4 in its entirety, or at least Section 4 (2) (b). If it is not removed, or if additional restrictions such as parental notification are attached, we must urge the complete rejection of HB 2778.

Attach 9

WOMEN AND MEN FOR CHOICE
1200 Boyd, P.O. Box 232
Newton, KS 67114

Senator Ed Reilly
Senate Committee on Federal and State Affairs
State Capitol, Third Floor
Topeka, KS 66612

Senator Reilly and Members of the Committee:

Thank you for the opportinity to share with you my support of House Bill 2778, a comprehensive bill dealing with abortion. After learning that a member of the Newton City Commission, Mrs. Beverly Gering, will be appearing before you, and being aware of the brevity of the scheduled hearing, I have chosen not to appear before you today.

I urge your support of House Bill 2778 because it is comprehensive in its scope and because I believe that it represents the views of most Kansans on the issue of abortion.

-Most Kansans feel that reproductive choice should be given to the women of Kansas. This bill provides for that.

-Most Kansans feel that some limits should be placed on abortions sought during the last trimester of pregnancy. This bill provides for that.

-Most Kansans feel that stiffer penalties would be appropriate for persons who block access to clinics who are providers of legal medical services to women. This bill provides for that.

-Most Kansans, and especially those of us in Newton, feel that cities should be restricted from making ordinances in the area of abortion. This bill provides for that.

-Most Kansans believe that a young woman under the age of sixteen should receive counseling before receiving an abortion. This bill provides for that.

Most Kansans believe in reproductive choice for women and that these issues should be dealt with privately by women in consultation with their physicians, their families, and other appropriate counselors. Most Kansans were appalled and angered by the tactics of intimidation and harassment brought forth in the clinic blockades in Wichita last summer. Criminally blockading access to legal clinics cannot be considered within the realm of non-violent resistence or public demonstrations.

I appreciate the willingness of the Senate to take up this important issue, and urge the Committee on Federal and State Affairs to pass it out to the full Senate in its present form. Thank you for your attention to, and consideration of my statement.

Gilbert W. (Bill) Ester
Co-chair
Women and Men for Choice
Newton, Kansas
316-283-6410

Att. 9
2

Att. 10

# Bill #2778

We are 3 high school students who have come before you today to voice our opinions concerning Bill #2778.

As you are well aware, this bill covers three main areas: prohibiting the interference of the operation of a medical facility, prohibiting abortions in the third trimester (except in extreme cases), and requiring anyone under the age of 16 to receive counseling before terminating her pregnancy.

We strongly support counseling for minors. Counseling insures that women will have access to resources which allow them to make an informed decision that is best for them in the long and short term.

Counselors insure that the woman's options are presented in a clear and objective manner. When assisted by a counselor, the young woman wishing to terminate her pregnancy will clearly understand her options, including alternatives to abortion. If the young woman chooses to terminate her pregnancy, she will still have the option of changing her decision up to the time that the abortion is performed.

Another benefit of counseling is information that is provided may prevent future unwanted pregnancies, ~~in the future.~~ Understanding birth control is important for a sexually active teenager. A counselor would help the young woman to understand how to prevent pregnancy. As teenagers, we realize the importance of this.

Counseling helps the young woman sort out her feelings and decide which is the ideal choice for her. For these reasons we feel that counseling is important and should be required for women under the age of 16.

We encourage you to vote against any amendments presented that would be added to the bill. We strongly oppose any amendment requiring parental notification. A young woman should not be forced to tell her parents. When the young woman has sex, she does not have to notify her parents. When the young woman becomes pregnant she does not have to notify her parents. No matter how many laws are passed, a young woman may still terminate her pregnancy without informing her parents, even if they must get a back alley abortion. These are illegal but they will occur if a notification bill is passed. Any amendments added would vitiate this bill.

Please vote to pass this bill. Bill #2778 must be passed without any further restrictions, and it must be passed with enough votes to override a veto. You may be personally opposed to abortion, but ask yourself if you have the right to choose for all Kansas women?

We hope that you will condsider our views when casting your vote. Thank you for your time.

Members of MHS Students for Choice:
Monica Parker, sophomore
Janet Balk, freshman
Rachel Smit, freshman

Att. 10
1

Att. 4. 11

Testimony on Senate Bill No. 2778

March 9, 1992

Dear Chairman Reilly and Members of the Committee:

Government should not try to control women with laws that force a certain set of views on all women.

We are capable of making decisions based on conscience and personal religious beliefs.

God allows women to make decisions.. Will you?

Bonnie R. Funk
Junction City, Kansas

Att. 11

Attach. 12



while committing a violation of K.S.A. 8-1566, 8-1567 or 8-1568, and amendments thereto, or the ordinance of a city or resolution of a county which prohibits any of the acts prohibited by those statutes.

(b) Vehicular battery is a class A misdemeanor for which the offender, if the crime is committed while committing a violation of K.S.A. 8-1567 and amendments thereto or the ordinance of a city or resolution of a county in this state which prohibits any acts prohibited by that statute, shall:

(1) Be fined not less than $1,000;

(2) not be eligible for release on probation, suspension or reduction of sentence or parole until the person has served at least 90 days' imprisonment;

(3) be required, as a condition of any grant of probation, suspension or reduction of sentence, parole or other release, to enter into and successfully complete an alcohol and drug safety action program or a treatment program as provided in K.S.A. 8-1008 and amendments thereto, or both the education and treatment programs; and

(4) have driving privileges suspended, or suspended and restricted, as provided by K.S.A. 1988 Supp. 8-1014.

(c) As used in this section, "bodily injury" means great bodily harm, disfigurement or dismemberment.

(d) This section shall be part of and supplemental to the Kansas criminal code.

**History:** L. 1988, ch. 47, § 1; July 1.

**Cross References to Related Sections:**

Victim impact statement and restitution requirements, see 8-1019.

**21-3406. Assisting suicide.** Assisting suicide is intentionally advising, encouraging or assisting another in the taking of his own life.

Assisting suicide is a class E felony.

**History:** L. 1969, ch. 180, § 21-3406; July 1, 1970.

**Source or prior law:**

21-408.

**Judicial Council, 1968:** Suicide is not now a crime in Kansas. Hence, one who aids and abets a suicide is not guilty of a crime in the absence of a statute so providing. Manslaughter, as defined heretofore, probably does not include this situation. Therefore, a specific prohibition seems necessary.

**Law Review and Bar Journal References:**

"Euthanasia: A Medical and Legal Overview," Howard N. Ward, 49 J.B.A.K. 317, 324 (1980).

**CASE ANNOTATIONS**

1. Where defendant pushed plunger on needle in deceased's arm and pulled gun trigger ultimately resulting in death, defendant properly convicted of first degree murder. State v. Cobb, 229 K. 522, 525, 625 P.2d 1133.

**21-3407. Criminal abortion.** (1) Criminal abortion is the purposeful and unjustifiable termination of the pregnancy of any female other than by a live birth.

(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.

(5) Criminal abortion is a class D felony.

**History:** L. 1969, ch. 180, § 21-3407; July 1, 1970.

**Source or prior law:**

21-409, 21-437.

**Judicial Council, 1968:** This section substantially broadens the circumstances under which an abortion may be justifiably performed. The former law authorized therapeutic abortions only when necessary "to preserve the life" of the mother. Subsection (2) following the Model Penal Code, recognizes other conditions that justify abortions.

Subsection (3) eliminates the necessity for distinguishing between the quick child and other fetus.

**Law Review and Bar Journal References:**

"The Beginning of Life," M. Martin Halley and William F. Harvey, 69 J.K.M.S. 384, 385, 386 (1968).



Att. 12
1

Session of 1992

# HOUSE BILL No. 2778

By Committee on Federal and State Affairs

1-27

AN ACT concerning health care; relating to abortion; prohibiting certain acts with regard to abortion and prescribing penalties therefor; requiring counseling before performance of abortions on certain minors; prohibiting certain acts with regard to certain health care facilities and providing penalties and remedies therefor; imposing certain prohibitions on political subdivisions; repealing K.S.A. 21-3407.

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

Section 1. (a) As used in this act:

(a) "Abortion" means the use of any means to intentionally terminate a pregnancy except for the purpose of causing a live birth. Abortion does not include the use of any drug or device that inhibits or prevents ovulation, fertilization or the implantation of an embryo.

(b) "Physician" means a person licensed to practice medicine and surgery in this state.

(c) "Viable" means that stage when, in the best medical judgment of ~~the woman's physician~~, based on the particular facts of the case before the physician, there is a reasonable likelihood of sustained survival of the fetus outside the uterus without the application of extraordinary medical measures.

Sec. 2. (a) Except as provided by this act, the state shall not interfere with the right of a woman to terminate a pregnancy before fetal viability or at any time if the procedure is necessary to protect the life or health of the woman. The state may impose on terminations of pregnancy only those regulations that the state can prove are both necessary and the least intrusive way to protect the life or health of the woman and are not inconsistent with established medical practice.

(b) No political subdivision of the state shall interfere with the right of a woman to terminate a pregnancy.

(c) No person shall perform an abortion when the fetus is viable unless such person is a physician and such person determines that: (1) The abortion is necessary to preserve the life or health of the pregnant woman; or (2) the fetus is affected by serious deformity or abnormality.

a physician who is not the physician performing the abortion and is completely independent of and not associated in any way with the physician performing the abortion

financially

Att. 12
2

To: Representative Kathleen Sebelius

From: Mary Torrence, Assistant Revisor of Statutes

Date: January 30, 1991

Re: Summary of House Bill No. 2778

Section 1

Codifies Roe v. Wade and provides that political subdivisions have no power to interfere with a woman's right to terminate pregnancy.

Section 2

Prohibits post-viability abortion unless necessary to protect the woman's life or health or the fetus is affected by a serious deformity or abnormality. Requires person performing an abortion to be a physician and prohibits self-induced abortion. Defines viability to exclude cases where application of extraordinary medical measures is required to sustain life.

Section 3

Requires a minor under 16 years of age to receive counseling before undergoing an abortion. Allows counseling to be furnished by any one of a number of professionals. Sets out generally what the counseling must include and provides an exception for emergencies. Modeled after Connecticut law.

Section 4

Prohibits interference with access to any health care facility or health care provider's office or disruption of the functioning of such a facility or office. Provides both criminal and civil penalties. Includes other miscellaneous provisions. Taken from 1990 Washington bill.

Section 5

Provides for severability.

Section 6

Repeals current criminal abortion statute.

Att. 12
3

(HOUSE

# ABORTION LAW ALTERNATIVES, HB 2778

## Current Law

Kansas has no restrictions on abortion. Criminal abortion statute KSA 21-3407 is unconstitution (unenforceable) under Roe v. Wade and related cases.

21-3407 makes abortion criminal in all cases except where

1. Impair physical or mental health of the mother;
2. Child with physical or mental defect; OR
3. Rape, incest or criminal intercourse.

21-3407 does not include restrictions of 3 physicians concurring or accredited hospital. These stricken out by Poe vs. Menghini in 1972.

## ALTERNATIVE #1: ROE NOT OVERTUNED IN ENTIRETY AND HB 2778 NOT PASSED

Current law continues: Abortion without restriction.

## ALTERNATIVE #2: ROE NOT OVERTURNED IN ENTIRETY AND PRESENT FORM OF HB 2778 PASSED

Before fetal viability, abortion without restriction.

After fetal viability, no abortion unless:

1. Life or health of the mother, OR
2. Deformity or abnormality of the fetus.

Penalty: Class A misdemeanor.

## ALTERNATIVE #3: ROE OVERTURNED IN ENTIRETY AND HB 2778 NOT PASSED

By the majority decision of cases in other States and Federal jurisdictions, KSA 21-3407 would be revived and enforceable. (See "Current Law" section above.)

There is an argument which can be made that the legislature would have to take some action (whether another Bill or a Resolution) to revive 21-3407. John Solbach and Sebelius will take this position which I believe is in error.

ALTERNATIVE 4: ROE OVERTURNED IN ENTIRETY AND HB 2778 PASSED

Same as #2 above.

ALTERNATIVE #5: ROE NOT OVERTURNED IN ENTIRETY AND HB 2778 PASSED IN AN AMENDED FORM

From my understanding of Roe v. Wade, it permits states to limit abortion:

1. In the third trimester
2. Up to point of fetal viability
3. In cases of rape, incest, etc.

Depending upon the abortion restrictions amended into the Bill, it may be constitutional. A third trimester limitation would definitely be constitutional.

PARENTAL NOTIFICATION

The parental notification amendment to be offered is, to the best of my information, HB 3030, sponsored by 33 representatives. Whether it meets the standards of constitutionality of other parental notification cases, I do not know. It does appear to be drafted in conformity with some case law, however.

WARNING: HB 3030 is NOT only parental notification. It goes further such as the first sentence of Section 4:

> "No parent, guardian or other person shall coerce a minor to undergo an abortion."

Also Section 7:

> "Any person who intentionally performs an abortion with knowledge that, or with reckless disregard as to whether, the person upon whom the abortion is to be performed is an unemancipated minor, and who intentionally and knowingly fails to conform to any requirement of this act, is guilty of a class A misdemeanor."

Also Section 8 specifically permits civil causes of action against persons to fail to "effectuate notice" under HB 3030. It grants a prima facie cause of civil action against such persons (a very low standard of proof) and may include exemplary damages to be awarded.

Prepared by: Dale M. Sprague
Floor Debate: Friday, February 28, 1992.

FAH27

STATE OF KANSAS

HOUSE OF REPRESENTATIVES

MR. CHAIRMAN:

I move to amend House Bill No. 2778 (As Amended by House Committee of the Whole), on page 1, by striking all of lines 30 through 43, inclusive;

On page 2, by striking all of lines 1 and 2 and inserting in lieu thereof the following:

"Sec. 2. (a) No person shall perform an abortion during the third trimester of pregnancy unless such person is a physician and such physician determines that the abortion is necessary to preserve the life of the pregnant woman.

(b) Violation of subsection (a) is a class D felony.";

And by renumbering sections accordingly

Tom Bradley

16 District.

Att. 12
6

STATE OF KANSAS

HOUSE OF REPRESENTATIVES

MR. CHAIRMAN:

I move to amend House Bill No. 2778 (As Am by House Committee)

On page 1, following line 39, by inserting a new section 3 to read as follows:

"Sec. 3. (a) No abortion shall be performed or induced except with the informed consent and educated choice of the woman upon whom the abortion is to be performed or induced. Except in the case of a medical emergency, consent to an abortion is informed and educated if and only if:

(1) At least 24 hours prior to the abortion, the physician who is to perform the abortion or the referring physician obtains written acknowledgment from the woman that she has been orally informed of:

(A) The nature of the proposed procedure or treatment and of those risks and alternatives to the procedure or treatment that a reasonable patient would consider material to the decision of whether or not to undergo the abortion.

(B) The probable gestational age of the unborn child at the time the abortion is to be performed.

(C) The medical risks associated with carrying her child to term.

(2) At least 24 hours prior to the abortion, the physician who is to perform the abortion or the referring physician, or a qualified physician assistant, health care practitioner, technician or social worker to whom the responsibility has been delegated by either physician, has provided the pregnant woman in written form a publication from the department of health and environment that is updated yearly which:

Att. 12
7

(A) describes the unborn child and lists support agencies and contact information which offer alternatives to abortion;

(B) describes medical assistance benefits that may be available for prenatal care, childbirth and neonatal care, and that more detailed information on the availability of such assistance is contained in the printed materials published by the department of health and environment;

(C) informs the pregnant woman that the father of the unborn child is liable to assist in the support of her child, even in instances where he has offered to pay for the abortion. In the case of rape, this information may be omitted;

(D) informs the pregnant woman of the potential associated risk for adjustment reaction with depressed mood resulting from the performed abortion and where counseling can be obtained if such symptoms evolve at a later date.

(3) The pregnant woman certifies in writing, 24 hours prior to the abortion, that the information required to be provided under paragraphs (1) and (2) has been provided.

(b) Where a medical emergency compels the performance of an abortion, the physician shall inform the woman, prior to the abortion if possible, of the medical indications supporting the physician's judgment that an abortion is necessary to avert her death or to avert substantial and irreversible impairment of major bodily function.

(c) Any physician who violates the provisions of this section is guilty of "unprofessional conduct" as defined by K.S.A. 65-2837 and amendments thereto and such physician's license for the practice of medicine and surgery shall be subject to suspension or revocation in accordance with procedures provided under K.S.A. 65-2836 et seq. and amendments thereto. Any physician who performs or induces an abortion without first obtaining the certification required by subsection (a)(3) or with knowledge or reason to know that the informed consent of the woman has not been obtained shall be guilty of a class A misdemeanor subject to penalties as prescribed by subsection (c)

of section 6 of this act. No physician shall be guilty of violating this section for failure to furnish the information required by subsection (a) if such physician reasonably believed that furnishing the information would have resulted in a severely adverse effect on the physical or mental health of the patient.

Also on page 1, in line 40, by renumbering section 3 as section 4;

On pages 2 to 8, by renumbering sections 4 to 8, inclusive, as sections 5 to 9, inclusive;

District.

A++. 12
9