

Approved: 4-2-99  
Date

MINUTES OF THE SENATE JUDICIARY COMMITTEE.

The meeting was called to order by Chairperson Emert at 11:28 a.m. on March 30, 1999 in Room 521-S of the Capitol.

All members were present except: Senator Feleciano (excused)  
Senator Petty (excused)

Committee staff present:

Gordon Self, Revisor  
Jerry Donaldson, Research  
Mary Blair, Secretary

Conferees appearing before the committee:

Representative Tim Carmody  
Barbara Saldivar, Kansans For Life  
Beatrice Swoopes, Kansas Catholic Coalition  
Barbara Duke, Kansas Choice Alliance  
Erika Fox, Planned Parenthood of Kansas and Mid Missouri  
Jessica Travis, National Organization of Women

Others attending: see attached list

A motion to approve the March 29 minutes was made by Senator Bond and seconded by Senator Oleen, carried.

**HB 2405--an act concerning abortion; requiring parental consent prior to abortion; requiring certain records and reports**

Conferee Carmody reviewed the structure of **HB 2405** and provided background on the amendments made by the House. He detailed the following amendments: repeal of the notice part of current law changing it to a consent requirement; substantive change to current law adding a judge to the list of those required to report child abuse; and making the definition of the term "viable" consistent throughout Chapter 65 Article 67. (no attachment)

Conferee Saldivar testified in support of **HB 2405**. She stated that the bill "recognizes the rights of parents to be involved in their minor daughter's abortion decision" by requiring parental consent before an abortion can be performed on a girl under the age of 18. She discussed the fundamental rights of parents to the care and custody of their minor children especially when any medical procedure is to be performed, with the exception of an abortion. She noted that "the abortion industry, which routinely counsels minors to petition the courts for judicial bypass, has a financial stake in the outcome of the abortion decision." (attachment 1)

Conferee Swoopes testified in support of **HB 2405**. She stated that the Kansas Catholic Conference favors the principle of "parental consent" and that requiring parental consent "protects minors against their own immaturity, fosters the family structure and preserves it as a viable social unit, and protects the rights of parents to rear children who are members of their household." (attachment 2)

Conferee Duke testified in opposition to **HB 2405**. She discussed what she felt would be negative ramifications of requiring parental consent. (attachment 3)

Conferee Fox testified in opposition to **HB 2405**. She discussed why she thought the proposed changes in this bill appear to be unconstitutional and further discussed what she thought would be the negative consequences of requiring parental consent. (attachment 4)

Conferee Travis testified in opposition to **HB 2405**. She discussed the "unconstitutionality" of the bill. (attachment 5)

Conferee Stearns testified in opposition to **HB 2405** explaining why she felt the bill challenges the constitutional right of privacy of a minor female to make reproductive choices. (attachment 6)

Written testimony in opposition to **HB 2405** was submitted by Barbara Holzmark, National Council of Jewish Women. (attachment 7)

The meeting adjourned at 12:12 p.m.

# SENATE JUDICIARY COMMITTEE GUEST LIST

DATE: March 30, 1999

NAME	REPRESENTING
Rep. Tim Carmon	16th Dist.
Elmer Zelakow	Right to Life of Kansas
Cleta Renyer	Right to Life of Ks.
Eden Detache	Intern for Sen. Hensby
Mary Kay Prosz MD	KAPP Doctor for the Day
Barb Seldner	KFL
Beatrice Swoope	Ks. CATH. CONFERENCE
Veronica Nash	Rep. Goodwin
David Miles	Associated Press
Barbara Duke	Kansas Choice Alliance
Mike Fox	Planned Parenthood of Kansas & Mid-Missouri
Laraine Gier Stearns	League of Women Voters Ks
Jessica Travis	NOW
Duke [unclear]	CHPRKM

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Affiliates

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Augusta  
Brown County  
Cheyenne County  
Clay Center  
Colby  
Columbus  
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Edwards County  
El Dorado  
Emporia  
Fort Scott  
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Harvey County  
Hugoton  
Hutchinson  
Independence  
Iola  
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# Kansans for Life

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Topeka, KS 66604

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FAX (785) 357-0100  
E-Mail: kfl@networksplus.net

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## TESTIMONY IN SUPPORT OF HB 2405

Mister Chairman and Members of the Committee:

My name is Barbara Saldivar and I am a lobbyist for Kansans for Life, the state's largest pro-life organization. I speak on behalf of the tens of thousands of our members when I ask you to support House Bill 2405 and recognize the rights of parents to be involved in their minor daughter's abortion decision.

Currently, over 20 states have some type of parental involvement law on the books. The American public is overwhelmingly in favor of such legislation. A 1996 Gallup poll found that 74% of Americans surveyed support a law requiring parental consent before an abortion can be performed on a girl under the age of 18.

State laws requiring parental consent for minors, with a judicial bypass procedure, have been upheld by the United States Supreme Court. In addition, the Kansas constitution recognizes the fundamental right of parents to the care and custody of their minor children. This right is recognized when any medical procedure is to be performed on a minor, except for abortion.

The state of Kansas, through its informed consent law, recognizes the serious consequences of abortion. Surely, then, parents should be allowed to be involved in making a decision that will affect their daughter for the rest of her life. It is unfair to parents to treat them as if they are an obstacle to their minor daughter's so-called "right" to an abortion. Those same parents are pretty important when it comes to giving permission for vaccinations, tonsillectomies, ear piercing, appendectomies, wart removal, receiving aspirin at school, selling Girl Scout cookies, school field trips, etc....

HB 2405 logically puts parents, who best know their daughter's emotional, physical, and psychological history, in charge of deciding what is best for their minor child. The abortionist, who just met the girl, should not have the authority to circumvent this important parental right and discount years of parental care and involvement.

Moreover, it is hypocritical to require consent from parents to treat a minor's complications from an abortion, but not for the abortion itself. You must also realize that the abortion industry, which routinely counsels minors to petition the courts for judicial bypass, has a financial stake in the outcome of the abortion decision. Why are their interests protected while the parents are often left out of the decision-making?

Please consider the majority of loving and dedicated parents in this state who deserve to have their rights protected and vote in favor of House Bill 2405. Thank you.



Kansas affiliate to the National Right to Life Committee

Sen Jud  
3-30-99  
att

A GALLUP NEWS SERVICE POLL

JULY 1996 GPNS

-- FINAL TOP-LINE --

AC: 3800    TIMBERLINE: 107302

R:         PRINCETON JOB # 96-06-017

N=1000 National Adults

David Moore, Lydia Saad  
July 25-28, 1996

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RESULTS ARE BASED ON TELEPHONE INTERVIEWS WITH -- 1,008 -- NATIONAL ADULTS, AGED 18+, CONDUCTED JULY 25-28, 1996.

FOR RESULTS BASED ON THE TOTAL SAMPLE OF NATIONAL ADULTS, ONE CAN SAY WITH 95% CONFIDENCE THAT THE MARGIN OF SAMPLING ERROR IS  $\pm 3$  PERCENTAGE POINTS.

ELECTION-RELATED QUESTIONS ARE BASED ON -- 844 -- SELF-STATED REGISTERED VOTERS; THE MARGIN OF SAMPLING ERROR IS  $\pm 4$  PERCENTAGE POINTS.

28. Next, do you favor or oppose each of the following proposals. First, ... Next, ... [READ AND ROTATE A-D FIRST. THEN ROTATE E AND F]

		<u>Favor</u> %	<u>Oppose</u> %	<u>No opin</u> %
a.	A law requiring women seeking abortions to wait 24 hours before having the procedure done			
	96 Jul 25-28	74	22	4
	92 Jan 16-19	73	23	4
b.	A law requiring doctors to inform patients about alternatives to abortion before performing the procedure			
	96 Jul 25-28	86	11	3
	92 Jan 16-19	86	12	2
c.	A law requiring women under 18 to get parental consent for any abortion			
	96 Jul 25-28	74	23	3
	92 Jan 16-19	70	23	7
d.	A law requiring that the husband of a married woman be notified if she decides to have an abortion			
	96 Jul 25-28	70	26	4
	92 Jan 16-19	73	25	2

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## TESTIMONY

### Substitute for H.B. 2405

SENATE JUDICIARY COMMITTEE

Tuesday – March 30, 1999 - 11:00 a.m. Room 521S

### KANSAS CATHOLIC CONFERENCE

Beatrice E. Swoopes, Programs Director

Chairman Emert, committee members, I am Beatrice Swoopes, Programs Director of the Kansas Catholic Conference, which represents the Roman Catholic Bishops of Kansas. Thank you for the opportunity to speak in support of Substitute for H.B. 2405, relating to parental consent prior to the performance of an abortion.

Last month our bishops and staff met here in Topeka and part of our agenda dealt with legislation of concern to the Conference. One of the criteria proposed for determining what bills we support or oppose was to ask the questions – What does the legislation do for the family – to the family – and how will the legislation affect the family.

In looking at the Substitute for H.B. 2504 we clearly see the concept contained in this legislation is pro-family.

Whereas current law requires notification prior to a minor's abortion, this bill goes a step further requiring an active participation on the part of the parent or legal guardian – consent has to be given.

Sen Jud  
3-30-99  
att 2

The decision to have an abortion is very serious. For an adult it can be very emotional and traumatic – even more for a child.

Requiring parental consent 1) protects minors against their own immaturity, 2) it fosters the family structure and preserves it as a viable social unit, and 3) it protects the rights of parents to rear children who are members of their household.

Although the child is terrified of the prospect, parental involvement is usually desired and welcome because someone the child loves and trusts is sharing this important life decision, of whether to bear a child or not.

The Kansas Catholic Conference favors the principle of “parental consent”. That is the focus of this legislation and it should be considered from that viewpoint.

Please vote to pass Substitute for H.B. 2405 as it came out of the House.



# The Kansas Choice Alliance

March 30, 1999

Testimony of Barbara Duke, President, Kansas Choice Alliance,  
902 Pamela Lane, Lawrence, KS 66049  
785-749-0786, E-mail: BarbaraDuke@compuserve.com

Aid for Women  
American Association of University  
Women - Baldwin Branch  
American Association of University  
Women - Kansas Branch  
American Association of University  
Women - Shawnee Branch  
American Civil Liberties Union of  
Kansas and Western Missouri  
Choice Coalition of Greater Kansas  
City  
Greater Kansas City Chapter of  
Hadassah  
Jewish Community Relations  
Bureau/American Jewish  
Committee  
Jewish Women International  
Kansas Religious Leaders for  
Choice  
KU Pro-Choice Coalition  
League of Women Voters of  
Johnson County  
League of Women Voters of Kansas  
League of Women Voters of  
Wichita-Metro  
MAINstream Coalition  
National Council of Jewish Women,  
Greater Kansas City Section  
National Organization for Women,  
Johnson/Wyandotte County  
Chapter  
National Organization for Women,  
Kansas Chapter  
National Organization for Women,  
Kansas City Urban Chapter  
National Organization for Women,  
Manhattan Chapter  
National Organization for Women,  
Wichita Chapter  
Planned Parenthood of  
Kansas & Mid-Missouri  
Pro-Family Catholics for Choice  
Wichita Family Planning  
Women's Health Care Services  
YWCA of Wichita

Senator Emert and Members of the Senate Judiciary Committee:

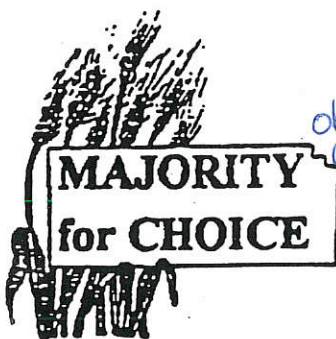
My name is Barbara Duke. I am president of the Kansas Choice Alliance or KCA. KCA is a statewide coalition of 20 diverse organizations dedicated to ensuring access to a full range of reproductive choices, including a woman's right to choose abortion, and to the promotion of comprehensive reproductive health care and human sexuality education. My own organization is the American Association of University Women (AAUW). Others are listed on our letterhead.

I speak to you today on behalf of all KCA member organizations in opposition to House Bill 2405. Our reproductive rights rest on the right to privacy guaranteed to every American. Legislation which requires parental consent for a minor to terminate an unwanted pregnancy is an unwarranted intrusion into the lives young women and their families. Parental consent requirements imply that a young woman who is too immature to make an abortion decision may be mature enough to raise child.

In a perfect world, our teenagers, both male and female, would be open and honest with their parents about their sexual behavior. Realistically, we know that they seldom are. While most teenagers considering abortion need their parents help and will talk to them about their decision, some cannot or will not do so. They may fear physical abuse, violence between their parents, or being thrown out of the house.

The American Medical Association states that because "the need for privacy may be compelling, minors may be driven to desperate measures to maintain the confidentiality of their pregnancies. They may run away from home, alley' abortion, or resort to self-induced abortion. The desire to maintain secrecy has been one of the leading reasons for illegal abortion deaths since 1973."

(over)



Sen Judd  
3-30-99  
att 3

Kansas Choice Alliance Testimony on H.B. 2405,3-30-99 – page two.

Petitioning a court for judicial authorization for an abortion can be a formidable obstacle. Many young women do not want to reveal intimate details of their personal lives to strangers. Court scheduling practices combined with other factors can result in a delay of a week or more.

Further, judges who are anti-choice routinely deny petitions despite rulings by the U.S. Supreme court that a minor must be granted a bypass if she is mature, or if an abortion is in her best interests.

The American Medical Association concluded in a 1992 study that parental consent and notice laws “increase the gestational age at which the induced pregnancy termination occurs, thereby also increasing the risk associated with the procedure.”

While early abortion is far safer than childbirth, the risk of death or major complications significantly increases for each week that elapses after eight weeks.

In 1989 Supreme Court Justice Harry Blackmun expressed his fear that allowing the government to intrude farther and farther into the private realm of decisions about reproduction “casts into darkness the hopes and visions of every woman in this country who had come to believe that the Constitution guaranteed her the right to exercise some control over her unique ability to bear children.”<sup>1</sup>

We urge you to confirm the privacy of decisions about reproduction, and to recognize the possible tragic consequences of parental consent requirements by rejecting H.B. 2405.

Thank you.

A handwritten signature in cursive script that reads "Barbara Duke".

Barbara Duke

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Rabbi Michael Zedek

PRESIDENT/CEO  
Patricia C. Brous



Planned Parenthood®  
of Kansas and Mid-Missouri

Testimony of Erika Fox,  
Vice President for Public Policy,  
in opposition to  
Substitute for House Bill No. 2405  
before the  
Senate Judiciary Committee  
of the Kansas Legislature  
on March 30, 1999

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Sen Jud  
3-30-99  
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Good morning. My name is Erika Fox. I am the Vice President for Public Policy for Planned Parenthood of Kansas and Mid-Missouri. Thank you for this opportunity to speak to you about our opposition to House Bill No. 2405. Our not-for-profit organization offers sexuality education, advocacy opportunities, family planning services and a number of surgical services--including abortion—to Kansans and Missourians in thirteen locations. We have recently initiated special teen clinics in several of our family planning centers.

Planned Parenthood works hard to convince minors that they should consult with their parents about all issues of sexuality and their health care, and to train parents to give knowledgeable and sensitive guidance. However, Planned Parenthood's extensive experience in providing information and medical services to young people undergirds our opposition to legislated parental involvement mandates for many of the reasons you will probably hear from others today.

But the State of Kansas has already chosen to enact a law governing the ability of minor's to obtain an abortion. We comply with that law and have learned to work within it to provide the best possible outcome for teenagers who choose to have an abortion. That law contains a parental notification requirement. As this type of law goes, Kansas's current law is strict but also constitutional and compassionate.

Unfortunately, the proposed changes in HB 2405 appear to be unconstitutional or in direct conflict with a desire to protect the health and well-being of young women, or both.

The change from a parental notification to a consent requirement is bad public policy. What protection does consent provide that notification does not? It is harder for a variety of reasons for minors to comply with consent requirements and so such a requirement will force more minors to bear children against their will, require more teens to seek a bypass, and result in more delayed abortions—thereby increasing costs and risks.

That large majority of minors who already involve parents may be forced to wait for an abortion until a parent can come into a clinic to provide sufficient proof of their status as parent and provide their consent. This delay is not in the best interests of young women because the risk of major complications from abortions, though small, increases 20% each week. And teens already tend to seek later abortions because of their inability to recognize or reluctance to deal with an unintended pregnancy.

Those minors who are adamant about not involving parents will still use the judicial bypass, drive to another state, resort to illegal or self-induced abortions, or try to hide their pregnancies as long as possible—some even abandoning infants after a clandestine birth. Again,

the risks from delay, long road trips, botched abortions and lack of trained medical attention are not in a minor's best interests.

Minors who might have been willing to notify their parents—but who believe that their parent would never consent—will have no incentive to do so. Therefore, we believe the change to consent will result in fewer parents being notified and more minors using judicial bypass or other alternatives.

To the extent that the change to consent results in additional births by adolescents, more teens will be subjected to greater medical risks because it is far more dangerous for an adolescent to deliver a baby than to have an abortion at any stage of pregnancy.

Then there are several constitutional problems created by the House Substitute to HB 2405. Current law provides exceptions to the parental notification or judicial waiver requirements in situations that threaten a minor's health and safety. The amendment in Section 5 of the current substitute repeals that exception. The exception in Sec. 5(j)(1)(B) applies only to situations in which an emergency exists that threatens the life of the minor. This is blatantly unconstitutional under *Planned Parenthood v. Casey* and subsequent cases applying the requirement for a health exception to laws affecting minors.

The new requirement in Sec.1(a)(11) and Sec. 5(h), that judges are mandatory reporters of sexual abuse, may be construed as a de facto parental notification mandate which deprives minors of a confidential judicial bypass--a constitutional requirement for any consent law.

Under Sec. 5(e), the judge conducting the waiver proceedings has only three choices. The effect of subdivision (3) is to allow an immature minor's application to be denied, even though an abortion may be in her best interest, if a judge finds that waiving the requirement of consent would not be in the minor's best interest. Although this formulation has been upheld in connection with notification, it has not in the case of consent. The point is currently being litigated in Arizona.

This Committee should not need to be reminded that should this bill become law, be successfully challenged and enjoined as a violation of constitutional principles governing a minor's right to choose to have an abortion, Kansas will be without any law to encourage parental involvement.

Planned Parenthood urges this Committee and the Kansas Legislature to reject HB 2405. Thank you.

**TESTIMONY IN OPPOSITION  
TO  
HOUSE BILL #2405**

before

**The Kansas Senate Judiciary Committee**

By  
**Jessica Travis**

Lobbyist for

**THE KANSAS MEMBERS OF  
THE NATIONAL ORGANIZATION  
FOR WOMEN**

March 30, 1999

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Sen Jud  
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att 5

Good morning. Thank you for allowing me the opportunity to speak. My name is Jessica Travis and I am a native of Independence, Kansas in my third year at Washburn law and I am here speaking on behalf of the Kansas members of the National Organization for Women (NOW).

As the others testifying today, Kansas NOW members are opposed to House Bill 2405. This bill increases the burden upon a young woman seeking an abortion, thereby pressuring her to carry the unwanted pregnancy to term. Additionally, House Bill 2405 is unconstitutional. Since we have heard from others who spoke about the personal hardships that this bill would impose upon the young woman, I will refrain from reiterating my concurrence and briefly focus on the unconstitutionality of the bill.

In Roe v. Wade the United States Supreme Court first held that reproductive decisions are a fundamental right guaranteed by the privacy provision of the Constitution. In Casey v. Planned Parenthood the Court held that before viability of a fetus a state may not “unduly burden” a woman’s efforts to exercise this right. As it is currently proposed, House Bill 2405 is unconstitutional because it unduly burdens a young woman’s constitutional right to seek an abortion.

Section 5(k)(B) provides that no parental consent shall be required if the pregnancy threatens the life of the young woman. There is no exception when the pregnancy threatens her health. In essence, this section states that the potential life of a nonviable fetus is more important than the health and well-being of a living

person. Since when has the health and quality of life of a child, the young woman, been so unimportant? In all other instances, such as custody placement, the health and welfare of a minor are paramount. Yet now, this bill seeks to shove aside considerations of the young woman's quality of life. By elevating the legal status of a nonviable fetus so that it trumps efforts to preserve health, the bill places an undue burden on the young woman whose health might suffer as a result of pregnancy. This restriction on exercising the fundamental right to make reproductive decisions is too much. By not allowing an exception for when the minor's health is in danger, the bill is flagrantly unconstitutional.

It is on these grounds that the Kansas members of the National Organization for Women ask this committee to reject House Bill 2405.



*Written*  
*Send 3-30-99*  
*att 6*

# LEAGUE OF WOMEN VOTERS OF KANSAS

TO: Members of the Senate Judiciary Committee  
FROM: The League of Women Voters of Kansas  
RE: Substitute for House Bill 2405  
DATE: March 30, 1999

The League of Women Voters of Kansas has a long history of support for a woman's right to choose in terms of reproductive choices. Our position on reproductive choice is as follows: "Protect the constitutional right of privacy of the individual to make reproductive choices."

We understand the situation when the pregnant woman is a minor, but also understand the situation when the minor woman cannot, or will not, discuss the pregnancy with her parents. Bringing a child into the world is a wonderful experience for all women having a loving family, wanting a child, and being prepared to love the child and help it grow to adulthood. This is not the scenario for many young women who find themselves pregnant, without funds, support, comfort, and a family willing, or able, to support them.

Recent legislation regarding the abortion controversy ignores the problems of a young woman without funds, help, or a future, should she be required to have a child. The League position on reproductive choice applies to all women. Should a minor female be denied her constitutional right of privacy?

The League of women Voters of Kansas asks these questions and requests your vote against Substitute for HB 2405.

Respectfully,

*Darlene Greer Stearns*

Darlene Greer Stearns  
League of Women Voters of Kansas

*Sen Jud*  
*3-30-99*  
*att 6*

TO: MARY BLAIR  
FROM: BARBARA HOLZMARK



March 30, 1999

Testimony of Barbara Holzmark, Kansas Public Affairs Chair,  
Greater Kansas City Section, National Council of Jewish Women  
8504 Reinhardt Lane, Leawood, Kansas 66206  
(913)381-8222, Fx: (913)381-8224, E-mail: bjbagels@aol.com

Senator Emert and Members of the Senate Judiciary Committee:

My name is Barbara Holzmark. I am the Kansas Public Affairs Chair for the Greater Kansas City Section of the National Council of Jewish Women (NCJW). We are only one of 200 sections across the country, nearly 1000 members in the metropolitan K.C. area. Founded in 1894, we are the oldest Jewish Women's organization in the country, with a Mission of working through volunteerism in the General as well as the Jewish community, to improve the quality of life for women, children and families and strives to ensure individual rights and freedoms for all.

I am in opposition to HB 2405, an act concerning abortion, relating especially to parental consent prior to an abortion.

NCJW believes in choice and "the protection of every "female's" right to reproductive choice, including safe and legal abortion, and to the elimination of obstacles that limit reproductive freedom". Abortion is only one reproductive choice, as is birth and adoption. Why should we single out a female under a certain age, let alone necessitate the obstacle of consent by a parent or guardian. In Kansas, we notify them now, parental notification is parental involvement! Where is the expedited procedure if a judicial bypass is chosen? Such delays often send the female into another trimester, at which point, further obstacles come into play. What is really underlying in HB 2405 is to encourage a young woman to carry a fetus to term when it is a proven fact that a safer scenario is always an abortion. NCJW further believes in "the protection of every individual's right to privacy". If a judge must report physical abuse upon examining the judicial waiver, where is the confidentiality? The female may "choose" not to tell a parent to the point that taking her pregnancy in her own hands may cause a "medical emergency" which could cause her death or create serious risk to her life. Where is the "health exception" to the risk of her life before a medical emergency must exist? Is this bill even constitutional? Why are you considering restricting further, an unemancipated minor's liberties and rights? Is she old enough to carry to term and become a "minor parent", or too young to be able to choose the safe and legal procedure of abortion? Do all minors live at home? Do minors have a choice when the "parents consent" is to abort against their wishes? I only ask these questions to point out that any further restrictions on a female's choice to a safe and legal abortion or her choice of being a "minor mom" should be her choice. Doesn't she need Parental Consent to carry the fetus to term? The NCJW believes that all females are entitled to their own reproductive choices. I urge you to consider the minor who will be the ultimate "adult" with whatever decision she is allowed to choose. I urge you to vote NO on HB 2405. Thank you.

Sen Jud  
3-30-99  
att #1