Approved: April 10, 2002
Date

MINUTES OF THE HOUSE FEDERAL & STATE AFFAIRS COMMITTEE

The meeting was called to order by Chairperson Doug Mays at 1:40 p.m. on February 25, 2002 in Room 313-S of the Capitol.

All members were present except: Representative John Edmonds, Excused
Representative Broderick Henderson, Excused

Committee staff present: Mary Torrence, Revisor of Statutes
Russell Mills, Legislative Research Analyst
Shelia Pearman, Committee Secretary

Conferees appearing before the committee: Representative Tony Powell
Representative Karen Divita
Carla Mahany, Kansas & Mid-Missouri Planned Parenthood
Mark Pederson, Central Family Medicine
Lowell Ramsey, Kansans for Life

Others attending: See attached list

Chairman Mays opened the hearing on **HB 3000 - Performance of abortions on minors; counseling requirements; judicial waiver of parental notice requirement.** Representative Powell stated his support of **HB 3000** the Supreme Court's ruling of Minnesota's *Hodgson v. Minnesota* in order to tighten the parental notification law in Kansas.(Attachment #1)

Mr. Ramsey referenced other significant decisions that minors cannot make without their parents permission. He cited *Hodgson v. Minnesota*, 497 U.S. 417 (1990) which is the model for **HB 3000**. He stated this proposed legislation requires in person or certified mail parental notification and provides for a civil remedy. (Attachment #2)

Representative Divita appeared before the committee to voice her support of **HB 3000**.

Mr. Pederson voiced concern of the juvenile's confidentiality if granted by judges as well as the issue of accessibility to counselors not financially associated with the physician. (Attachment #3)

Ms. Mahany cited issues of constitutionality and timeliness of services as reasons to oppose **HB 3000**. (Attachment #4)

Ms. Porter voiced concern of the staffing issues required by the 24/7 mandate on the judicial system as proposed in **HB 3000**. (Attachment #5)

No other conferrees appeared before the committee. The hearing on **HB 3000** was closed.

Chairman Mays opened the hearing on **HB 2797 - Unborn victims of violence act.** Representative Powell stated this statutory change is necessary because the Kansas Supreme Court has twice rejected efforts to define an unborn child. (Attachment #6)

The committee meeting recessed at 3:05 p.m. to continue the hearing at the next scheduled meeting on February 26, 2002.

Unless specifically noted, the individual remarks recorded herein have not been transcribed verbatim. Individual remarks as reported herein have not been submitted to the individuals appearing before the committee for editing or corrections.

HOUSE FEDERAL & STATE AFFAIRS COMMITTEE GUEST LIST

DATE 2/25/02

NAME	REPRESENTING
Mark Pederson	Central Family Medicine
Lowell Ramsey	Kansans for Life
Carla Norcott-Mahany	PPKM
Barbara Dake	KCA
Bruce Dimmitt	KFL
Linda Kenney	KDHE
Jennifer Orth	Corlee Consulting
Ami Hyten	Judicial Branch
Barb Conant	KTLA
Sandy Shaw	PMCA of Ks
Karen DeVota	Rep Seat #16
Mary Ellen Conlee	Via Christi

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STATE OF KANSAS
HOUSE OF REPRESENTATIVES

TOPEKA

COMMITTEE ASSIGNMENTS
CHAIRMAN: ETHICS AND ELECTIONS
MEMBER: FEDERAL AND STATE AFFAIRS
RULES AND JOURNAL
TAXATION
ALEC STATE CHAIR

TESTIMONY IN SUPPORT OF HB 3000
BY REPRESENTATIVE TONY POWELL

Mr. Chairman,

I am pleased today to appear in support of HB 3000, legislation which would make small, but significant changes to our state's parental notification law. The United States Supreme Court upheld the Minnesota parental notice statute in Hodgson v. Minnesota ten years ago. This bill attempts to bring our statute more in conformity with the Minnesota statute by ensuring more parental involvement.

The bill does the following:

1. Requires that the counselor advising a minor on whether to have an abortion not be affiliated with the abortionist.

2. Like the Minnesota statute, limits the emergency exception to situations where the minor's life is at stake.

3. Adds a criminal penalty for an abortionist who performs an abortion on a minor without the required counseling.

4. Requires actual service of the notice to a parent and that proof of such service be given before an abortion on a minor can be performed.

5. Preserves the confidentiality of the minor in court records while allowing review and access to other facts of the case like other court cases.

6. Adds reporting on judicial bypasses as part of KDHE's annual reporting on abortions.

This bill is needed to tighten our parental notification law and ensure that parents are involved in the most difficult decision a minor could make—the decision to have an abortion. I urge this committee to support this bill. I am happy to stand for questions.

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LifeMatters

In the Kansas Legislature

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Testimony of Lowell D. Ramsey, J.D.
Lobbyist for Kansans For Life, Inc.

Mr. Chairman and Members of the Committee,

My name is Lowell Ramsey and I am appearing today on behalf of Kansans For Life in support of House Bill 3000. I will be brief today because thankfully we are not breaking any new ground when we ask for your support of this legislation. I would ask that you think of my appearance today as less that of an activist but rather that of a mechanic. You see we are not advocating any new policy objective today in adopting this legislation but rather we are hoping to tune-up an existing statute. KSA 65-6704 and 65-6705 were adopted by this body ten years ago with the hope of assisting families in dealing with the difficult reality of a minor teen's pregnancy. It is the established public policy of the State of Kansas that parents, when possible, should be by their teen's side when making these life changing decisions dealing with abortion, adoption or parenting. An overwhelming majority of Americans agree (over 85%) that a parent should at least be notified before an abortion is performed on their daughter. I will not recite the litany of how other decisions cannot be made by a minor child without their parents PERMISSION much less notification. (i.e., no aspirin at school, tattoos, ear piercing etc.) We are here today to help clear up some problems in the statute that have kept it from being as effective as the drafters hoped ten years ago.

Lest there be some who do not yet realize, I want to make it clear that the Supreme Court of the United States in Hodgson v. Minnesota, 497 U.S. 417 (1990) made it crystal clear that the principle of Parental Notification with a judicial bypass provision is constitutional.

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We have modeled our language after the exact wording that the Court upheld in Hodgson. The specter of unconstitutionality has been laid to rest.

I would like to briefly summarize the changes that are being proposed:

PG. 1. – Line 30, We have clarified the requirement that a counselor be an outside party and not the physician performing the abortion or an affiliated party.

PG. 2 – Line 29, Instead of outlining what information a minor should receive we have simply incorporated the "Woman's Right To Know Act", KSA 65-6709 and 65-6710 into this legislation. There is no need to reinvent the wheel. It is established public policy that before any woman has an abortion she should be given the opportunity for informed consent.

PG. 3 – Line 15 – 20, The exact language of the Minnesota statute also has been used in making it clear that the only time the physician can bypass the statutory counseling requirement is when, "the abortion is necessary to prevent the minor's death and there is insufficient time" to provide it.

PG. 3 – Line 24 – 28, There is now a criminal sanction for anyone who disregards the statute in regard to counseling.

PG. 3 – Line 31 – 35, The physician must now give actual notice to one of the parents of the minor child or to a legal guardian. The notice must be in person or by certified mail and have written proof of such notice.

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State Affiliate of National Right to Life Committee

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Judicial Bypass Section

PG. 4 – Line 9, The intent of the legislation is to provide absolute security that a minor girl can proceed in the court system under an umbrella of confidentiality.

PG. 4 – Line 33-35, In the existing law the courts ruled by default if they did not rule within 48 hours. Now the court will be open 24/7 in these cases. This is also patterned after the Minnesota statute.

PG 5 – Line 12 – 13, In the existing law the physician could disregard the notice requirement by simply stating that there was an emergency that threatened the health, safety or well-being of the minor child. Now they must certify in the patient's record that, "the abortion was necessary to prevent the minor's death and there is insufficient time to provide the required notice". This language has been lifted verbatim from the case the U.S. Supreme Ct. upheld in Hodgson.

PG 5 – Line 29 – 35, There is now a civil remedy for parents or guardians when the attending physician disregards any provision of this section.

PG 5 – Line 38 –39, Criminal sanction for disclosing the identity of the minor that petitions the court for a judicial bypass.

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REPORTING REQUIREMENTS FOR THE COURT

PG 5, Lines 42 –43
PG 6, Lines 1 – 9
The District Courts will be required to file with Secretary of Health and Environment the number of bypass actions filed, the number that were rejected and the number that were approved.
The Department will add these statistics to its annual report on abortion in Kansas.

In conclusion, I want to again thank the committee for allowing me to appear and will be available to answer any questions you might have. Parental Notification before a minor daughter's abortion is common sense for the vast majority of Americans and certainly Kansans. The Supreme Court of the United States has said that parents have every right to notification under our Constitution. The goal of this legislation is to simply assure that they are afforded that right and minor girls are encouraged to seek their parents counsel. Thank you.

Lowell D. Ramsey, J.D.
Kansans For Life

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Summary of HB3000 Objections, Kansas House of Representatives 2002.
****

1. No general health exception, unconstitutional.
2. Political harassment of judge and attorneys who grant waivers and whose information is no longer confidential, making waivers only theoretical. All other juvenile cases are sealed. Why?
3. Counselors meeting the separation criteria will be difficult to obtain at $75-120 per hour, and will not have the knowlege or the forms to transmit to physician doing the abortion.
4. Availability of court services 24-hours 7-days a week will either be very expensive or not available, thereby making waivers only theoretical.
5. Ability of parents to sue for punitive damages. This has a chilling effect when the terms regarding 'reckless' are not defined well.

****

65-6701

(b)(1)(C) Counselor cannot be "any person legally or financially affiliated with the physician [who does the abortion]."

Reply) How will a minor obtain counseling services without the help of the physician? Currently we subsidize this counseling. Of the nine type of counselors, only one may be free, clergy. Define financially affiliated. Will it suffice to have a contract counselor who is paid directly by the minor, but scheduled by us? **Is being financially unassociated a new malpractice mandate for all professionals?** When a general practice doctor with hospital privileges, refers a patient to a specialist with the same privileges, but there are no direct financial or legal affiliation, is this considered malpractice as you are implying? Should clergy be required to have malpractice insurance for abortion counseling?

-Will there exist a standard counseling form to inform us she has been counseled properly?

-Minors have constitutional rights, therefore absolute prohibition of abortion is illegal. They may however be regulated more strictly such as reasonable parental consultation. How does changing the counseling help involve parents more?

-The majority of minors we see are accompanied by parents, and approximately 13% do a waiver of notice. 25% of the minors sonogram'ed are too far gestationally for us to do. (Nov & Dec '01)

-The minors who do a waiver tend to be straight-A students whose parents would be very upset if she told them, or a much smaller fraction are minors whom have already left the home and the parents do not care but will not participate in signing forms. Being a pretty girl in school is a curse because of the pressures to have sex.

65-6704

(a)(1)-(2) The removed subsection made the counseling easier to do, but less informative.

Reply) The phrase removed was to talk about <u>all</u> the options including abortion, adoption, and keeping the baby. Now only the latter two are discussed in the State literature as required.

(f) removal of general health exception.

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Reply) Unconstitutional without general health exception. How much will this cost the State?

65-6705

(a) the definition of notice has been tightened up.
Reply) If when sending a Certified RRR letter, if the parent refuses to accept the letter, has notice still be served?? Registered letters are considered served whether accepted or not.

(c) court record no longer confidential about except minor.
Reply) The District Court Judge and attorney will become political targets, the real purpose. All other juvenile court records are completely sealed. How is a parental-notification-to-abortion waiver different?

(f) Court available 24 hours/day, 7 days/week. No 48-hour automatic okay. But still must be expedited.
Reply) You cannot force a state employee (court srvices) to work past their 40-hour week, and they already work M-F, 8:00am-4:30pm. Thus the 24/7 is unlikely to be enforced, to the detriment of the minors. But the 24/7 was supposed to be a concession for removing the 48-hour automatic okay. It effectively elimines judicial waivers. The 24/7 would have been nice for minors who have a hard time getting off from school, work, or parental curfews, but rather hard on the adults who help them. How much will this cost the State?

(l) actual and punitive damages can be brought against physician by parent.
Reply) Normally the parent has to petition the court to file a lawsuit on behalf of the child. This would allow more frivolous lawsuits to be filed by parents against abortion providers. If there are actual damages then punitive damages can be added. Define actual damages. Do severe but not unusual cramps after an abortion constitute damages?

(n) clerk of district courts will file how many waivers applied for, how many granted and how many denied, to be published by KDHE.
Reply) How much will that cost the State?

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Planned Parenthood®
of Kansas and Mid-Missouri

TESTIMONY
in Opposition to House Bill 3000

by Carla Mahany, Kansas Public Affairs Director
Planned Parenthood of Kansas and Mid-Missouri
913.312.5100, Ext. 227
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House Committee on Federal and State Affairs

Representative Doug Mays, Chair

Monday, February 25, 2002

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Planned Parenthood of Kansas and Mid-Missouri opposes House Bill 3000 because it is unconstitutional, unnecessary and unwise policy for Kansas minors.

HB 3000 is unconstitutional on its face because it does not include a health exception as well as an exception to prevent the death of the minor. It is unconstitutional in effect because of its vagueness in the new definition of "counselor," and because it attacks judicial bypass in several ways that create an unnecessary delay and undue burden for minors. Laws are unconstitutional if they have either the purpose or effect of creating a substantial obstacle to obtaining an abortion. Please ask yourself what is the intent of the sponsors of this legislation. Do they "intend" to create an obstacle to minors seeking an abortion? The answer certainly seems obvious to us.

Delays in seeking abortion add to the risk of the procedure. (Please refer to my attachment, "Abortion After the First Trimester.) Adolescents already tend to delay getting any help for their pregnancy, no matter what kind of help it is, due to ignorance or denial. HB 3000 attacks the ability of all minors to obtain an abortion as quickly as possible through its completely unnecessary change to the definition of "counselor" as someone who is not affiliated with the physician legally or financially. For one thing, the term "legally" is vague. At Comprehensive Health Care Services of Planned Parenthood of Kansas and Mid-Missouri, counselors are paid by us, not by the doctor, so depending on how you read the bill, our counselors do not have a "financial" affiliation with the physician. But do our counselors have a "legal" relationship to the physician? Does this bill allow us to continue to hire the counselors we need? Even if so, private physicians who provide abortion services in their offices serve as both physician and employer. They certainly have both a legal and financial affiliation with their counselors. Are they being singled out for attack in this part of the bill? Or does this new definition mean that all the counseling has to be done off site? If so, an extra burden is applied to the minor, with all the problems associated with delaying the procedure. How is counselor availability to be ensured? If a so-called "crisis pregnancy center" provides the counselors, how likely is it that their counselor will be available to the minor when needed? What if they only schedule a counselor once a month? Again, delay affects safety and adds to the minor's burden and consequently to the unconstitutionality of this bill.

Delay is also caused, intentionally and without any need, in Section 3, by requiring a return receipt from the parent or guardian. Nowhere else in the country is the minor's abortion delayed until the return receipt is received by the provider. There is no need, because minors who want to involve their parents (by far the preponderance) already participate in notification under current law. But it penalizes those minors whose parents may be on a month long road trip, parents who work 12 hours a day and can't get to the post office to sign for the notification letter, or parents who are homeless. This may mean a significant delay in the procedure. Again, it adds to the minor's burden and consequently to the unconstitutionality of the bill.

The elimination of a guarantee of prompt judicial bypass for minors who cannot or will not involve their parents is also unconstitutional. The US Supreme Court, in the *Belotti* case of 1979, has said that the judicial bypass is constitutional as long as it is completed expeditiously and the minor is anonymous. This bill attacks the "expeditious" requirement in two ways – by eroding the minor's right to have an abortion if the court delays its ruling, and by eroding the confidentiality of her court records. Even though her name is kept anonymous, there is a new

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lack of confidentially of judge and attorney. Ask yourselves why this is being done? What purpose does it serve for the minor? Is there any reason to do this other than enabling the harassment of judges and attorneys? Is there any reason for doing this other than eroding access to the courts for judicial bypass? Does it fit the US Supreme Court criteria of an intended obstacle? Again, we believe the answer is obvious.

If the effect of this erosion of confidentiality is to remove access to judicial bypass, this bill is unconstitutional. If other the other changes to the minors' access to counseling and bypass remain, this bill is unconstitutional. If the elimination of the health exception remains, this bill is unconstitutional.

Delay in abortion services, especially for the youngest minors, equals risks to minors' health.

Please oppose this dangerous, unconstitutional and unnecessary legislation.

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TALKING POINTS ON HOUSE BILL 3000

For more information, contact Carla Mahany, Planned Parenthood of Kansas and Mid-Missouri, 913.915.9636

The intent of HB 3000 is to delay access to abortion for minors by requiring parental notification by certified mail (this would often cause delay of at least a week), changing the definition of "counselor" to erode the minor's ability to have complete, unbiased and accurate information, and by making judicial by-pass nearly impossible to obtain. The bill is unconstitutional on its face because it eliminates the "health" exception, and it is unconstitutional in effect by creating significant burdens for minors who, for good reasons, cannot speak to their parents. The result of its passage would be increased health risks to pregnant minors.

The level of parental involvement/awareness is already quite high in Kansas. For example, during a six month period at Comprehensive Health Care Services in Overland Park in the last half of 2000, out of approximately 250 procedures for minors (below the age of 18, with approximately 10 younger than 15), judicial by-pass was needed only six times (an average of once per month). There are compelling reasons for young people to seek a by-pass – pregnancy as a result of incest, a history of abuse by parents leading them to fear for their safety if their parents find out, etc.

More than one third of all abortions after 12 weeks are obtained by teenagers. Teens face not only state regulatory hurdles, but also delays in recognizing that they are pregnant and taking decisive action. They may:

- understand little about how their bodies work and therefore may not recognize signs of pregnancy
- become pregnant before they have begun to menstruate or before their cycle is regular, so they don't have the signal of a missed period
- believe a variety of myths, such as "You can't get pregnant the first time"
- keep rape or sexual abuse a secret, denying the possibility of pregnancy
- keep hoping they're wrong, that it will go away, that they won't have to disappoint their family, friends, teachers
- be intimidated by the health care system

Delays mean greater health risks to the pregnant minor. The earlier the abortion, the fewer risks because the procedure is less complicated. (However, the risks of giving birth are much greater that having an abortion, even later in pregnancy.)

Abortion is a fundamental right supported by more than 25 years of constitutional case law. They are not analogous to "tattoos," one of the spurious claims by sponsors of bills to restrict minors access to abortion. Tattoos are not a "right," and lack of access to tattoos won't affect a minor's health or life.

The consequences of adolescent pregnancy and childbearing are serious:

- Teen mothers are less likely to graduate from high school and more likely than their peers who delay childbearing to live in poverty and to rely on welfare
- The children of teenage mothers are often born at low birth weight, experience health and development problems, and are frequently poor, abused, and/or neglected

Legislators who want to do something positive for the health of minors should support the following state policies:

- ensure greater access to contraceptives and medically accurate sexuality education
- ensure that a pregnant minor can obtain prenatal care and delivery services without parental consent or notification
- ensure that minors are able to consent to the diagnosis and treatment of sexually transmitted infections

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FACT SHEET

Abortion after the First Trimester

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Since the legalization of abortion throughout the U.S. in 1973, abortion services have become more widely accessible and knowledge of them has grown. As a result, the overwhelming majority of abortions are performed in the first trimester of pregnancy. For a number of reasons, however, abortion after the first trimester remains a necessary option for some women.

Unfortunately, anti-choice activists seek to limit access to abortion through, among other means, bans on postviability procedures, laws imposing a fixed date for fetal viability, and so-called "partial birth" abortion bans, many of which could limit access to abortion during *all* stages of pregnancy.

In fact, the same anti-choice activists who would limit access to abortions after the first trimester also oppose access to abortion *in the first trimester* by advancing numerous restrictions, including parental involvement laws and mandatory delay laws. Also, by asserting their bias at a local level through picketing doctors' homes and offices, clinic blockades, threats of violence against doctors, and the misapplication of zoning laws, etc., they create a climate so threatening that the number of qualified providers is diminished. These actions endanger the health of women and the right of physicians to determine the most appropriate treatment for their clients.

The Number of Abortions after the First Trimester Is Relatively Small

- Between 1990 and 1997, the number of abortions in the United States fell from 1,429,577 to 1,186,039 (CDC, 2000). The CDC estimates that 55 percent of legal abortions occur within the first eight weeks of gestation, and 88 percent are performed within the first 12 weeks. Only 1.4 percent occur after 20 weeks (CDC, 2000).
- Since the nationwide legalization of abortion in 1973, the proportion of abortions performed after the first trimester has decreased because of increased access to and knowledge about safe, legal abortion services (Gold, 1990).

McCormick Information Center

click here for further research

Various Factors Require Women to Have Abortions after the First Trimester

Barriers to Service

- **Geographic** A 1993 survey of U.S. abortion providers found that among women who have non-hospital abortions

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approximately 16 percent travel 50 to 100 miles for services, and an additional eight percent travel more than 100 miles (Henshaw, 1995a). It follows that having to travel such distances would cause delays in obtaining abortions.

- **Provider shortage** As of 1996, 86 percent of U.S. counties have no known abortion provider; these counties are home to 32 percent of all women of reproductive age. Furthermore, 95 percent of non-metropolitan counties have no abortion services, and 87 percent of non-metropolitan women live in these unserved counties (Henshaw, 1998).

- **Financial** In 1993, the average cost of a first-trimester, non-hospital abortion with local anesthesia was $296. [*The New York Times* reports that this cost is currently about $350 (Talbot, 1999).] For low-income and younger women, gathering the necessary funds for the procedure often causes delays. Compounding the problem is the fact that the cost of abortion rises with gestational age: in 1993, non-hospital facilities charged $604 for abortion at 16 weeks gestation and $1,067 at 20 weeks (Henshaw, 1995a). For various reasons, most patients pay for abortions out-of-pocket. For example, in 1995, one-third of women did not have employer-based insurance; most states did not allow Medicaid funding for abortions; and one-third of private insurance plans did not cover abortion or covered it only for certain medical indications (Henshaw, 1995a). For some, these costs can pose significant barriers to access.

Abortion Index

- **Legal restrictions** Causing additional delays are state laws such as those mandating parental consent or notification or court-authorized bypass for minors and those imposing required waiting periods. For example, after Mississippi passed a parental consent requirement, the ratio of minors to adults obtaining abortions after 12 weeks increased by 19 percent (Henshaw, 1995b).

Medical indications may lead to abortion after 12 weeks. Discovery of serious fetal anomalies, such as severe genetic disorders, or conditions in which the woman's health is threatened or aggravated by continuing her pregnancy include

- malignant hypertension, including preeclampsia
- out-of-control diabetes
- heart failure
- severe depression
- suicidal tendencies
- serious renal disease
- certain types of infections

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These symptoms may not occur until the second trimester, or may become worse as the pregnancy progresses (Cherry & Merkatz,

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1991; Paul *et al.*, 1999)

Other Reasons for Postponing Abortion Past 12 Weeks

- lack of financial and/or emotional support from the male partner
- psychological denial of pregnancy, as may occur in cases of rape or incest
- lack of pregnancy symptoms, seeming continuation of "periods," irregular menses
- absence of partner due to estrangement or death (Paul *et al.*, 1999)

Adolescents Often Delay Abortion Until after the First Trimester

- Adolescents are more likely than older women to obtain abortions later in pregnancy. Adolescents obtain 29 percent of all abortions performed after the first trimester (CDC, 2000).
- Among women under age 15, one in four abortions is performed at 13 or more weeks' gestation (CDC, 2000).
- The very youngest women, those under age 15, are more likely than others to obtain abortions at 21 or more weeks gestation (CDC, 2000).
- Common reasons why adolescents delay abortion until after the first trimester include fear of parents' reaction, denial of pregnancy, and prolonged fantasies that having a baby will result in a stable relationship with their partner (Paul *et al.*, 1999). In addition, adolescents may have irregular periods (Friedman *et al.*, 1998), making it difficult for them to detect pregnancy. Also, as previously noted, state laws requiring parental consent or court-authorized bypass for minors often cause delays.

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Abortion after the First Trimester Is as Safe as or Safer than Carrying a Pregnancy to Term

- Overall, abortion has a low morbidity rate. Fewer than 1 percent of women who undergo legal abortion sustain a serious complication (AGI, 1998). The rate of complication increases by about 20 percent for each additional week of gestation past eight weeks (Paul *et al.*, 1999).
- Presently the death rate from abortion at all stages of gestation is 0.6 per 100,000 procedures (Paul *et al.*, 1999). The risk of death associated with childbirth is about 10 times as high as that associated with abortion (AGI, 1998).
- The risk of death associated with abortion increases with the length of pregnancy, from one death for every 530,000 abortions at eight or fewer weeks to one per 17,000 at 16-20 weeks, and one per 6,000 at 21 or more weeks (AGI, 1998).

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After 20 weeks gestation there is no statistically significant difference in maternal mortality rates between terminating a pregnancy by abortion and carrying it to term (Paul *et al.*, 1999).

Current Law Allows for Abortion after the First Trimester

Legality of Abortion

- In *Roe v. Wade* (410 U.S. 113 (1973)), the U.S. Supreme Court held that the U.S. Constitution protects a woman's decision to terminate her pregnancy. Only after the fetus is viable, capable of sustained survival outside the woman's body with or without artificial aid, may the states ban abortion altogether. Abortions necessary to preserve the woman's life or health must still be allowed, however, even after fetal viability.

- Prior to viability, states can regulate abortion, but only if the regulation does not impose a "substantial obstacle" in the path of a woman seeking an abortion (Harrison & Gilbert, 1993).

Determination of Viability

- In *Planned Parenthood of Central Missouri v. Danforth* (428 U.S. 52 (1976)), the U.S. Supreme Court recognized that judgments of viability are inexact and may vary with each pregnancy. As a result, it granted the attending physician the right to ascertain viability on an individual basis. In addition, the Court rejected as unconstitutional fixed gestational limits for determining viability. The court reaffirmed these rulings in the 1979 case *Colautti v. Franklin* (439 U.S. 379 (1979)).

McCormick Information Center

click here for further research

State Laws and Abortion Facilities

- In *City of Akron v. Akron Center for Reproductive Health* (462 U.S. 416 (1983)), the U.S. Supreme Court invalidated a costly requirement that all second-trimester abortions take place in a hospital.

- In *Thornburgh v. American College of Obstetricians and Gynecologists* (476 U.S. 747 (1986)), the U.S Supreme Court ruled that a state may require that a second physician be present at the abortion of a viable fetus to care for it should it be born alive, but that requirement must be waivable in a medical emergency.

Laws and Specific Abortion Techniques

- In *Thornburgh v. American College of Obstetricians and Gynecologists*, the U.S. Supreme Court ruled that a woman may not be required to risk her health to save a fetus even after viability, and it granted the attending physician the right to determine when a pregnancy threatens a woman's life or health.

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- The court also ruled that when performing a postviability abortion, a physician must be permitted to use the method most likely to preserve the woman's health, even if it might endanger fetal survival.

- Anti-choice activists have called for legislation prohibiting "partial birth" abortions, a political term that has no medical definition (Paul *et al.*, 1999).

- In *Stenberg v. Carhart* (530 U.S. 914 (2000)), the U.S. Supreme Court ruled that Nebraska's so-called "partial birth" abortion ban was unconstitutional because it failed to include an exception to preserve the health of the woman, and it imposed an undue burden on a woman's ability to choose an abortion. The court determined that the law was so broadly worded that it could be used to prohibit access to the safest and most common medical procedures for terminating a pregnancy before fetal viability.

- Bans on so-called "partial birth" abortions have been passed by 31 states, and legal challenges to these laws have been brought in 21 states. The majority of these states passed laws similar to Nebraska's, and most have been held invalid or are unenforceable (CRLP, 2001).

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House Federal and State Affairs Committee

Monday, February 25, 2002

Testimony on HB 3000
Kathy Porter

Thank you for the opportunity to address this issue. I have concerns about two sections of the bill, neither of which would seem to address the merits of the bill.

My first concern is with section 3 (f), which reads, in relevant part:

For purposes of making an application for waiver pursuant to this section, a minor shall be afforded access to the court at all times, 24 hours a day, seven days a week.

Judges are already available 24 hours a day, seven days a week, for certain issues, most notably search warrants in criminal cases and emergency child in need of care matters. Both law enforcement and state officials know how and when to contact judges when necessary, and many judges spend countless hours outside of the normal 8 to 5 workday addressing these emergency issues, only to report to work the next morning to address trials or hearings that cannot easily be rescheduled. The provision referenced above, however, would require access to all

I do not know how this could be accomplished. If the expectation is that someone will be at the courthouse at all times, my response is that this simply would not be possible without massive additional funding. I would remind you that the courts do not have enough money to keep the doors open now. If the expectation is that all judges' home telephone numbers and addresses be displayed conspicuously so that the public can call them, I would have obvious privacy and safety concerns. I request that the language noted above be stricken from the bill.

In addition, I would request that in section 3(n) (on page 5, line 42 of the bill) the reference to "clerk of the district court" be amended to "judicial administrator" if the committee decides to include adopt this amendment to current law. Requiring the 105 clerks of the district court to report this information to the Secretary of Health and Environment would require a duplication of efforts. The clerks currently report this information to the judicial administrator, and the information could be forwarded to the Secretary of Health and Environment.

Thank you for your consideration of these issues, and I would be glad to answer any questions.

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TAXATION
ALEC STATE CHAIR

TESTIMONY IN SUPPORT OF HB 2797 BY REPRESENTATIVE TONY POWELL

Mr. Chairman,

I am pleased to appear in support of HB 2797, the Unborn Victims of Violence Act, legislation which would give added protection to the unborn by enshrining in our criminal code the principle that unborn children are human beings.

This effort to protect the unborn is not without precedent in our law. The Kansas Supreme Court ruled just last year that the heirs of an unborn child killed due to the negligence of others may sue for wrongful death. In another case last year, the Kansas Supreme Court ruled that doctors not only have a doctor-patient relationship with a pregnant mother, but also with their unborn baby. These important court decisions recognize what is clearly common-sense, that an unborn child is not a potato, but is a human being worthy of protection.

This statutory change is further required because the Kansas Supreme Court, or two prior occasions, has rejected efforts to define an unborn child as a human being for the purposes of the criminal code, holding that it was a job for the legislature to make that decision.

HB 2797 would amend the criminal code by including "unborn child" as part of the definition of "person" and "human being." However, in recognition of the U.S. Supreme Court's guaranteeing the right to an abortion, the bill would exempt any act by a mother of an unborn child, any medical procedure performed by a physician at the request of a pregnant woman, and the lawful dispensation or administration of lawfully prescribed medication.

Any society that fails to protect its most vulnerable citizens is not civilized. This legislation will change that by protecting the unborn. I urge you to support this bill. Thank you for your kind attention. I am pleased to stand for questions.

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