

MINUTES OF THE HOUSE FEDERAL AND STATE AFFAIRS COMMITTEE

The meeting was called to order by Chairman John Edmonds at 1:30 P.M. on February 22, 2005 in Room 313-S of the Capitol.

All members were present except:

Representative Broderick Henderson- excused
Representative Melody Miller

Committee staff present:

Athena Andaya, Kansas Legislative Research Department
Dennis Hodgins, Kansas Legislative Research Department
Mary Torrence, Revisor of Statutes Office
Carol Doel, Committee Secretary

Conferees:

Representative Steve Brunk
Jeanne Gawdun - Kansans for Life
Marsha Strahm - Concerned Women of America of Kansas
Jana Mackey - National Organization for Women
Sarah London - KS Coalition Against Sexual and Domestic Violence
Julie Burkhart - ProKanDo

Others attending:

See attached list

Chairman Edmonds called the meeting to order and opened the floor for bill introductions.

Representative Brunk requested the introduction of a bill regarding licensing as it applies to certain clinics.

With no objections, the Chair accepted that request for introduction.

There were no other requests for bill introductions and the Chairman opened the floor for public hearing on **HB 2300** concerning the unborn victims of violence act and recognized Representative Brunk who introduced the two conferees, Jeanne Gawdun, Kansans for Life and Marsha Strahm, Concerned Women of America of Kansas both proponents of the bill.

Jeanne Gawdun representing Kansans for Life presented testimony in support of **HB 2300** stating they support the bill as it reflects long-standing criminal law. She further related that when there are two victims of a crime in Kansas, prosecutors should be able to obtain justice for both victims, not just one. (Attachment 1) Mrs. Gawdun also submitted a copy of court cases regarding victims of unborn violence (Attachment 2), state homicide laws that recognize unborn victims (fetal homicide) (Attachment 3), as well as constitutional challenges to state unborn victims laws. (Attachment 4)

Marsha Strahm presented testimony on behalf of Concerned Women of America who supports the passage of **HB 2300**. Ms. Strahm related that a woman who experiences violence in her pregnancy has to be concerned about two people; herself and her unborn child. A woman whose unborn child is injured or killed has lost something previous, something that should be protected under the law. (Attachment 5)

Michael Farmer, Executive Director, Kansas Catholic Conference submitted written testimony supporting **HB 2300**. (Attachment 6)

There were no other proponents to **HB 2300** and Chairman Edmonds recognized Jana Mackey, National Organization for Women as an opponent to the bill.

Mrs. Mackey delivered testimony in opposition to **HB 2300** saying that **NOW** (National Organization for Women) oppose the bill on the grounds that it is unfair to offenders who are already punished under statutes prohibiting crimes against pregnant women, unnecessary considering the near-in-existence of such cases in

CONTINUATION SHEET

MINUTES OF THE House Federal and State Affairs Committee at 1:30 P.M. on February 22, 2005 in Room 313-S of the Capitol.

Kansas, and unsympathetic toward the very women it is supposed to protect. (Attachment 7)

Planned Parenthood was represented by Sarah London in opposition to **HB 2300** which expressed the opinion that they strongly condemn any act of violence that interferes with a woman's choice to carry a pregnancy to term, however, this **HB 2300** ignores the woman, and instead endows the fetus with its own distinct rights. (Attachment 8)

Sandy Barnett, Executive Director of Kansas Coalition Against Sexual and Domestic Violence, addressed the committee in opposition to **HB 2300** taking the stand that it is too little, too late. They further stated that there are a number of steps that can be taken that will more effectively address domestic violence and these suggestions were listed in their testimony. (Attachment 9)

Executive Director of ProKanDo, Julie Burkhart provided written testimony in opposition to **HB 2300**. (Attachment 10)

Written testimony was supplied for committee review by Glenn Thompson of Stand Up For Kansas in response to questions which were asked at the February 17th meeting. (Attachment 11) Mr. Thompson also provided the Chicago Better Government Association Reports on the Impact of Riverboat Casinos in Illinois. (Attachment 12)

Chairman Edmonds announced that the meeting of the Federal and State Affairs scheduled for February 23rd would be canceled and with no further business before the committee, the meeting was adjourned.



House Federal and State Affairs Committee
Mr. Chairman:

My name is Jeanne Gawdun and I am the lobbyist for Kansans for Life. KFL supports passage of HB 2300, The Unborn Victims of Violence Act, as it reflects long-standing criminal law. (see attachment A)

An intruder who shoots a woman in her bedroom will be tried for 1 death if she dies, 2 deaths if the intruder also killed a sleeping child hidden under a pillow, and 1 death if the child dies and the mother survives. If a drunk driver hits a car, killing a mother with an infant on her lap, the driver will be prosecuted for 2 deaths.

In California, 2 dead bodies washed up on 2 shores: Laci And Conner Peterson. Scott Petersen has been convicted of those two murders. The unborn victim protection law used to prosecute for baby Conner was established in California before Roe v Wade and, like other states, remains in force.

Also, it is the consistent policy of the state Supreme Courts that the killing of a pregnant woman counts as two homicides even if the perpetrator is unaware of the pregnancy. "The possibility that a female homicide victim of childbearing age may be pregnant is a possibility that an assaulter may not safely exclude." *State v. Merrill*, 450 N.W.2d 318 (Minn. 1990), cert. denied, 496 U.S. 931 (1990).

30 states have some form of law allowing prosecution for the loss of life of an unborn child in the commission of a crime. Last year, protection was extended to the unborn victim for injury or death during the commission of a federal crime. (see Attachment B)

The unborn is not an "appendage" to the mother, as the prevalence of ultrasound photos can attest to. The child in the womb is a member of the human family, with great significance not only to the mother, but also to the father, siblings, grandparents and the community.

Thus, criminal injury against the unborn should not just be a matter of increased penalty to any charge that may or may not be filed on behalf of its mother. There are many cases where the unborn are injured or killed while the mother survives. For example in San Jose just 6 weeks ago, a 44 yr old man was charged with killing his 18week old unborn son. He had choked, beaten and kicked his girlfriend in the stomach. In this all too typical case, the criminal wanted the baby destroyed, not the mother.

Violence to pregnant women sometimes stems from a desire to get rid of a baby that the woman will not abort. http://www.afterabortion.info/petition/Forced_Abortions.pdf But increasing reports are heard of women attacking pregnant women to steal the unborn. An attack like that occurred in Kentucky on Feb.11 and this past December right in our own backyard. Bobbi Jo Stinett was strangled and her baby was cut from her womb, allegedly by a Kansas woman. If that attack had taken place in Kansas instead of Missouri, and if the baby had not been successfully removed from the womb, Kansas would be unable to prosecute for both deaths.

Kansans for Life –Proponent HB2300- HouseFedState - 2/22/05

FEDERAL AND STATE AFFAIRS

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Date 2-22-05
Attachment 1

Last year, this committee was presented with objections to unborn victim protection.

We heard one conferee oppose the bill because in her judgment it would not deter domestic battery. We disagree. No law can ever guarantee to prevent crime. But HB2300 is a woman-protective measure. The deterrence to crime is heightened by the fact that someone who attacks a woman can be convicted of fetal homicide, even if the force he uses is less than lethal to the mother herself.

We heard one abortion opponent object to the bill because it would not stop abortion. We agree this bill specifically excludes abortion. Roe has not affected unborn protection in other states. However, this is still a desirable bill because it is a vehicle for justice.

We heard abortion supporters claim that the bill is in conflict with the Supreme Court's decision in Roe v. Wade. However, HB 2300 is intended to reach nonconsensual conduct only, and excludes conduct of the pregnant woman herself. For years, criminal defendants and advocacy groups have mounted over a dozen legal challenges to state unborn victims laws and every one has failed in the federal and state courts. (*Attachment C*)

Polls consistently continue to show high support for unborn victim protection. A July 2003 Fox News poll showed that 79 percent of those Americans surveyed (including 69 percent of those who call themselves "pro-choice") say that when "a violent physical attack on a pregnant woman leads to the death of her unborn child...prosecutors should be able to charge the attacker with murder for killing the fetus."

We strongly agree with that statement. When there are two victims of a crime in Kansas, prosecutors should be able to obtain justice for both victims, not just one. I ask you to please pass HB2300 favorably out of committee. Thank you.

Attachment A-list of relevant Kansas cases

Attachment B- list of 30 states with unborn victim protection

Attachment C-list of Constitutional challenge cases

Kansans for Life –Proponent HB2300- HouseFedState - 2/22/05

Kansas Case law, failure to prosecute deaths of unborn

www.kscourts.org/kscases/wordsrch.htm

Unborn death unprosecuted, unrelated to abortion

CREAMER =1997 drunk driver kills another driver and injures pregnant woman such that her unborn child dies; mom survives.. Creamer was convicted under K.S.A. 21-3441 and K.S.A. 1998 Supp. 21-3442 and sentenced to a term of 41months

SHELTON=1997 mom & 9 month fetus destroyed by drunk driver; wrongful death suit pursued on behalf of unborn as well as mom

PRUITT = 1998 mom & 9 month fetus brutally killed in drug robbery; woman was repeatedly stabbed and beaten on the head with a hammer. Pruitt was identified as the assailant and charged in September 1998 with first-degree premeditated murder or, in the alternative, felony murder; aggravated kidnapping; aggravated robbery; injury to a pregnant woman; aggravated burglary; and criminal possession of a firearm.

Viable unborn considered not “born” alive, thus no charge of murder

TRUDELL = 1986 aggravated vehicular homicide dismissed for death of unborn due to drunk driver; KS Supreme Court affirmed dismissal of charge because even though child was 25 weeks, viable, it had not been born alive.

GREEN = 1987 murder of 8 ¾ months pregnant woman; her baby delivered by emergency c-section, considered stillbirth but resuscitated to heartbeat within 10 minutes, however, baby died in transfer to ICU. Green conviction of 2 murders reversed by Kansas Supreme Court to one count on interpretation that infant technically was not born alive.

Wichita Eagle 10-28-89, “KILLING FETUS NOT A CRIME, COURT RULES”

Imposing criminal liability is a legislative function, said the Court’s opinion in Green.

Rep. Kathleen Sebelius, then a member of the House Judiciary committee, was quoted, “I think for me and a lot of other people, there are certain inalienable rights established for a person, but those are not applied in utero.

NOEL= 1988 death of mom and unborn by drunk driver; conviction for adult only

Johnson County D.A. Dennis Moore was prohibited by law from filing charges on behalf of 7 month old unborn child; he stated “I don’t believe that’s what the law should be.”

Unborn death from violence caused by refusal of mother to abort

THOMAS 1997-husband beat 5 ½ months pregnant mom, killing his unborn baby. Thomas did not want the baby and wanted her to have an abortion. Thomas repeatedly struck, hit, and kicked her about the abdominal region and threatened to kill her. Wife went to the emergency room where medical inspection showed numerous bruises throughout her trunk and abdominal region. Doctors determined the fetus had died and then induced labor.

FEDERAL AND STATE AFFAIRS

Date 2-22-05

Attachment 2

IN THE SUPREME COURT OF THE STATE OF KANSAS No. 84,488 12MAR03

KENNETH SHELTON and MARY JO SHELTON, as sole heirs of Alexis Danielle Shelton,

Appellees, v. .

SUSAN R. DEWITTE, *Appellant*. SYLLABUS BY THE COURT

ALLEGRUCCI, J.: Kenneth and Mary Jo Shelton's daughter, who was 9 months pregnant, died in an automobile collision with a vehicle driven by Susan R. DeWitte. The Sheltons filed this wrongful death action seeking damages for the death of their daughter's unborn viable fetus. The district court denied DeWitte's motion for summary judgment. A jury awarded damages in the amount of \$55,000 for the wrongful death of the unborn viable fetus. DeWitte appeals. The case was transferred from the Court of Appeals pursuant to K. S. A. 20-3018(c).

The question raised in this appeal is whether the plaintiffs Kenneth and Mary Jo Shelton have a cause of action under the wrongful death statute for the death of the unborn fetus of their deceased daughter.

"1. On January 2, 1997 Christina M. Shelton was killed in an automobile accident in Miami County, Kansas. At the time of her death Christina M. Shelton was nine months pregnant. The fetus died as a result of the accident without being born alive. The fetus was named Alexis Danielle Shelton and a probate proceeding was filed in the Miami County District Court, case no. 97-PR-33 entitled in the Matter of the Estate of Alexis Danielle Shelton, deceased.

IN THE COURT OF APPEALS OF THE STATE OF KANSAS

No. 81,461 12mar03

STATE OF KANSAS, *Appellee*, v.

NATHANIEL D. **THOMAS**, *Appellant*. SYLLABUS BY THE COURT

Appeal from Butler District Court; JOHN M. JAWORSKY, judge. Opinion filed December 23, 1999. Reversed and remanded with directions.

Karen Eager, assistant appellate defender, and *Jessica R. Kunen*, chief appellate defender, for appellant.

Jan Satterfield, county attorney, and *Carla J. Stovall*, attorney general, for appellee.

Before BRAZIL, C.J., LEWIS, J., and MARLA J. LUCKERT, District Judge, assigned.

6. Under the facts, aggravated battery was the underlying felony supporting the charge of injury to a pregnant woman. Aggravated battery does not require proof of an element not necessary to prove the other offense. Therefore, a separate charge of aggravated battery was multiplicitous. If there was clear

legislative intent that the purpose of the injury to a pregnant woman statute was to protect the fetus, then the convictions would not be multiplicitous.

C.B., the victim, testified that Nathaniel Thomas called her around 12:45 a.m. on May 21, 1997. C.B. then proceeded to Thomas' house, picked him up around 1:15 a.m., and drove out to the lake. C.B. was 5 1/2 months pregnant with Thomas' baby. Thomas did not want the baby and wanted her to have an abortion. Thomas repeatedly struck, hit, and kicked her about the abdominal region while they were parked out at the lake that night. C.B. testified that Thomas threatened to kill her. C.B. then drove Thomas home.

Thomas testified that he was asleep on the couch and never left the house in the early morning hours of May 21, 1997.

C.B. went to the emergency room about 24 hours after the beating. The medical evidence of C.B.'s injuries was consistent with her being beaten within 24 hours of her reporting to the hospital. C.B. sustained numerous bruises throughout her trunk and abdominal region. Doctors determined the fetus had died and induced labor.

Thomas was convicted of injury to a pregnant woman, aggravated battery, and criminal threat.

The standard of review on questions of multiplicity is plenary. *State v. Vontress*, 266 Kan. 248, 255, 970 P.2d 42 (1998).

In order to convict Thomas of injury to a pregnant woman, the State had to prove that Thomas committed an underlying felony causing C.B. to suffer a miscarriage. K.S.A. 21-3440. The State used aggravated battery as the underlying felony to support the conviction of injury to a pregnant woman. Thomas was also separately charged with and convicted of aggravated battery. The State did not allege or prove two separate and distinct acts of battery but relied on the facts of the aggravated battery charge to prove the injury to a pregnant woman charge. Thomas argues the prohibition against double jeopardy prevents the State from using a single wrongful act as the basis for multiple convictions.

This case is very similar to *City of Wichita v. Edwards*, 23 Kan. App. 2d 962, 939 P.2d 942 (1997). In *Edwards*, an ethnic intimidation ordinance required proof of a violation of one or more enumerated underlying ordinances. Edwards was convicted of battery, disorderly conduct, and ethnic intimidation. The court held that since violation of the battery and disorderly conduct ordinances were required at trial to prove ethnic intimidation, the convictions were multiplicitous. *Edwards*, 23 Kan App. 2d at 973. Applying this precedent to the case at hand, Thomas' conviction of aggravated battery, which was required to prove the crime of injury to a pregnant woman, is multiplicitous. If there was clear legislative intent that the purpose of the injury to a pregnant woman statute was to protect the fetus, then the convictions would not be multiplicitous. However, we have been unable to find such a clear legislative intent in our research of the legislative history of the statute.

Having determined that the convictions of injury to a pregnant woman and aggravated battery are multiplicitous, we need not address Thomas' argument relating to merger of the offenses.

Reversed and remanded for new trial.

IN THE COURT OF APPEALS OF THE STATE OF KANSAS No. 81,410 12MAR03

STATE OF KANSAS, *Appellee*, v.

ANTHONY **CREAMER**, *Appellant*. SYLLABUS BY THE COURT

3. In order to prove a defendant is guilty of a violation of K.S.A. 1998 Supp. 21-3442, the State need only prove that an individual died as a result of an accident involving a vehicle driven by a defendant while under the influence of alcohol or drugs as defined by K.S.A. 1998 Supp. 8-1567. The same reasoning applies to prove the crime of injury to a pregnant woman under K.S.A. 21-3441.

4. The crimes of injury to a pregnant woman by vehicle and DUI involuntary manslaughter defined by K.S.A. 21-3441 and K.S.A. 1998 Supp. 21-3442 are absolute or strict liability crimes. The proof of these crimes does not require proof of a general criminal intent.

5. The fact that the crimes of injury to a pregnant woman by vehicle and DUI involuntary manslaughter defined in K.S.A. 21-3441 and K.S.A. 1998 Supp. 21-3442 are absolute or strict liability crimes does not conflict with the provisions of K.S.A. 21-3201 through K.S.A. 1998 Supp. 21-3204.

LEWIS, J.: Defendant Anthony Creamer's problems began one night in 1997 when he was driving his pickup truck and pulling a utility trailer down Highway 56 in Stevens County. The trailer defendant was pulling detached and struck another vehicle, **killing the driver and causing such severe injuries to the pregnant passenger that she suffered a miscarriage**. During the investigation following the accident, defendant's blood alcohol concentration was found to be .13 within 2 hours of his operation of the vehicle. Defendant was charged with and convicted of **involuntary manslaughter while driving under the influence of alcohol, injury to a pregnant woman**, and operation of a motor vehicle in violation of K.S.A. 1998 Supp. 8-1567. He **was sentenced to a term of 41 months** in the custody of the Secretary of Corrections. This is a direct appeal from defendant's convictions.

The facts surrounding defendant's accident have been condensed and are set forth above. These facts are largely irrelevant to the issues on appeal, and we will not undertake a more exhaustive review of the facts unless necessary for an understanding of our opinion.

Defendant first argues his convictions for injuries to a pregnant woman and DUI involuntary manslaughter are not valid. Defendant's argument is based on the fact that the statutes in question, K.S.A. 21-3441 and K.S.A. 1998 Supp. 21-3442, do not require proof of a general criminal intent as required by K.S.A. 21-3201.

We do not agree.

We have long held that driving while under the influence of alcohol or drugs is an absolute liability offense. *City of Wichita v. Hull*, 11 Kan. App. 2d 441, 445, 724 P.2d 699 (1986). "An absolute liability offense, unlike most other crimes, does not require any criminal intent. The only proof required to convict an individual of an absolute liability offense is that the individual engaged in the prohibited conduct."

State v. Hopper, 260 Kan. 66, 70, 917 P.2d 872 (1996). See *State v. Pendleton*, 18 Kan. App. 2d 179, 185, 849 P.2d 143 (1993).

The legislature, in enacting K.S.A. 1998 Supp. 21-3442, has defined involuntary manslaughter while driving under the influence of alcohol and drugs to be the unintentional killing of a human being committed in the commission of K.S.A. 1998 Supp. 8-1567. In other words, involuntary manslaughter is the unintentional killing of a human being while driving a vehicle while under the influence of drugs or alcohol as described in K.S.A. 1998 Supp. 8-1567. In enacting K.S.A. 21-3441, the legislature has described the crime of injury to a pregnant woman as an injury to a pregnant woman which occurs during the unlawful operation of a motor vehicle when that injury causes the pregnant woman to suffer a miscarriage. K.S.A. 21-3441(c)(1) makes an injury to a pregnant woman by vehicle while committing DUI a severity level 5, person felony. As we read those statutes, proof need only be made that the individual died or the pregnant woman was injured by an accident involving a vehicle driven by the defendant while under the influence of drugs or alcohol as defined by K.S.A. 1998 Supp. 8-1567. The pregnant woman is a specific subclass of "human beings." Similarly, K.S.A. 1998 Supp. 21-3442 requires that the unintentional killing be committed during the commission of an act described in 8-1567. This is a specific type of risk. It is clear that in enacting these two statutes, the legislature intended to establish certain offenses applicable only when an individual commits the act for violating K.S.A. 1998 Supp. 8-1567. See *Williams*, 250 Kan. at 736-37 (finding that when the legislature enacts a more specific statute, a defendant must be charged under it). The State correctly charged defendant with the more specific crimes defined by the two statutes involved in this opinion.

Affirmed.

END –

<http://www.kscourts.org/kscases/supct/2003/20030110/87827.htm> - 9.3KB

IN THE SUPREME COURT OF THE STATE OF KANSAS

No. 87,827

STATE OF KANSAS, *Appellee*, v.

DENNIS RAY **PRUITT**, *Appellant*. SYLLABUS BY THE COURT

Appeal from Ford district court; JAY DON REYNOLDS, judge. Opinion filed January 10, 2003. Sentence vacated in part and case remanded with directions.

Nathan B. Webb, assistant appellate defender, argued the cause, and *Steven R. Zinn* and *Randall L. Hodgkinson*, deputy appellate defenders, were on the briefs for appellant.

Keri A. Kish, assistant county attorney, argued the cause, and *Carla J. Stovall*, attorney general, was with her on the brief for appellee.

The opinion of the court was delivered by

SIX, J.: Dennis Ray Pruitt pled no contest to first-degree premeditated murder and aggravated robbery. He appeals his upward durational departure sentence for aggravated robbery imposed under K.S.A. 2001 Supp. 21-4716.

The question before us is whether Pruitt's upward durational departure sentence is unconstitutional under *Apprendi v. New Jersey*, 530 U.S. 466, 147 L. Ed. 2d 435, 120 S. Ct. 2348 (2000), and *State v. Gould*, 271 Kan. 394, 23 P.3d 801 (2001). Our answer is "yes." Pruitt's upward durational departure sentence was imposed under a scheme which has been declared unconstitutional on its face. We vacate Pruitt's sentence for aggravated robbery and remand the case for resentencing within the statutory range. Our jurisdiction is under K.S.A. 22-3601(b)(1) (conviction of an off-grid crime).

FACTS

This case arises out of the **brutal deaths of Shannon Harper and her unborn child. Harper was 9 months pregnant at the time of her death. Harper was repeatedly stabbed and beaten on the head with a hammer while being robbed of drugs and money.** Pruitt was identified as the assailant.

Pruitt was charged in September 1998 with first-degree premeditated murder or, in the alternative, felony murder; aggravated kidnapping; aggravated robbery; injury to a pregnant woman; aggravated burglary; and criminal possession of a firearm. He agreed to plead no contest to first-degree premeditated murder and aggravated robbery in exchange for dismissal of the remaining charges and the State's agreement not to seek a hard 40 sentence. Pruitt also agreed to the imposition of an upward durational departure sentence of 178 months on the aggravated robbery, to run consecutive to the life term. He stipulated to the existence of substantial and compelling reasons to support the departure. The reasons supporting departure were not specified in the written agreement.

Later, Pruitt decided to withdraw his stipulation as to the existence of substantial and compelling reasons to support the departure. At sentencing, the trial court asked if Pruitt stipulated that the aggravated robbery was committed with excessive brutality and the victim was vulnerable. Pruitt said, "No." The State indicated it was willing to stand by the terms of the original plea agreement. The State asked the trial court to consider the evidence presented at the preliminary examination and Pruitt's written stipulation in evaluating whether there were substantial and compelling reasons to support a departure.

The trial court concluded that the evidence presented at the preliminary examination supported the conclusion that the crime was excessively brutal and the victim, because of her pregnancy, was vulnerable. The trial court sentenced Pruitt to **a life term with parole eligibility after 25 years for the murder,** to run consecutive to a term of 178 months' imprisonment for the aggravated robbery. Pruitt appeals his aggravated robbery departure sentence

Pruitt's aggravated robbery sentence is vacated, and the case is remanded for resentencing on his aggravated robbery conviction within the statutory range.

END

No. 77,490 263 Kan. 557 (951 P2d 953)

REBECCA WOODRUFF, Individually, MAX WOODRUFF, Individually, and REBECCA and MAX WOODRUFF, for and on behalf of MORGAN ELIZABETH **WOODRUFF**, Deceased, *Appellants*, v. THE CITY OF OTTAWA, KANSAS, a Kansas municipality, *Appellee*, and THE CITY OF OTTAWA POLICE DEPARTMENT, JEFF HERRMAN, in his Representative Capacity as Police Chief for the CITY OF OTTAWA POLICE DEPARTMENT, *Defendants*.

LOCKETT, J.: Plaintiffs Rebecca and Max Woodruff brought an action against the City of Ottawa, Kansas, (City) for wrongful death and personal injury arising when the Woodruffs' car was struck by an automobile driven by Douglas A. **Totton**, who was operating his vehicle under the influence of alcohol. At the time of the accident, Rebecca Woodruff was pregnant with a daughter who later died as a result of the accident. The plaintiffs alleged in the petition that they were injured due to the Ottawa police officers' failure to arrest, detain, and prevent the intoxicated Totton from driving his vehicle. The district court granted the City's motion for summary judgment, concluding that because the City did not have a written policy requiring an officer to arrest Totton or take him into custody to prevent him from operating a motor vehicle, the City owed no duty to the plaintiffs.

Here, the Woodruffs acknowledge that the City did not have a written policy mandating that Totton be taken into custody under the circumstances. They assert that an unwritten policy to protect a third party was created when Officer Fitzgerald, the supervising officer, instructed Officer Weidl to observe Totton leave the club. We disagree. Under the circumstances, an oral instruction from a supervising officer to another officer to observe an intoxicated person fell within the discretionary function exception of K.S.A. 75-6104(e) and did not create a special relationship with or a specific duty owed to the plaintiffs.

Affirmed.

SIX, J., concurring: As the majority opinion acknowledges, the district court's summary judgment ruling was granted because the City had no written policy requiring an officer to arrest Totton or take him into custody. Thus, the district court reasoned, no duty was owed to the Woodruffs.

**State Homicide Laws That Recognize Unborn Victims
(Fetal Homicide)**

National Right to Life Committee

February 8, 2005

What appears below is a summary of the laws of the 30 states that recognize the unlawful killing of an unborn child as homicide in at least some circumstances. The federal Unborn Victims of Violence Act, enacted April 1, 2004, covers unborn victims of federal and military crimes.

Full-Coverage Unborn Victim States (18)
(States With Homicide Laws That Recognize Unborn Children as Victims
Throughout the Period of Pre-natal Development)

Arizona: The killing of an "unborn child" at any stage of pre-natal development is manslaughter. Ariz. Rev. Stat. §13-1103 (A)(5) (West 1989 & Supp. 1998). Also to be read with Ariz. Rev. Stat. § 13-702(c)(10).

Idaho: Murder is defined as the killing of a "human embryo or fetus" under certain conditions. The law provides that manslaughter includes the unlawful killing of a human embryo or fetus without malice. The law provides that a person commits aggravated battery when, in committing battery upon the person of a pregnant female, that person causes great bodily harm, permanent disability or permanent disfigurement to an embryo or fetus. Idaho Sess. Law Chap. 330 (SB1344)(2002).

Illinois: The killing of an "unborn child" at any stage of pre-natal development is intentional homicide, voluntary manslaughter, or involuntary manslaughter or reckless homicide. Ill. Comp. Stat. ch. 720, §§5/9-1.2, 5/9-2.1, 5/9-3.2 (1993). Ill. Rev. Stat. ch. 720 § 5/12-3.1. A person commits battery of an unborn child if he intentionally or knowingly without legal justification and by any means causes bodily harm to an unborn child. Read with Ill. Rev. Stat. ch. 720 § 5/12-4.4.

Kentucky: Since February, 2004, Kentucky law establishes a crime of "fetal homicide" in the first, second, third, and fourth degrees. The law covers an "unborn child," defined as "a member of the species homo sapiens in utero from conception onward, without regard to age, health, or condition of dependency."

Louisiana: The killing of an "unborn child" is first degree feticide, second degree feticide, or third degree feticide. La. Rev. Stat. Ann. §§14:32.5 - 14.32.8, read with §§14:2(1), (7), (11) (West 1997).

Michigan: The killing of an "unborn quick child" is manslaughter under Mich. Stat. Ann. § 28.555. The Supreme Court of Michigan interpreted this statute to apply to only those unborn children who are viable. *Larkin v. Cahalan*, 208 N.W.2d 176 (Mich. 1973). However, a separate Michigan law, effective Jan. 1, 1999, provides felony penalties for actions that intentionally, or in wanton or willful disregard for consequences, cause a "miscarriage or stillbirth," or cause "aggravated physical injury to an embryo or fetus." (M.C.L. 750.90a through 750.90f)

Minnesota: Since 1986 the killing of an "unborn child" at any stage of pre-natal development is murder (first, second, or third degree) or manslaughter, (first or second degree). It is also a felony to cause the death of an "unborn child" during the commission of a felony. Minn. Stat. Ann.

FEDERAL AND STATE AFFAIRS

Date 2-22-05

Attachment 3

§§609.266, 609.2661- 609.2665, 609.268(1) (West 1987). The death of an "unborn child" through operation of a motor vehicle is criminal vehicular operation. Minn. Stat. Ann. §609.21 (West 1999).

Mississippi: Under a law enacted May 6, 2004, and effective July 1, 2004, for purposes of enumerated state laws dealing with various types of homicide and certain other violent crimes, "the term 'human being' includes an unborn child at every stage of gestation from conception until live birth and the term 'unborn child' means a member of the species *homo sapiens*, at any stage of development, who is carried in the womb." (SB 2869)

Missouri: The killing of an "unborn child" at any stage of pre-natal development is involuntary manslaughter or first degree murder. Mo. Ann. Stat. §§1.205, 565.024, 565.020 (Vernon Supp. 1999), *State v. Knapp*, 843 S.W.2d 345 (Mo. 1992), *State v. Holcomb*, 956 S.W.2d 286 (Mo. App. W.D. 1997).

Nebraska: The killing of an "unborn child" at any stage of pre-natal development is murder in the first degree, second degree, or manslaughter. Neb. Rev. Stat. § 28-391 to § 28-394. (2002)

North Dakota: Since 1987 the killing of an "unborn child" at any stage of pre-natal development is murder, felony murder, manslaughter, or negligent homicide. N.D. Cent. Code §§12.1-17.1-01 to 12.1-17.1-04 (1997).

Ohio: At any stage of pre-natal development, if an "unborn member of the species *homo sapiens*, who is or was carried in the womb of another" is killed, it is aggravated murder, murder, voluntary manslaughter, involuntary manslaughter, negligent homicide, aggravated vehicular homicide, and vehicular homicide. Ohio Rev. Code Ann. §§ 2903.01 to 2903.07, 2903.09 (Anderson 1996 & Supp. 1998).

Pennsylvania: An individual commits criminal homicide in the first, second, or third-degree, or voluntary manslaughter of an "unborn child" if the individual intentionally, knowingly, recklessly or negligently causes the death of an unborn child. 18 Pa. Cons. Stat. Ann. §§ 2601 to 2609 (1998) "Unborn child" and "fetus." Each term shall mean an individual organism of the species *Homo sapiens* from fertilization until live birth." On January 14, 2005, the Superior Court of Pennsylvania -- an intermediate court of appeals -- rejected an array of constitutional challenges to this law, including assertions based on *Roe v. Wade* and equal protection principles. The court upheld the application of the law "from the moment of fertilization," holding that "the viability of the fetus, that is, its likelihood of survival outside of the mother's body, is irrelevant." *Commonwealth of Pennsylvania v. Bullock*.

South Dakota: The killing of an "unborn child" at any stage of pre-natal development is fetal homicide, manslaughter, or vehicular homicide. S.D. Codified Laws Ann. §22-16-1, 22-16-1.1, 22-16-15(5), 22-16-20, and 22-16-41, read with §§ 22-1-2(31), 22-1-2(50A) (Supp. 1997).

Texas: Under a law signed June 20, 2003, and effective September 1, 2003, the protections of the entire criminal code extend to "an unborn child at every stage of gestation from fertilization until birth." The law does not apply to "conduct committed by the mother of the unborn child" or to "a lawful medical procedure performed by a physician or other licensed health care provider with the requisite consent." (SB 319, Prenatal Protection Act)

Utah: The killing of an "unborn child" at any stage of pre-natal development is treated as any other homicide. Utah Code Ann. § 76-5-201 *et seq.* (Supp. 1998) and UT SB 178 (2002).

Virginia: Effective July 1, 2004, Code of Virginia Section 18.2-32.2 provides: "Any person who unlawfully, willfully, deliberately, maliciously and with premeditation kills the fetus of another" may be imprisoned from 20 years to life; and any person who does so without premeditation may be imprisoned for not less than five nor more than 40 years

Wisconsin: Since 1998 the killing of an "unborn child" at any stage of pre-natal development is first-degree intentional homicide, first-degree reckless homicide, second-degree intentional homicide, second-degree reckless homicide, homicide by negligent handling of dangerous weapon, explosives or fire, homicide by intoxicated use of vehicle or firearm, or homicide by negligent operation of vehicle. Wis. Stat. Ann. §§939.75, 939.24, 939.25, 940.01, 940.02, 940.05, 940.06, 940.08, 940.09, 940.10 (West 1998).

Partial-Coverage Unborn Victim States (12)
(States with Homicide Laws That Recognize Unborn Children as Victims,
But only During Part of the Period of Pre-natal Development)

NOTE: These laws are gravely deficient because they do not recognize unborn children as victims during certain periods of their pre-natal development. Nevertheless, they are described here for informational purposes.

Arkansas: The killing of an "unborn child" of twelve weeks or greater gestation is capital murder, murder in the first degree, murder in the second degree, manslaughter, or negligent homicide. Ark. Stat. Ann. § 5-1-102(13)(b)(i)(a), read with Ark. Stat. Ann. §§ 5-10-101 to 5-10-105. (A separate Arkansas law makes it a battery to cause injury to a woman during a Class A misdemeanor to cause her to undergo a miscarriage or stillbirth, or to cause injury under conditions manifesting extreme indifference to human life and that results in a miscarriage or stillbirth. Ark. Stat. Ann. § 5-13-201 (a)(5)(a)).

California: California Penal Code § 187(a) says, "Murder is the unlawful killing of a human being, or a fetus, with malice aforethought." The words "or a fetus" were added by the legislature in 1970. The California Supreme Court later interpreted "fetus" to apply "beyond the embryonic stage of seven to eight weeks." (*People v. Davis*, 1994) In addition, Penal Code § 190.2(3) makes a defendant eligible for capital punishment if convicted of more than one murder, and the California Supreme Court ruled that fetal homicide is included under this provision as well (*People v. Dennis*, 1998).

Florida: The killing of an "unborn quick child" is manslaughter, a felony of the second degree. Fla. Stat. Ann. § 782.09 (West 1999). The killing of an unborn child after viability is vehicular homicide. Fla. Stat. Ann. § 782.071 (West 1999).

Georgia: The killing of an "unborn child" after quickening is feticide, vehicular feticide, or feticide by vessel. Ga. Code Ann. § 16-5-80 (1996); § 40-6-393.1 (1997); and § 52-7-12.3 (1997).

Indiana: The killing of "a fetus that has attained viability" is murder, voluntary manslaughter, or involuntary manslaughter. Indiana Code 35-42-1-1, 35-42-1-3, 35-42-1-4.

Massachusetts: The killing of an unborn child after viability is vehicular homicide. *Commonwealth v. Cass*, 467 N.E.2d 1324 (Mass. 1984). The killing of an unborn child after viability is involuntary manslaughter. *Commonwealth v. Lawrence*, 536 N.E.2d 571 (Mass. 1989).

Nevada: The killing of an "unborn quick child" is manslaughter. Nev. Rev. Stat. § 200.210 (1997).

Oklahoma: The killing of an "unborn quick child" is manslaughter. Okla. Stat. Ann. tit. 21, § 713 (West 1983). The killing of an unborn child after viability is homicide. *Hughes v. State*, 868 P.2d 730 (Okla. Crim. App. 1994).

Rhode Island: The killing of an "unborn quick child" is manslaughter. The statute defines "quick child" to mean a viable child. R.I. Gen. Laws § 11-23-5 (1994).

South Carolina: The killing of an unborn child after viability is homicide. *State v. Horne*, 319 S.E.2d 703 (S.C. 1984); *State v. Ard*, 505 S.E.2d 328 (S.C. 1998).

Tennessee: The killing of an unborn child after viability is first-degree murder, second-degree murder, voluntary manslaughter, vehicular homicide, and reckless homicide. Tenn. Code Ann. § 39-13-201, 39-13-202, 39-13-210, 39-13-211, 39-13-213, 39-13-214, 39-13-215 (1997 & Supp. 1998).

Washington: The killing of an "unborn quick child" is manslaughter. Wash. Rev. Code Ann. § 9A.32.060(1)(b) (West Supp. 1999).

Conflicting Statutes

New York: Under New York statutory law, the killing of an "unborn child" after twenty-four weeks of pregnancy is homicide. N.Y. Pen. Law § 125.00 (McKinney 1998). But under a separate statutory provision, a "person" that is the victim of a homicide is statutorily defined as a "human being who has been born and is alive." N.Y. Pen. Law § 125.05 (McKinney 1998). See *People v. Joseph*, 130 Misc. 2d 377, 496 N.Y.S.2d 328 (County Court 1985); *In re Gloria C.*, 124 Misc.2d 313, 476 N.Y.S.2d 991 (N.Y. Fam. Ct. 1984); *People v. Vercelletto*, 514 N.Y.S.2d 177 (Co. Ct. 1987).

Constitutional Challenges to State Unborn Victims Laws

February 1, 2004 All challenges were unsuccessful. All challenges were based on *Roe v. Wade* and/or denial of equal protection, unless otherwise noted.

CALIFORNIA: In *People v. Davis* [872 P.2d 591 (Cal. 1994)], the California Supreme Court upheld the legislature's addition of the phrase "or a fetus" to the state murder law in 1970, but held that the term "fetus" applies "beyond the embryonic stage of seven to eight weeks." (California Penal Code 187(a) says, "Murder is the unlawful killing of a human being, or a fetus, with malice aforethought.") In *People v. Dennis* [950 P.2d 1035 (Cal. 1994)], the California Supreme Court upheld inclusion of fetal homicide under Penal Code 190.2(3), which makes a defendant eligible for capital punishment if convicted of more than one murder.

GEORGIA: A three-judge panel of the U.S. Court of Appeals for the Eleventh Circuit unanimously upheld the conviction of Richard James Smith, Sr., under Georgia's "feticide" statute. Smith argued that the law conflicted with *Roe v. Wade*, but the court rejected this assertion as "without merit." The court held: "The proposition that Smith relies upon in *Roe v. Wade* -- that an unborn child is not a "person" within the meaning of the Fourteenth Amendment -- is simply immaterial in the present context to whether a state can prohibit the destruction of a fetus." *Smith v. Newsome*, 815 F.2d 1386 (11th Cir. 1987). Related state supreme court decision: *Brinkley v. State*, 322 S.E.2d 49 (Ga. 1984) (vagueness/due process challenge).

ILLINOIS: *U.S. ex rel. Ford v. Ahitow*, 888 F.Supp. 909 (C.D.Ill. 1995), and lower court decision, *People v. Ford*, 581 N.E.2d 1189 (Ill.App. 4 Dist. 1991).

People v. Campos, 592 N.E.2d 85 (Ill.App. 1 Dist. 1992). Subsequent history: *appeal denied*, 602 N.E.2d 460 (Ill. 1992), *habeas corpus denied*, 827 F.Supp. 1359 (N.D. Ill. 1993), *affirmed*, 37 F.3d 1501 (7th Cir. 1994), *certiorari denied*, 514 U.S. 1024 (1995)

LOUISIANA: Re double jeopardy -- *State v. Smith*, 676 So.2d 1068 (La. 1996), *rehearing denied*, 679 So.2d 380 (La. 1996).

MINNESOTA: *State v. Merrill*, 450 N.W.2d 318 (Minn. 1990), *cert. denied*, 496 U.S. 931 (1990).

Re establishment clause -- *State v. Bauer*, 471 N.W.2d 363 (Minn. App. 1991).

MISSOURI: In the 1989 case of *Webster v. Reproductive Health Services* (492 U.S. 490), the U.S. Supreme Court refused to invalidate a Missouri statute (Mo. Rev. Stat. 1.205.1) that declares that "the life of each human being begins at conception," that "unborn children have protectable interests in life, health, and well-being," and that all state laws "shall be interpreted and construed to acknowledge on behalf of the unborn child at every stage of development, all the rights, privileges, and immunities available to other persons, citizens, and residents of this state," to the extent permitted by the Constitution and U.S. Supreme Court rulings. A lower court had held that Missouri's law "impermissibl[y]" adopted "a theory of when life begins," but the Supreme Court nullified this ruling, and held that a state is free to enact laws that recognize unborn children, so long as the state does not include restrictions on abortion that *Roe* forbids.

In *State v. Knapp*, 843 S.W. 2nd (Mo. en banc) (1992), the Missouri Supreme Court held that the definition of "person" in this law is applicable to other statutes, including at least the state's involuntary manslaughter statute.

PENNSYLVANIA: *Commonwealth of Pennsylvania v. Corrine D. Wilcott*, No. 2426 A & B of 2002 (Court of Common Pleas of Erie County, Pennsylvania, Criminal Division). Rejected challenges that Pennsylvania Crimes Against Unborn Children Act is unconstitutionally vague, violates U.S. Supreme Court abortion cases, violates equal protection clause, and conflicts with state tort law on definition of "person." January 24, 2003.

UTAH: *State of Utah v. Roger Martin MacGuire*. MacGuire was charged under the state criminal homicide law with killing his former wife and her unborn child. He argued that the law, which covered "the death of another human being, including an unborn child," was unconstitutional because the term "unborn child" was not defined. The Utah Supreme Court upheld the law as constitutional, holding that "the commonsense meaning of the term 'unborn child' is a human being at any stage of development in utero. . ." MacGuire was also charged under the state's aggravated murder statute, which applies a more severe penalty for a crime in which two or more "persons" are killed; the court ruled that this law was also properly applied to an unborn victim and was consistent with the U.S. Constitution. January 23, 2004.

WISCONSIN: Re due process -- *State v. Black*, 526 N.W.2d 132 (Wis. 1994) (upholding ~~earlier statute~~)

FEDERAL AND STATE AFFAIRS

Date 2-22-05

Attachment 4



Teddy bears... bassinets... cribs, and layettes represent the hopes and dreams of a pregnant woman who yearns to hold her infant in her arms. Her hopes and dreams are not placed on a "parasite" growing in her womb; nor on a clump of cells, they are placed upon a child who has its own unique DNA, who, when born, will be an unique individual who will someday have his/her own hopes and dreams.

A woman who experiences violence in her pregnancy has to be concerned about two people; herself *and* her unborn child. That child is as real to her as if he/she is already in her arms. When something happens to that child as a result of violence done to the woman two people are harmed or killed.

Unfortunately, violence done to women who are pregnant is all too common. Cara Krulewitch, an epidemiologist at the University of Maryland in Baltimore, looked at death records in Washington D.C. from 1988 and 1996 and found that **38 percent** of pregnant women who had died had been victims of homicide. According to a study published in the *Journal of the American Medical Association*, murder is now believed to be the leading cause of death for pregnant women. An expectant mother is more likely to be killed than to succumb to a medical complication, such as embolism or hemorrhaging.

Twenty-nine states have some sort of fetal homicide law. California enacted its law in 1970, the law recently prosecuted in the Scott Peterson murder trial for the death of his wife Laci and their unborn son Connor. In 1988 the California Supreme Court in *People v. Bunyard*, unanimously upheld the death penalty in a double homicide where one victim was unborn; "It is clear that the multiple-murder special circumstance is applicable to the killing "by a single act" of a pregnant woman and her viable fetus." In 1989 the court again unanimously upheld the death penalty in a similar case, *People v. Hamilton*. The court stated: "The Courts of Appeal have inferred a viability limitation in light of the subsequent abortion cases, which first recognized a woman's constitutional right to terminate her pregnancy before the fetus becomes viable." In 1994, in *People v. Davis*, the court affirmed a lower court ruling that eliminated the viability finding: We conclude that viability is not an element of fetal homicide under section 187, subdivision (a). The third party killing of a fetus with malice aforethought is murder under section 187, subdivision (a) as long as the state can show that the fetus has progressed beyond the embryonic stage of seven to eight weeks."

For those who worry about this bill affecting abortion; however California's fetal homicide law has been on the books for 30 years and has not stopped abortion in California.

A woman who is pregnant expects to have a child and nothing else. A woman whose unborn child is injured or killed has lost something precious, something that should be protected under the law. The families of these victims deserve something better too.

CWA of Kansas
P.O. Box 11233
Shawnee Mission, KS 66207
Judy Smith, State Director

FEDERAL AND STATE AFFAIRS

Date 2-22-05
Attachment 5



6301 ANTIOCH • MERRIAM, KANSAS 66202 • PHONE/FAX 913-722-6633 • WWW.KSCATHCONF.ORG

TESTIMONY IN SUPPORT OF H.B. 2300

Chairman Edmonds and members of the Committee:

Thank you for the opportunity to testify in support of H.B. 2300, the unborn victims of violence act. My name is Mike Farmer and I am the Executive Director of the Kansas Catholic Conference the public policy office of the Catholic Church in Kansas.

The Catholic Church proclaims, as stated by the U.S. Catholic Bishops in their document "Sharing Catholic Social Teaching, Challenges and Directions" that:

"...human life is sacred and that the dignity of the human person is the foundation of a moral vision for society. Our belief in the sanctity of human life and the inherent dignity of the human person is the foundation of all the principles of our social teaching. ...We believe that every person is precious, that people are more important than things, and that the measure of every institution is whether it threatens or enhances the life and dignity of the human person."

H.B. 2300 supports this teaching. It protects unborn children whose mothers are physically assaulted, beaten, maimed or murdered in violation of specified provisions of Kansas law. Surprisingly, in current law when a pregnant woman is herself the victim of a violent crime, any resulting injury to her unborn child – harm to which the woman obviously has not consented – goes unpunished. H.B. 2300 will enable Kansas to recognize that when a pregnant woman is assaulted or killed within its jurisdiction, and her unborn child is harmed or killed as a result, the crime has two victims – the woman and her child.

It is disappointing that some opponents of the bill claim it should nonetheless be defeated to preserve a "right" to abortion because it acknowledges the existence of prenatal human life. In fact, this bill specifically does not apply in the abortion context. This bill simply offers an opportunity to protect both the pregnant woman and her unborn child from violent assault and murder.

MOST REVEREND RONALD M. GILMORE, S.T.L., D.D.
DIOCESE OF DOGUE CITY

MOST REVEREND JAMES P. KELEHER, S.T.D.
Chairman of Board
ARCHDIOCESE OF KANSAS CITY IN KANSAS

MOST REVEREND JOSEPH F. NAUMANN, D.D.
CO-ADJUTOR ARCHBISHOP
ARCHDIOCESE OF KANSAS CITY IN KANSAS

MOST REVEREND PAUL S. COAKLEY, S.T.L., D.D.
DIOCESE OF SALINA

MICHAEL P. FARMER
Executive Director

FR

MOST REVEREND MARION F. FORST, D.D.
RETIRED

MOST REVEREND GEORGE K. FITZSIMONS, D.D.
RETIRED

NY

FEDERAL AND STATE AFFAIRS

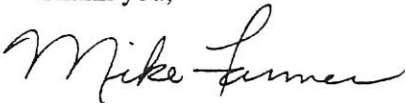
Date 2-22-05
Attachment 6

We believe H.B. 2300 is constitutional; it complies with legal precedent, and mirrors laws in 31 other states. Unborn children can own property, sue for paternity rights and loss of companionship. It is time that our Kansas laws against violence embrace reality.

This bill is a common sense and compassionate approach, consistent with government's responsibility to protect vulnerable human life.

Please consider H.B. 2300 on its merits and support its passage.

Thank you,

A handwritten signature in black ink that reads "Mike Farmer". The signature is written in a cursive, flowing style.

Michael P. Farmer
Executive Director

Testimony presented to House Federal and State Affairs Committee opposing HB 2300, Feb. 22, 2005.

Oppose HB 2300. It is unfair, unnecessary, and unsympathetic toward pregnant women.

The National Organization for Women's purpose is to take action to bring women into full participation in the mainstream of American society now, exercising all privileges and responsibilities thereof in truly equal partnership with men. Kansas NOW has 760 active members, distributed throughout the state. The membership has agreed upon a legislative agenda that includes increased access to comprehensive healthcare and the reduction of violence against women.

We believe that HB 2300, The Unborn Victims of Violence Act, is ineffective if not contrary to these ends. NOW is committed to the reduction of violence against women, but this bill has no provisions that would help to accomplish this goal. Furthermore, NOW is very concerned about the implications that any bill granting personhood to fetuses has regarding the precedent set by the Roe v. Wade decision. Under the assumption that other conferees today will address the potential that this bill has to interfere with women's access to healthcare and reproductive freedom, an examination of the dangers of establishing fetal personhood has been omitted from this testimony.

NOW opposes this bill on the grounds that it is unfair to offenders who are already punished under statutes prohibiting crimes against pregnant women, unnecessary considering the near-inexistence of such cases in Kansas, and unsympathetic toward the very women it is supposed to protect.

HB 2300 is unfair.

The point is often raised that the crimes created by HB2300 are superfluous. The extent of this redundancy merits a thorough examination. K.S.A 21-3440 and K.S.A 21-3441 prohibit the injury of a pregnant woman in the commission of another crime when that injury results in miscarriage. The scope of these statutes will be discussed further in the next section. In order to understand the severity of these existing statutes, it is helpful to consider an example of a case in which these charges would be applied and the ramifications they would have. A comparison chart is attached to clarify the following information, along with a sentencing grid and a list of felony crimes with severity levels.

The instance of a pregnant woman being killed in a collision with an intoxicated driver provides a clear illustration of the impact of existing "Injury to a Pregnant Woman" (IPW) statutes. The driver, in this case, could be charged with two felonies. The first, K.S.A 21-3441: Injury to a Pregnant Woman by Vehicle (committing a violation of K.S.A. 8-1567) is a severity level five person felony (F5P), with a sentencing range of 50 – 55 months. The second, K.S.A 21-3442: Involuntary Manslaughter in the Commission of a DUI, is a severity level four person felony (F4P), with a sentencing range of 62 – 69 months. The total sentence in this case, if applied consecutively, would range from 112 – 124 months or nine years and four months to ten years and four months.

FEDERAL AND STATE AFFAIRS

Date 2-22-05

Attachment 7

Were HB 2300 to take effect, the IPW charge (K.S.A. 21-3441) and the related sentencing recommendation of 50 – 55 months would still be in effect. The recognition of a separate victim in the involuntary manslaughter charge would escalate it to a level 4 two-person felony (F4P2), which carries a sentencing range of 144 – 162 months. This would bring the total possible sentencing range to 194 – 217 months, or 16 years and two months to 18 years and one month. The **difference** between sentencing in this case before and after the passage of UVVA would be **up to 105 months** or eight years and six months.

Please note that the IPW charge nearly doubles the sentence in this case. This considerable increase is certainly sufficient to account for the great difference between taking the life of a person who is pregnant and one who is not. It is important to recognize that the addition of another victim to the involuntary manslaughter charge, in combination with the IPW charge, would result in a sentence nearly **three times** the amount of the sentence for the original crime of involuntary manslaughter. While doubling the sentence is appropriate and necessary to recognize the special status of a woman and her pregnancy, tripling it is excessive and unfair to offenders, who may not even be aware of the fact that their victims are pregnant.

HB 2300 is unnecessary.

K.S.A. 21-3440 prohibits injury to a pregnant woman in the commission of a felony or misdemeanor. This includes, among other charges, batter, domestic battery, and sexual battery. K.S.A. 21-3441 prohibits injury to a pregnant woman by vehicle. These statutes, signed into law in 1995, are both necessary and sufficient to recognize the especially heinous nature of crimes against pregnant women.

Since these statutes were enacted, only two offenders have been prosecuted under them. One was sentenced to prison in FY1998 under a level four person felony. The other pled to a charge of attempted injury of a pregnant woman. He was sentenced to 24 months of probation under intense supervision, which included courses about domestic violence. Clearly, this problem is being addressed when it arises.

Furthermore, there is no evidence to suggest that incidences of violence against pregnant women are on the rise. This is not to suggest that these crimes and their consequences do not have devastating effects on victims and their families – according to the Journal of the American Medical Association, murder is the leading cause of death among pregnant women. However, beside the fact that this legislation does nothing to prevent such violence, the incidence of deaths of pregnant women and fetuses in Kansas has steadily declined for the past three decades. Fetal death rates do not number more than 100 per year in Kansas. In 2003, the last year for which these statistics are available, only three of the 88 reported fetal deaths were the result of injury to the mother. There is no way of knowing whether these injuries were a result of violence. In the same year, no deaths of pregnant women were reported (KDHE.)

HB 2300 is unsympathetic and unhelpful to the women it intends to protect.

The most glaring inconsistency in this legislation's claim of protecting fetuses is the fact that it contains absolutely no provisions for preventing violence against women or helping those who are in violent situations to escape. The legislature should not have its attention diverted from the real issue at hand – violence against women. Moreover, the state budget cannot afford the increased costs associated with incarcerating offenders for such greatly increased periods of time. If the Kansas legislature is willing to allocate money to combat violence against pregnant women, it must do so in ways that work to prevent this violence, rather than in reactionary measure such as HB 2300 that can only address tragedies after they have occurred.

Services addressing domestic violence, such as shelters and preventative education programs, are perpetually under-funded and rely almost entirely on federal grants, which are increasingly hard to come by. Shelters are turning away women, who usually have no other avenues to escape violent situations, because they simply do not have the resources or space to help any more victims. As long as existing services cannot provide the services they need to, services that actually prevent violence and death, the state of Kansas cannot focus its attention nor its budget on prosecuting the crimes created by the Unborn Victims of Violence Act, and especially not in the name of these victims. To do so would be hypocritical, at best.

The issue of violence against fetuses cannot be separated from the issue of violence against women – the first *cannot* take place in isolation from the second. This undeniable fact has been overlooked in the writing of this bill. The desire to see fetuses as somehow independent of the women who carry them is at the heart of this legislation. This very notion is a great injustice to pregnant women, and legislation based upon it offers nothing to help them.

The most popular argument in favor of this type of legislation is that there are two victims when a pregnant woman is injured or killed. The spirit of this argument – that these crimes are especially deserving of punishment reflecting their particularly atrocious nature – is already recognized in the form of the statutes prohibiting crimes against pregnant women. *To deny that the recognition of pregnant women as a special class of victims is sufficient is to deny the fact that this construction inherently acknowledges both the mother and the fetus.* Insistence upon recognizing the fetus separately, or conversely, refusal to consider the fetus and mother as inseparable, has the unavoidable effect of elevating the status of the fetus while devaluing the mother.

Thank you for your consideration of these very difficult issues.

Vote “no” on HB 2300. It is unfair, unnecessary, and unsympathetic.

Comparison of Sentencing Guidelines

Current Statute			HB 2300		
Charge	Severity Level	Sentence Guideline	Sentence Guideline	Severity Level	Charge
IPW in commission of DUI	F5P1	50 – 55	50-55	F5P1	IPW in commission of DUI
Invol. Man. in DUI, 1 person	F4P1	62 - 69	<i>144 – 162</i>	F4P2	Invol. Man. in DUI, 2 person
Total		112 – 124	194 - 217		
Difference in sentencing range: 70 – 105 months or 5 years 10 months to 8 years 6 months					

FELONY CRIMES SORTED ALPHABETICALLY BY DESCRIPTION

<u>REFERENCE</u>	<u>DESCRIPTION</u>	<u>F/M</u>	<u>LEVEL</u>	<u>P/N</u>
8-1568(b)(2)	Fleeing or Eluding a LEO – subsection (c)(4) – committed while attempting to elude capture for the commission of any felony	F	9	P
65-67a04	Fetal Organs and Tissue; prohibited acts	F	2	N
21-3710(a)(1) to (3)	Forgery	F	8	N
21-3610(b)	Furnishing Alcoholic Beverages to a Minor for Illicit Purposes; child < 18 yoa	F	9	P
21-3707(d)(1)	Giving a Worthless Check; loss of > \$25,000	F	7	N
21-3707(d)(2)	Giving a Worthless Check; loss of ≥\$500 but < \$25,000	F	9	N
21-3707(d)(4)	Giving a Worthless Check; loss of < \$500, if in previous five years offender convicted two or more times of the same crime	F	9	N
34-295	Grain Storage; negotiation of receipt for encumbered grain with intent to defraud	F	10	N
34-293	Grain Storage; unlawful issuance of receipt for warehouseman's grain	F	10	N
65-3441(c)	Hazardous Wastes; knowingly violates unlawful acts included in paragraphs 1-11, subsection (a)	F	6	N
65-3441(b)	Hazardous Wastes; violation of unlawful acts included in paragraph 11, subsection (a)	F	10	N
65-2861	Healing Arts; false swearing	F	9	N
65-2859	Healing Arts; filing false documents	F	8	N
21-3734(b)(1)	Impairing a Security Interest, value of ≥\$25,000	F	7	N
21-3734(b)(2)	Impairing a Security Interest; value of ≥\$500 but < \$25,000	F	9	N
21-4018	Identity Theft	F	7	P
21-3602	Incest	F	10	P
21-4105	Incitement to Riot	F	8	P
21-3503(a)(1)	Indecent Liberties w/Child; child ≥14 yoa but < 16 yoa; lewd fondling or touching	F	5	P
21-3503(a)(2)	Indecent Liberties w/Child; child ≥14 yoa but < 16 yoa; soliciting to engage in lewd fondling, etc.	F	5	P
21-3510(a)(1)	Indecent Solicitation of a Child; ≥14 yoa & < 16 yoa to commit or submit to unlawful sexual act	F	7	P
21-3510(a)(2)	Indecent Solicitation of a Child; ≥14 yoa & < 16 yoa; inviting, etc., to enter secluded place	F	7	P
21-3435(1)(2) or (3)	Infection by Communicable Disease (HIV crime)	F	7	P
21-3440(a)	Injury to a Pregnant Woman in the Commission of a Felony	F	4	P
21-3440(c)	Injury to a pregnant woman in commission of KSA 21-3412 (battery), KSA 21-3413(a)(1) (battery on LEO), or (b)(1) or (b)(2) of KSA 21-3412a or KSA 21-3517 (sexual battery)	F	5	P
21-3441	Injury to a Pregnant Woman by Vehicle- committing a violation of 8-1567	F	5	P
21-4308	Installing Communications Facilities for Gamblers	F	8	N
40-247(b)(1)(B)	Insurance Agent/Broker Failure to Pay Premium to Company; loss of ≥\$500 but <\$25,000	F	9	N
40-247(b)(1)(A)	Insurance Agent/Broker Failure to Pay Premium to Company; loss of ≥\$25,000	F	7	N
40-247(b)(2)	Insurance Agent/Broker Failure to Pay Premium to Company; loss of < \$500, previous conviction w/in 5 years	F	9	N
40-2,118	Insurance; fraudulent acts in an amount of at least \$500 but < \$1,000	F	9	N
40-2,118	Insurance; fraudulent acts in an amount of ≥\$25,000	F	6	N
40-2,118	Insurance; fraudulent acts in an amount of at least \$5,000 but < \$25,000	F	7	N
40-2,118	Insurance; fraudulent acts in an amount of at least \$1,000 but < \$5,000	F	8	N
21-3422(c)(2)	Interference With Parental Custody in all other cases	F	10	P
21-3404	Involuntary Manslaughter	F	5	P
21-3442	Involuntary Manslaughter in the Commission of a DUI	F	4	P
21-3420	Kidnapping	F	3	P
50-718	Knowingly and Willfully Obtaining Information on a Consumer From a Consumer Reporting Agency Under False Pretenses	F	7	P
50-719	Knowingly and Willfully Providing Information Concerning an Individual to a Person not Authorized to Receive That Information; officer or employee of a consumer reporting agency	F	7	P
65-4142(e)(1)	Knowingly or intentionally receiving or acquiring proceeds or engaging in transactions involving proceeds known to be derived from any violation of the uniform controlled substances act, < \$5,000	F	4D	N
65-4142(e)(2)	Knowingly or intentionally receiving or acquiring proceeds or engaging in transactions involving proceeds; ≥\$5,000 < \$10,000	F	3D	N
65-4142(e)(3)	Knowingly or intentionally receiving or acquiring proceeds or engaging in transactions involving proceeds; ≥\$100,000 < \$500,000	F	2D	N

Legend
F = Felony
M = Misdemeanor

P = Scored as person
N = Scored as nonperson
S = Scored as select
NS = Not scored for Criminal History purposes

***This crime was created, amended or the severity level of this crime was changed during the 2004 Legislative Session.**

SENTENCING RANGE - NONDRUG OFFENSES

Category →	A	B	C	D	E	F	G	H	I
Severity Level ↓	3+ Person Felonies	2 Person Felonies	1 Person & Nonperson Felonies	1 Person Felony	3+ Nonperson Felonies	2 Nonperson Felonies	1 Nonperson Felony	Misdemeanor 2+	Misdemeanor 1 No Record
I	653 620 592	618 586 554	285 272 258	267 253 240	246 234 221	226 214 203	203 195 184	186 176 166	165 155 147
II	493 467 442	460 438 416	216 205 194	200 190 181	184 174 165	168 160 152	154 146 138	138 131 123	123 117 109
III	247 233 221	228 216 206	107 102 96	100 94 89	92 88 82	83 79 74	77 72 68	71 66 61	61 59 55
IV	172 162 154	162 154 144	75 71 68	69 66 62	64 60 57	59 56 52	52 50 47	48 45 42	43 41 38
V	136 130 122	128 120 114	60 57 53	55 52 50	51 49 46	47 44 41	43 41 38	38 36 34	34 32 31
VI	46 43 40	41 39 37	38 36 34	36 34 32	32 30 28	29 27 25	26 24 22	21 20 19	19 18 17
VII	34 32 30	31 29 27	29 27 25	26 24 22	23 21 19	19 18 17	17 16 15	14 13 12	13 12 11
VIII	23 21 19	20 19 18	19 18 17	17 16 15	15 14 13	13 12 11	11 10 9	11 10 9	9 8 7
IX	17 16 15	15 14 13	13 12 11	13 12 11	11 10 9	10 9 8	9 8 7	8 7 6	7 6 5
X	13 12 11	12 11 10	11 10 9	10 9 8	9 8 7	8 7 6	7 6 5	7 6 5	7 6 5

Probation Terms are:

My name is Sarah London. I am the Kansas Public Policy Manager for Planned Parenthood of Kansas & Mid-Missouri. Thank you, Chairman Edmonds and members of this committee, for allowing me to discuss my opposition to HB 2300.

Planned Parenthood operates three health centers in Kansas, in Wichita, Hays, and Lawrence. We are affiliated with Comprehensive Health of Planned Parenthood of Kansas & Mid-Missouri in Overland Park. We also operate eight centers in Missouri. In 2003, Planned Parenthood provided family planning and related care to over 30,000 women and men.

Planned Parenthood is founded on the belief that every woman should be safe and healthy. For a woman to determine her own destiny, she must be able to control the timing and extent of her childbearing and the integrity of her own body. The ability to make decisions about childbearing without interference and regardless of geography, economic circumstance, or political considerations, is the most fundamental civil and human right. I am opposing the so-called Unborn Victims of Violence Act, HB 2300, because this bill threatens that right by elevating the legal status of the fetus to that of an adult human being and indeed superior to the woman in some ways.

Make no mistake: Planned Parenthood strongly condemns any act of violence that interferes with a woman's choice to carry a pregnancy to term. However, HB 2300 ignores the woman, and instead endows the fetus with its own distinct rights. By creating a separate offense for injury to the fetus, this bill would for the first time elevate the fetus to a status equal with that of the adult woman who suffers not only an injury, but also the additional harm of losing a wanted pregnancy.

Although the sponsors of HB 2300 attempt to disguise this bill as protecting wanted pregnancies, it is in truth an attempt by anti-choice lawmakers to erode a woman's right to choose. Not only does this bill treat the woman as separate from her fetus, but it attempts to

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make that fetus a distinct legal entity from the moment of conception. The bill defines “unborn child” as “a living fetus in utero at any stage of development or gestation from conception until live birth.” This sweeping definition of “unborn child” means that an embryo only a few weeks old is protected by state law as a human being – even before its existence is known to the woman. This is in tension with the Supreme Court’s decision in *Roe v. Wade* in which the Court ruled that “the word ‘person,’ as used in the Fourteenth Amendment, does not include the unborn.”

Kansas law already addresses the issue of restitution for injury to a pregnant woman in two different statutes. KS 21-3440 and KS 21-3441 both ensure stiffer penalties for crimes that injure a pregnant woman if she miscarries. If the legislature believes these statutes to be inadequate, Planned Parenthood would fully endorse the further enhancement of these penalties. This would allow us to find a solution without the issue being politically charged.

Planned Parenthood recognizes that a woman suffers a unique and tragic injury if a wanted pregnancy is harmed or ended by an act of violence. However, the sponsors of this bill do not really care about the women who are the victims of these crimes. They care about the rhetoric. If they did care about these women, the woman – rather than embryos and fetuses – would be the focus of the bill. If the sponsors cared about these women, they would be advancing legislation aimed at stemming the tide of violence against women and assuring that every child brought into this world is wanted and safe.

Planned Parenthood fully supports a woman’s right to choose, including a woman’s right to choose to carry a pregnancy to term. The loss of a wanted pregnancy is a tragedy, but solutions to the problems posed by violence against pregnant women should be real, not political. HB 2300 is not the solution.



UNITED AGAINST VIOLENCE

KANSAS COALITION AGAINST SEXUAL AND DOMESTIC VIOLENCE

220 SW 33rd Street, Suite 100 Topeka, Kansas 66611
785-232-9784 • FAX 785-266-1874 • coalition@kcsdv.org

House Federal and State Affairs Committee
HB 2300
Oppose
February 22, 2005

Chairman Edmonds and Members of The Committee;

The Kansas Coalition Against Sexual and Domestic Violence is a membership organization of the 30 domestic violence and sexual assault programs that serve victims of these crimes. KCSDV represents not only the programs, but also the victims of domestic and sexual violence.

In 2003 (the last full year of statistics)

- ✓ *More than 18,000 people called a hotline associated with a Kansas domestic violence or sexual assault program*
- ✓ *More than 19,000 people were served by one of the thirty programs in Kansas*
- ✓ *3,280 women, children, and men sought safety in a shelter*
- ✓ *13 women and two men were murdered by their intimate partner: 279 during the decade from 1992 – 2003*

There is little doubt that domestic violence is a serious issue in Kansas, just as it is across the nation.

In fact, it is concern about domestic violence that has given rise to the Unborn Victims of Violence Act, initially at the federal level and now in Kansas. The horror of the Laci Peterson murder at the hands of her husband that also resulted in the death of her unborn child prompted many in public service to act. Murder by an intimate partner is one that occurs 9 to 40 times every year in Kansas alone.

So why is a domestic violence advocacy group opposed to a bill that appears to strengthen penalties when a victim of domestic violence is beaten so badly that she miscarries her unborn child—or worse, is killed?

Because HB 2300 is too little, too late.

Domestic homicide is America's most predictable murder (DeBecker, The Gift of Fear, 1997). Surely it is our job as public representatives and as advocates to recognize and prevent these heinous crimes before they get to this point of seve

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Domestic violence and sexual assault are the most common crimes experienced by women. We ought to be spending our time preventing the need for the kind of justice asked for in HB2300.

DeBecker suggests that there are three actions we CAN take to prevent domestic homicides and serious injuries: 1) refer victims to local domestic violence programs, 2) refer perpetrators to batterers intervention programs, and 3) stop participating in the violence as bystanders.

I would rather tell a family how we were able to help their loved one to reach safety than explain that we, as a state, can punish the perpetrator more harshly because he hurt or killed his wife or girlfriend while she was pregnant. I want to be able to look a family member in the eye and say we did everything we could. But, as of today I can't.

- We have only 23 shelters serving 105 counties
- There are crisis services available in only 38% of Kansas counties
- Children's services are available in only 16% of the domestic violence programs
- The state-wide hotline is suffering from lack of funding

The Kansas legislature has a long history of enacting strong anti-domestic violence laws. Kansas was one of the first states to enact a Protection From Abuse law allowing quick access to courts for a comprehensive restraining order. Kansas was one of the first seven states to remove the marital exemption from our rape statute. And Kansas is one of the states to enhance penalties for third and subsequent domestic battery offences. Kansas even enacted enhanced penalties for crimes perpetrated against a pregnant woman.

But, what Kansas has never done is make a serious commitment to provide support for the three actions DeBecker suggests. HB 2300 does NOT address these basic safety measures.

HB 2300 is too little, too late.

KCSDV applauds your commitment to these issues and we suggest there are a number of steps you can take that will more effectively address domestic violence:

1. Ensure that emergency safe shelter is easily accessible and available in locations that do not make victims choose between keeping children in school, being close to family and friends, or keeping their employment over safety.
2. Ensure that appropriate batterers intervention/accountability programs are available in every judicial district in the state.
3. Ensure that children's advocacy programs are available in every shelter.
4. Support training of health care workers to screen and identify domestic violence and take appropriate action.
5. Fully fund the courts so victims have timely access to protection orders.

6. Support training of law enforcement to better enforce protection orders. Violation of a protection order is a huge red flag to increased danger and lethality.
7. Support the development of safe and affordable housing options.
8. Adequately fund welfare and jobs programs so women have economic options away from abusers.
9. Support a statewide campaign that teaches citizens to stop being bystanders to the violence.
10. Support the development of data collection systems that provide adequate information for the formation of public policy and service delivery.

KCSDV believes that ***HB 2300 is too little, too late*** and we urge you to replace HB 2300 with more effective legislation.

Thank you for the opportunity to address this critical issue.

Respectfully Submitted,

Sandy Barnett
Executive Director

P.O. Box 8249
Wichita, KS 67208
www.prokando.org

PROKANDO

316.691.2002 (Phone)
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Julie Burkhart - *Chair*

Joan Armentrout - *Treasurer*

February 22, 2005

Representative John Edmonds, Chair
House Federal and State Committee
300 SW 10th Ave. Room 171-W
Topeka, Kansas 66612-1504

Dear Representative Edmonds:

Thank you Chairman Edmonds for allowing me to address the committee today regarding HB 2300 and our opposition to this measure. My name is Julie Burkhart and I am the Executive Director of ProKanDo, which is a statewide, pro-woman, reproductive rights organization.

Our opposition is based on the following three items that are inherent to the bill. 1. The bill does not protect women from further victimization by perpetrators during pregnancy nor does it recognize the harm that is inflicted on women; 2. The bill recognizes a fertilized egg (zygote), pre-implantation embryo (blastocyst), embryo and fetus as "victims" of a crime with distinct and separate legal rights; and 3. This bill represents a concerted effort by the anti-choice movement to redefine personhood and to roll back *Roe v. Wade*.

First, HB 2300 does not protect women. By viewing harm inflicted on a fetus as a separate offense, the bill disregards the offense that is done to the pregnant woman. Under this bill, there is potential for an adversarial relationship between the health of the woman and that of the fetus. The use of inflammatory language in the bill, such as "unborn child," exemplifies the lack of protection afforded to women under this act and the absence of focus on the pregnant woman. HB 2300 does not recognize that any act of violence that harms a woman's pregnancy is intrinsically an attack on the woman.

Second, HB 2300 would create a new and separate offense for a fetus that is harmed during the commission of certain criminal acts. If passed, this bill would establish in law, that an "unborn child" is an individual separate from a woman, and elevate its status over that of a woman. There are cases in other states where anti-choice prosecutors have used laws similar to this bill to prosecute women for behavior such as alcohol use, suicide attempts and drug use, which are potentially harmful to a fetus. One woman was even prosecuted for failure to follow her doctor's orders to remain on bed-rest.

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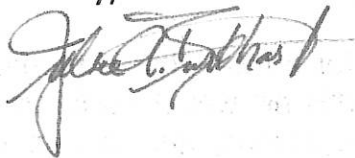
Third, this bill is simply a measure, on a national scale, by anti-choice groups to establish a fetus as a person; therefore, attempting to sabotage the 1973 Supreme Court ruling of *Roe v. Wade*. In *Roe v. Wade*, the Supreme Court established that "the word 'person' as used in the fourteenth amendment, does not include the unborn." The sole purpose of this act is to undermine a woman's right to choose. Since anti-choice groups have had little success in making abortion illegal, they have resorted to back door attempts to try to overturn *Roe v. Wade*.

Instead of passing this bill, which would separate a woman from her fetus in the eyes of the law and turn a blind eye to the integral connection between the woman and her fetus, we are advocating for *enhanced penalties* for the statutes that are already in effect in Kansas. The first statute: KS 21-3440 - created the crime of "injury to a pregnant woman" which applies if a pregnant woman suffers a miscarriage as a result of an injury received during the commission of a felony or misdemeanor. And the second statute is KS 21-3441 - created the crime of "injury to a pregnant woman by vehicle" which applies if a pregnant woman suffers a miscarriage as a result of an injury received from another person's unlawful operation of a motor vehicle. For ten years, these statutes have been enacted. In the interest of protecting pregnant women from acts of violence during pregnancy, we urge you to increase the penalties, under the pre-existing statutes, for crimes against pregnant women so that perpetrators will be brought to justice.

We unequivocally agree that there should be severe penalties for violence against women and the subsequent termination of a woman's pregnancy. There is no greater loss for a woman than when she loses a wanted pregnancy - it's heartbreaking at best. Additionally, we are also supportive of attempts to achieve this goal through non-inflammatory language that recognizes the devastating loss or injury *to the woman*. Therefore, I urge you to vote against HB 2300, as this bill's sole purpose is political gain through the exploitation of tragic situations.

I thank you again Chairman Edmonds for allowing me to testify today before your committee.

Sincerely,



Julie A. Burkhart
Executive Director

STAND UP FOR KANSAS

P.O. Box 780127 • Wichita, KS 67278 • (316) 634-2674

February 21, 2005

The Honorable John T. Edmonds
Chairman, House Federal and State Affairs Committee
Kansas State Capitol
Topeka, Kansas 66612

Re: House Bill 2415

Dear Chairman Edmonds,

Following my testimony on House bill 2415 last Thursday, Feb. 17th, you requested I provide committee members documentation on the economic impact of casinos for their study.

I am pleased to provide you 24 copies of a report published by the Chicago Better Government Association, "**Impact of Riverboat Casinos in Illinois**," one of the best documents on this subject, in my opinion.

The study was conducted by Professors William N. Thompson (no relation to me) and Ricardo C. Gazel of the University of Nevada Las Vegas. Although the report was prepared in 1996, it is a classic and referenced often in discussions on this subject.

The study was conducted in two parts:

Part 1: Demographic survey, report dated April 26, 1996

Part 2: Economic impact, report dated June 11, 1996

For many years, the report was available on the internet. Unfortunately, to my knowledge, it is no longer available on the internet.

I would also recommend to committee members the following documents:

1. **The Luck Business** by Robert Goodman, The Free Press, 1995, another classic. I am providing a copy to the ~~committee secretary~~ ^{CAPITOL LIBRARY} for the members to read at their convenience.
2. **The National Gambling Impact Study Commission Final Report**, June 1999. This historical report is available at <http://govinfo.library.unt.edu/ngisc/reports/fullrpt.html>
3. "**Reviewing the Impact of Parimutuel Racing In Kansas On the Kansas Racehorse and Greyhound Industries**," A Report to the Legislative Post Audit Committee, by the Legislative Division of Post Audit, State of Kansas, March 1996. This report is available from the Legislative Post Audit staff.

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The Executive Summary states, "*We estimate that the economic benefit to Kansas agribusinesses supplying goods and services to breeders and owners of race animals as a result of having parimutuel racing in Kansas was about \$15.2 million in 1995.*"

The significance of this study is, even allowing for inflation, the benefit of the parimutuel racing industry to the economy of the state is not several hundred million dollars, as often claimed by proponents of legalizing slot machines at racetracks.

4. ***Gambling in America - Costs and Benefits***, by Professor Earl L. Grinols, Cambridge University Press, 2004. Dr. Grinols is probably the most widely recognized academic authority on the economic impact of casinos in America. He has written numerous papers on the subject, culminating in this excellent book on costs and benefits. Some sections are pretty heavy on mathematics, but the conclusions are clear.

Grinols concludes:

"The long-term cost-to-benefit ratio from introducing casinos to a region that did not have them previously is greater than 3:1. As a device for raising taxes, casinos are more socially costly than a conventional tax.." (pp. 175-176)

This book is available in the capitol library.

I hope you find these documents informative and useful.

Sincerely,



Glenn O. Thompson
Executive Director

Chicago Better Government Association Reports

Impact of Riverboat Casinos in Illinois

Part 1: Demographic survey April 26, 1996

Part 2: Economic impact June 11, 1996

**Source: Better Government Association (BGA) web site,
<http://www.bettergov.org/gambling.htm>**

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Chicago Better Government Association Report

Demographic survey of Riverboat Casino Patrons in Illinois April 26, 1996

About the BGA

Mission:

"The Better Government Association (BGA) exists to expose waste, fraud corruption and inefficiency in government, to uphold high standards of public office and to educate the public."

BGA Overview

The BGA was founded in 1923 by a group of concerned citizens and business-people that saw the growing, pernicious influence of the Capone mob as a threat to the electoral process, the principals of good government and their liberty.

Seventy-five years later, the BGA has changed its structure and approach to adapt to the changing world, but it remains committed to the same principles that mobilized it's founders: to fight and expose waste, fraud and corruption in government, to uphold high standards of public service and to educate the public about the operations of their government.

Throughout the organization's history, the BGA's work has proven instrumental in changing poor policy, developing fair practices and in advancing significant government reforms on countless occasions. The BGA's recent successes have improved policies in almost every area of government, including nursing home regulation, health care administration, policies for the awarding of minority contracts, police accountability and the rules governing campaign financing.

The organization prides itself on producing tangible results. The BGA's investigations empower citizens by supplying them the information they need to make informed decisions and often provide the impetus for lively public debate, the most basic element of Democracy.

The BGA's reform efforts are divided into three main programs. The Investigative Program is staffed by investigators and attorneys who use journalistic investigative techniques and litigation to expose government waste and corruption. The Public Policy program works in concert with the Investigative Program to provide solutions to the problems we uncover. The Public Education program provides training for interns, archives of BGA investigations, investigative resources and voter information.

The BGA's multi-layered approach makes it unique in the country. The BGA partners with the local and national media to produce hard-hitting investigations and exposes. More than just a credible media source, the BGA's work is considered by many investigative journalists to be among the finest in the country. In fact, BGA media partners have won every major journalism award and citation—including three Pulitzer Prizes—for their work on BGA investigations.

The Better Government Association is a non-partisan, not-for-profit citizens group. The BGA receives broad-based support from citizens, businesses and foundations—taking no funding from government or political organizations.

Additional information on the BGA may be obtained from the BGA web site, <http://www.bettergov.org/>

Statement to the Press

by J. Terrence Brunner, Executive Director
April 26, 1996

Demographic Survey of Riverboat Casino Patrons in Illinois

Illinois' gambling policy is founded on the assumption that riverboat casinos are a viable form of economic development, the premise that riverboats bring positive economic impacts to local communities, as well as regional and state economies. By simply placing riverboat casinos in economically distressed towns throughout the state, local economies can be revitalized and new jobs created.

The depth of economic analysis that served as the basis for this assertion by our legislators, prior to passing the landmark legislation, was symbolized by Representative Zeke Giorgi's response to a question about projected revenue when he said:

"I'll guess fifteen to twenty million dollars, but don't...I've just done my own mathematics without...The Economic Fiscal Commission tried to put something together. They weren't able to, isn't that right? And I just did my own arithmetic on the number of people I thought would be there on a sunny day and so on."

This is the quality of analysis that supports the idea that riverboat casinos induce economic development. The legislation spelled out the purpose:

Representative Giorgi put it best, "now this bill is a result of a lot of discussion and talk about economic development... The consensus of the task force is that this will indeed spur economic development, create jobs, boost tourism, bring new life to the rivers of Illinois, cause beautification along the riverbanks."

Confident of the economic wonders yielded by riverboat gambling, legislators expressed explicitly in the intent of the Illinois Gambling Act of January 1990 that it is to "benefit the people of the State of Illinois by assisting economic development and promoting Illinois tourism." The word tax never appears.

That was 1990. In 1996, Illinois still does not know if it is winning or losing, or by how much. The state has not taken the time or allocated the resources to produce analysis that measures economic development created by gambling. Or study whether new tourism, upon which economic success of gambling policy hinges, has occurred at all. Instead, these important questions have been allowed to go unanswered. New gambling proposals continue to be shrouded in wildly speculative debate similar to Representative Giorgi counting people on a sunny day and so on."

We do know that gambling has been a huge commercial success. Casino owners in Illinois, without any doubt, have been the biggest winners. That money has been counted. But the intent of the Illinois gambling policy is not to legalize casino gambling for the sole purpose of making a few privileged individuals incredibly rich. It is to enhance the economic life of aging river towns and to be a catalyst spreading new wealth throughout the economy.

These findings drawn from data collected by the Better Government Association represent a comprehensive, objective, and unbiased look at who gambles on Illinois riverboats, how much they lose, and where they come from. The research project was conducted jointly with Professors William N. Thompson and Ricardo C. Gazel from the University of Nevada Las Vegas. They designed the questionnaires which are similar to those used in their project on Indian gaming in Wisconsin. They provided a strict methodology to the approach and gave expert analysis to the data.

When considering economic development, economists agree that net job creation is dependent on attracting new tourists to the casino.

On tourism. The results of the field study show that riverboats have failed to create new tourism. By almost any definition of a tourist this is true. The evidence is overwhelming and conclusive:

- * 84% of gamblers are from Illinois while only 16% are from out-of-state
- * 85 percent of people who gamble in Illinois live within 50 miles of the casino
- * Over one half the out-of-state players live within 50 miles
- * Only 4.6 percent travel more than 100 miles
- * 97.7 percent of all Illinois gamblers stay less than one day
- * 9.2 percent of out-of-state visitors stay over night
- * Less than 12 percent of out-of-state visitors stayed in either a hotel or motel

The purchases that casino patrons made outside of the casino were minimal, and irrelevant to any discussion of economic impact. Out of 785 players interviewed, only one out-of-state visitor, that traveled over 100 miles, reported making a purchase in town. Only 3% of all out-of-state players spent money outside the casino.

On the population that gambles. The largest percentage share of gamblers are locals. "There is no doubt that Illinois draws their largest share of patrons from their own communities and other nearby communities." Over five-sixths of the amount of money gambled is not new money brought into the local area. It is money that is already in the community. In 1995 Illinois riverboats reported overall revenues from food, drinks, and gambling of \$1.3 billion. The gaming win, gambling dollars kept by the casino, was \$1.2 billion. The large share of the \$1.2 billion was taken out of the local economy.

Who are the Gamblers?

- * 83.4 percent are residents of Illinois
- * 21.3 percent are retired
- * 7 percent of gamblers earn less than \$10,000 per year
- * 7 percent of gamblers earn between \$10,000 to \$20,000 per year

- * 85% live within 50 miles, 50% within 25 miles, 25% within 10 miles, 14% with 5 miles from the casino

Economically, the failure of riverboat casinos to draw in new tourists is worsened by the regressive impact on vulnerable groups in the local population. What are the characteristics of the 15% of Illinois residents in the 5-mile ring around the casino.

Gamblers living closer compared to those living further away:

- * have lower average annual income
- * are younger
- * have a larger share of non-whites
- * not married
- * lower level of education
- * unskilled labor
- * unemployed

"We concluded above that casinos have their larger market shares among those who live closer to them. We can extend that conclusion and say that casinos have their larger market shares among those less educated with lower income who live closer to them."

Furthermore, those close-in players:

- * visit the casino more than twice as much as someone living over 50 miles away, they lose twice as much of their annual income as other patrons.
- * lose a higher percentage of their income to gambling (14 percent lose more than 5% of their annual income.
- * are 28 percent black, which drops to 7-8 percent until reaching 50 miles when it climbs back to 28 percent;
- * are six times as likely to be unemployed.

How badly are distressed groups; poor, seniors, and non-whites effected?

- * 20% of the under \$10,000's lose more than 5% of their income
- * 11% of the \$10,000 to \$30,000 lose more than 5% of their income
- * 29% of seniors lose more than 5% of their income
- * 34% of non-white lose more than 5% of their income

"It is incredible to find that 40% of the unemployed gamblers spend over 25% of their income in the casinos. If casinos are devices for gaining government revenues in Illinois, state residents are paying them. Even worse, the poor, the unemployed, the less educated are paying the lions share of these tax revenues. This is a

regressive tax with perverse effects in terms of income redistribution."

What are the public policy implications of these demographics? In the last six months the federal government has shut down twice over the issue of where to find funding for the health care, for old people (medicare), and poor people (medicaid.) Those watching this debacle have suggested that these issues would be addressed more effectively at the state and local level. Here we have an example of your Illinois state government in action. While Washington politicians wring their hands over what to do, Illinois has franchised and sponsored a gambling enterprise which disproportionately takes the money out of the pockets of these same poor and senior citizens—the same folks who the national government is agonizing over.

Professor Thompson has pointed out:

"Perhaps the state of Illinois has by design followed a socially perverse path by choosing to put casinos in economically distraught locations. Instead of helping the locations achieve economic growth, it appears that the state has brought casino gambling to economically distraught individuals. Instead of giving to them, the state has created a device which takes from them."

Thus, we are left with a monstrous conclusion. It now seems clear that the worse thing that we could do to the economies of aging river towns was to place casinos in the heart of these distressed areas.

Casino Gamblers in Illinois: Who Are They?

Professors Ricardo C. Gazel and William N. Thompson

University of Nevada Las Vegas

I. Introduction

Advocates of legalized casino gambling--whether industry players, government officials, or members of the general public--invariably advance the notion that casino enterprise will bring net positive economic impacts to local communities as well as regional and state economies. Casinos are seen as job providers and sources of tax revenue. They are considered to be magnets that can attract tourists and their expenditures to local areas and to states.

The basis for the positive economic impacts is found in the patronage of non-local, out-of-state players who are attracted by opportunities to gamble. These visiting players inject new income into the casino venue. In other words, gambling enterprise is seen as a net exporter activity which results in more income injections into than income leaks out of the economy. (Leaks may be caused by casino expenditures). Most frequently, the casino legalization proponents point to the economic successes witness with the legalization of casinos in Nevada, particularly Las Vegas, and in Atlantic City. Certainly these casino jurisdictions are winners. The case of Las Vegas finds a local area attracting 30 million visitors a year, each of whom (on average) spends three nights and four days. Atlantic City attracts even more visitors, but each spends only part of a day in the gambling city; they are what is called day-trippers.

The common characteristic shared by Las Vegas and Atlantic City is that the preponderance

of their gamblers come from outside their boundaries and from beyond. These visitors represent a net injection of monetary income into the local and state economies. The driving force that results in tourist participation in gambling is the fact that each of these casino venues has a multiplicity of very large casino facilities. The gambling capacity of the cities could not be filled without tourists. Therefore the casino properties vigorously advertise and market their capacity to people who live outside their state and regional economies. To be sure, Las Vegas does have a genre of smaller casinos which are able to survive and even thrive with local players. As such, these properties do little to help the tourist export posture of the community.

Most new casinos jurisdictions--such as the riverboat venues of the Midwest and South Central states--do not allow free market entry for casino operators. Unlike Atlantic City and Las Vegas, they offer a limited number of licenses. Therefore, most of the casinos in these new venues find that they have a monopoly or near monopoly (duopoly or oligopoly) over a territory that may extend outward for one or two hours driving time. Or in the case of suburban Illinois a few licenses may be enabled to serve an entire metropolitan area of millions of people. Quite simply, the casinos are postured to succeed if they implement feasible marketing plans to local or near local players. Hence we have a dilemma. We have casino advocates who successfully sell casino gaming as an export product, but we license properties that have the potentiality for success without having to export their products.

The commercial experience of the first years of riverboat operations is well recorded. With the exception of one boat which was licensed for a rural area not close to any large urban center, and another boat within secondary urban center served by a larger competitor, the boats have been very successful. Revenues for eight of ten operators have far exceeded original projections.

Casino operators in Illinois have in every sense of the word been winners. With the passage of time, their revenue intake increases. However, the riverboat casinos of Illinois were not given a legalized existence for the purpose of making operators wealthy--albeit, free enterprise success is often a virtue pursued in American public policy. (On the other hand, the quasi-monopoly structure of Illinois licensing is anything but a structure for free enterprise). The explicit purpose for passage of the Illinois Riverboat Gambling Act of January 1990 was to bring economic development to river communities which had suffered through years of commercial decline in the 1980s. An economic turnabout was projected to occur as a result of the riverboat gambling. Gambling tourists from outside the local area and from beyond the boundaries of the state of Illinois would consume non-casino goods and services produced locally.

The evidence of the commercial success of the boats is recognized. The money has been counted. In 1995 ten licensees secured revenues in excess of \$1.3 billion from their patrons. Most of this revenue--\$1.2 billion was in gambling wins for the casinos. Some observers have also seen economic development for the riverboat communities. Michael Ficaro, a Chicago attorney who represents riverboat operators, offered these words of encouragement:

"Riverboat gambling has returned to Illinois with the same vitality it enjoyed in the mid-1800s. Now as a highly-regulated industry, it has encouraged tourism and promoted economic development throughout Illinois and its river cities. Riverboat gambling has provided entertainment to its participants and tax revenue to the state and local communities. Riverboat gambling has made the voyage into the gaming experience for Illinois a successful and worthwhile venture." (M. Ficaro, "Illinois," in A. Cabot, W. Thompson, and A. Tottenham, eds. 1993. International Casino Law. 2ed. Reno: Institute for the Study of Gambling, University of Nevada. Pp.23-30, at 30).

Words of encouragement, written in 1993, a year and a half into the "experience"--but what is the evidence? Have the riverboat casinos been winners for the local communities and the state of

Illinois like they have been winners for their owners? This study is being made in an attempt to answer that basic question.

In the initial quest to find "the answer," we have sought to identify the Illinois riverboat gambling market. In order to find the market, we have examined the characteristics of the players who have actually come to the casinos and participated in gambling. This section of our report provides the results of an initial analysis of the demographic and socio-economic characteristics of the riverboat gamblers. Are they rich out of state rogues in the image of Rhett Butlers--gambling with a vitality known in the mid-1800s? Are they wealthy entrepreneurs on business tours, retired couples on vacation, or are they something else? School teachers, factory workers, people on disability pensions, welfare mothers, foreign tourists, or persons living in the riverboat communities?

The initial analysis examines data gathered in a survey of players. A research team of summer interns with the Better Government Association of Chicago traveled to five boat sites during July and August 1995. There they interviewed 785 players. The interview schedule, which appears in the Appendix, was a modification of one used the previous year by the authors for a study of 697 gamblers in Native American casinos of Wisconsin. (See W. Thompson, R. Gazel, D. Rickman, 1995. The Economic Impact of Native American Gaming in Wisconsin. Milwaukee: Wisconsin Policy Research Institute.) In addition to asking demographic questions to the players we asked about their gambling behavior during the casino visit and also about any other spending activity inside and outside the casino which was a result of their excursion to the casino.

In Section II we will describe the survey methodology, while we present demographic results and analysis of player behaviors in Section III.

II. Survey Methodology

a. Basic Data

Randomly selected interviews were conducted at five riverboat casino sites --Aurora, Alton, Elgin, Joliet, and Rock Island. Interviews were made on eight different days in July and six different days in August, 1995, during both day (639 interviews) and night (146 interviews) shifts. A total of 785 interviews were completed and verified. See Table 1 below.

Table 1: Number of Interviews by Site

Site	Total
Aurora	275
Alton	36
Elgin	205
Joliet	207
Rock Island	62
Total	785

b. Data Verification

The data collected in the survey served as the base for this report. We have, in collaboration with the Better Government Association of Chicago, been very careful to cover different months, days, hours, and locations, in order to avoid systematic bias in the data collection pro-

cess. However, there is always, even if small, probability of bias since we did not cover all 10 casinos in Illinois as well as all months and hours of operation. In order to test whether our Illinois survey data was consistent with previous data from other studies, we used national survey data collected by the Mississippi State University in January 1995 on gambling behavior in the U.S.

We isolated the Illinois cases within the national survey data. Then we determined the ratio of those who reported gambling in casinos in the previous twelve months to those who did not do so. Next we applied that ratio to the Illinois adult population county by county, so that we could estimate the potential casino gambling population for each county in the state. In the next step, we used the reported number of visits to casinos among those who gambled dividing them into three groups depending on the distance between place of residence and closest casino location. Applying the two sets of information (share of the adult population who gambled in casino and the frequency of casino visits by distance from casino) to specific casino locations we were able to estimate the total number of gambling visits per year which each location would receive. We also determined which percentage of those visits would be local (county) residents, non-local Illinois residents, and out-of-state visitors. For all the five locations we surveyed, the difference between estimated number of visits using this methodology, and the number of admissions actually reported by the casinos was less than five percent. The results were even closer for location of players. Estimates using the national survey ratios and population number for the area of influence of each casino were, for all cases, very close to the estimates using our Illinois survey data in terms of local and non-local (as well as Illinois and out-of-state) distribution of players. In no case the difference was over three percent. These comparisons increased the level of confidence

we have in our estimates.

III. The Survey Population: Who are the Illinois Casino Gamblers?

The major demographic and socio-economic characteristics of the riverboat gamblers in Illinois are reported in Table 2 below. The percentages of tourist and non-tourists casino patrons in Illinois are strikingly different from those found in Las Vegas. There an estimated number of players in excess of 85% come from other states and regions. The export quality of the Las Vegas casino products are very noticeable in visitor data. Such is not the case for Illinois. The patrons of Illinois riverboats are overwhelmingly residents of Illinois--83.4%. This should not be a surprise since Illinois is surrounded by states which have casino gambling and also several casinos are located relatively close to large urban centers, especially Chicago area. These large urban centers become the target market for the close by casinos. There is no commercial incentive for the limited number of casinos to seek visitors from further distances, since the numbers of locals they cater to more than fill their capacity. If the purpose of casino gambling was to attract out-of-state visitors, it is clear that this goal has not been achieved.

Of all gamblers, two-thirds are male, three quarters are white, and over 60 percent are married. There is a large number of retirees (21.3 percent) compared to other occupations (see Table 2). The majority of gamblers have at least a high school education and a substantial number (38.4 percent) are college graduates. The patrons are evenly distributed across age groups.

Adding to the dismaying fact that over 80 percent of gamblers are Illinois residents, there is an additional item of concern. Most of the gamblers are from areas very close to the casinos. One quarter of all gamblers live within ten miles from the casino and another quarter between 11 and

25 miles. Half the gamblers live within 25 miles of the casino. Less than 15 percent live more than 50 miles away from the riverboats. There is no doubt that riverboats in Illinois draw their largest share of patrons from their own communities and other nearby communities. Over five-sixths of the amount of money gambled is not new money brought into local area. It is money that is already in the area of the community.

These disturbing demographic facts need further analysis. They don't tell the whole story by themselves. The information in Table 2 is important to have a first idea of riverboat gamblers in Illinois. Our survey also gathered information about individual characteristics and about their behaviors: how often players visited the casinos, their expenditures within and outside casinos as well as the reasons for their visit the area--if they came from a distance. We start exploring some of this data in Table 3.

Table 2: The Survey Population

	Illinois		Out-of-State		Total	
	Number	%	Number	%	Number	%
Visitors	654	83.4	130	16.6	785	100.0
Gender						
Male	418	64.6	83	64.3	501	64.6
Female	229	35.4	46	35.7	275	35.4
Race and Ethnicity						

White	473	73.1	118	90.8	591	76.1
African-American	120	18.5	7	5.4	127	16.3
Hispanic	25	3.9	3	2.3	28	3.6
Asian	25	3.9	1	0.8	26	3.3
Native American	2	0.3	1	0.8	3	0.4
Other	2	0.3	0	0.0	2	0.3
Marital Status						
Married	383	59.5	89	69.0	472	61.1
Not Married	261	40.5	40	31.0	301	38.9
Occupation						
Professional	78	12.6	15	12.1	93	12.6
Unskilled Labor	69	11.2	12	9.7	81	10.9
Services	72	11.7	13	10.5	85	11.5
Sales	61	9.9	8	6.5	69	9.3
Retired	127	20.6	31	25.0	158	21.3
Government	20	3.2	3	2.4	23	3.1
Clerical	21	3.4	7	5.6	28	3.8
Technical	50	8.1	10	8.1	60	8.1
Manager	43	7.0	16	12.9	59	8.0
Casino	11	1.8	2	1.6	13	1.8
Unemployed	12	1.9	1	0.8	13	1.8
Homemaker	38	6.2	5	4.0	43	5.8
Student	15	2.4	1	0.8	16	2.2

Table 2 (Continued)	Illinois		Out of State		Total	
	Number	%	Number	%	Number	%
Education						
Less than High School	31	4.8	7	5.5	38	4.9
High School Graduate	107	20.7	36	28.1	143	20.4
Some College	177	27.4	34	26.6	211	27.2
College Graduate	175	27.0	37	28.0	212	26.7
Some or Complete Graduate School	77	11.1	19	14.8	96	11.7
Household Income						

Less than \$10 000	47	77	7	17	40	68
Between \$10 000 and \$10 000	40	80	4	34	53	73
Between \$20 000 and \$20 000	85	140	15	170	100	138
Between \$30 000 and \$30 000	03	153	70	177	113	156
Between \$40 000 and \$40 000	100	164	70	177	170	166
Between \$50 000 and \$50 000	81	133	73	108	104	143
Between \$60 000 and \$60 000	47	60	4	34	46	63
Between \$70 000 and \$70 000	75	41	7	60	37	44
Between \$80 000 and \$80 000	75	41	7	60	37	44
Between \$90 000 and \$90 000	18	30	7	17	70	78
Equal or above \$100 000	44	77	17	103	56	77
Distance of Residence from Casino						
5 miles or less	84	157	4	44	88	141
Between 6 and 10 miles	58	100	10	111	68	100
Between 11 and 15 miles	54	101	5	56	50	05
Between 16 and 20 miles	50	110	3	33	67	00
Between 21 and 25 miles	34	64	1	11	35	56
Between 26 and 30 miles	00	185	7	77	101	167
Between 31 and 50 miles	106	100	17	133	118	180
Between 51 and 75 miles	30	56	10	111	40	64
Between 76 and 100 miles	6	11	18	700	74	38
Above 100 miles	4	07	75	778	70	46
Age						
30 year old or younger	110	175	10	80	170	150
31 to 45 year old	167	266	38	304	205	277
46 to 60 year old	214	341	44	357	258	343
61 to 75 year old	177	104	30	740	157	207
76 or older	15	24	3	24	18	24

A. Casino Player Behavior

The large majority of players (including local residents) reported gambling in the casino as their main purpose of visiting the area. However, close to one quarter of players from out of state were visiting the area for other reasons than gambling. Only a very small fraction of out-of-state visitors stay over night (9.2 percent) compared to the large share represented by less-than-a-day

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12-16

visitors (89.9 percent). It is also important to note that close to one third of the out-of-state visitors were visiting the specific casino for the first time compared to 11.7 percent of first visitor from Illinois. Among those who gamble, state residents visit Illinois riverboats 30 percent more times than their out-of-state counterparts in a year period. There is no significant difference between residents and nonresidents in terms of their visits to other casinos since most of them had visit gambling establishments in other jurisdictions. Less than 12 percent of out-of-state visitors stayed in a hotel or motel while in Illinois.

Table 3: Pattern and Reasons for Visits

	Illinois		Out-of-State		Total	
	Number	%	Number	%	Number	%
Purpose of Visit						
Gamble	563	90.8	91	77.1	656	88.6
Other	57	9.2	27	22.9	84	11.4
Length of Stay						
Less than a day	614	99.2	107	89.0	723	97.7
One night	5	0.8	11	9.2	16	2.2
Two nights	0	0	0	0	0	0

Three nights	0	0	0	0	0	0
Four nights	0	0	1	0.8	1	0.1
Five nights or more	0	0	0	0	0	0
First Visit						
Yes	75	11.7	37	31.1	114	15.0
No	564	88.3	87	68.9	646	85.0
Average Annual Visits						
Six or less	353	64.7	61	73.5	414	65.5
More than 6 less or equal 12	91	16.5	13	15.7	104	16.4
More than 12 less or equal 24	50	9.1	3	3.6	53	8.4
More than 24	56	10.2	6	7.2	62	9.8
Visit Other Casinos						
Yes	517	87.3	90	83.0	617	87.6
No	110	17.7	10	16.1	120	17.4
Where Staying						
Hotel/Motel	5	0.8	17	11.7	10	7.4
Friends/Relatives	3	0.5	14	10.8	17	7.7
RV Park	1	0.2	0	0	1	0.1
Other	645	98.6	93	77.5	748	95.3

B. Casino Players Behavior: The Residents of Illinois

As we said before, the majority of Illinois residents who visit the state riverboats live relatively close to the casinos. Close to 16 percent of them live within 5 miles from the casinos where they play more frequently, 11 percent live between 5 and 10 miles, and 27.5 percent between 10 and 25 miles. Thus, over 54 percent of gamblers from Illinois live within 25 miles from the riverboats and another 38 percent between 25 and 50 miles. Less than one percent live more than 100 miles from the riverboats. There is no doubt that gambling activity has been financed by local and

adjacent communities to the casinos.

The closer a patron lives to a riverboat the more often he or she visits it. Among those who gamble, the average annual visits to a riverboat of those living within five miles from a casino is twice as high as the average number of visits of those living more than 25 miles away. However, the average amount lost in each visit does not vary substantially among gamblers. Thus, those living closer to a riverboat loses annually proportionally more than other patrons and are more likely to gamble and lose a higher portion of their annual household income. On average, a gambler living within five miles from the casino loses twice as much of their annual income than any other patron living further than 15 miles from the casino. In summary, those who live closer to the riverboats visit them more frequently and loses a larger share of their annual income in gambling activities.

A question to be answered is fundamental: Who does live closer to the riverboats in Illinois and, as such, constitutes their primary markets? Table 4 shows that those living closer to the riverboat compare to patrons living further away have lower average annual income, are younger, and have a larger share of non-whites, not married, lower level of education, unskilled labor and unemployed. We concluded above that casinos have their larger market shares among those who live closer to them. We can extend that conclusion and say that casinos have their larger market shares among those less educated with lower income who live closer to them.

In the next section we look at the composition of patrons based on their income and ethnicity. We try to answer the following questions: Are the poor more affected by casinos than those with higher income? Are proportionally larger shares of minority groups among casino gamblers in Illinois? Are senior citizens more affected than younger patrons? Are unemployed workers more

likely to gamble?

Table 4: Illinois' Players by Distance of Residence from Casino

	Distance in Miles				
	0 - 5	5.1 - 15	15.1 - 25	25.1 - 50	Over 50
Illinois Residents	15.7	21.0	17.4	38.4	7.4
Number of Visits					
Mean	14.96	9.57	9.33	6.52	6.58

Median	5.1	3.49	3.38	2.54	2.54
Gambling Loss as a Share of Income (%)					
Less than 1%	58.8	70.8	75.7	77.0	76.2
1.1 to 5%	28.0	18.8	18.6	18.0	19.0
5.1 to 10%	5.8	4.2	2.8	1.9	0.0
10.1 to 25%	4.5	6.2	2.9	2.5	4.8
Over 25%	2.9	0.0	0.0	0.6	0.0
Mean	2.8	1.6	1.1	1.3	1.0
Median	0.40	0.27	0.21	0.23	0.18
Gambling Loss per Visit (\$)					
Mean	45.5	45.0	44.3	50.6	45.6
Median	29.6	24.9	23.7	28.4	35.5
Household Annual Income (\$1,000)					
Mean	41.2	50.3	56.7	44.2	49.2
Median	45.0	45.0	55.0	45.0	40.0

Table 4 (continue)	Distance in Miles				
	0 - 5	5.1 - 15	15.1 - 25	25.1 - 50	Over 50
Gender (%)					

Female	32.5	31.5	32.3	37.3	47.5
Male	67.5	68.5	67.7	62.7	52.5
Average Age	45	49	49	49	49
Race and Ethnicity (%)					
White	65.1	82.1	84.6	72.5	66.7
Black	27.7	7.1	8.8	20.1	28.2
Hispanic	6.0	7.1	2.2	1.5	0
Others	1.2	3.6	4.4	5.9	5.1
Marital Status (%)					
Married	48.8	62.7	71.7	59.7	66.7
Not married	51.2	37.3	28.3	40.3	33.3
Education (%)					
Less than High School	9.5	3.6	2.2	7.4	2.6
High School Graduate	32.1	25.9	31.2	26.2	51.3
Some College	31.0	33.0	24.7	25.2	23.1
College Graduate	20.2	25.0	28.0	32.2	7.7
Graduate School	7.1	12.5	14.0	8.9	15.4
Visited other casinos					
Yes	75.3	88.0	80.2	82.8	86.5
No	24.7	12.0	19.8	17.2	13.5

Table 4 (continue)	Distance in Miles				
	0 - 5	5.1 - 15	15.1 - 25	25.1 - 50	Over 50
Occupation					
Professional, managerial	18.8	11.1	29.2	19.9	28.2
Sales, services, technical	31.3	39.7	27.0	27.2	15.4
Clerical, government	3.8	12.1	5.6	4.2	7.7
Casino	2.5	1.9	0.0	1.6	5.1
Unskilled labor	16.3	11.1	11.2	9.9	17.9
Homemakers, student	6.3	3.7	11.2	11.0	7.7
Unemployed	6.3	0.9	0.0	1.0	2.6
Retired	15.0	19.4	15.7	25.1	15.4

The data in table 4 present a clear pattern. The players who live nearer to the casinos are less able to afford to regularly participate in gambling activity. However, they participate more than those who live further away. The group of players who live within five miles made an average of 15 visits to the casino annually, and while their incomes are the lowest of all the gamblers they have a per visit loss almost the same as the others. Accordingly we find that they gamble and loss a higher percentage of their incomes. One sixth of these gamblers lose over 5% of their income in casinos, compared to ten per cent of those living between 5 and 15 miles away, and less than five per cent of those living further away. The gamblers who live nearest the casinos are much more

likely to be non-white, to be not married, and to have lower levels of education. They are least likely to have visited other casinos, and they are six times as likely to be unemployed.

Perhaps the state of Illinois has by design followed a socially perverse path by choosing to put casinos in economically distraught locations. Instead of helping the locations achieve economic growth, it appears that the state has brought casino gambling to economically distraught individuals. Instead of giving to them, the state has created a device which takes from them.

B. Casino Players Behavior: The Residents of Illinois by Income Group

Table 5: Illinois' Players by Annual Household Income

	Household Income(\$1,000)		
	Less or equal 10.0	10.1 to 30.0	More than 30.0
Illinois Residents	7.7	22.0	70.3
Number of Visits			
Mean	12.8	8.7	9.3
Median	2.5	2.5	2.5
Gambling Loss as a Share of Income (%)			
Less than 1%	50.0	67.6	75.7
1.1 to 5%	30.0	20.7	19.2
5.1 to 10%	6.7	6.3	2.0
10.1 to 25%	6.7	4.5	2.8

Over 25%	6.7	0.9	0.3
Mean	4.5	2.1	1.2
Median	0.95	0.36	0.22
Gambling Loss per Visit (\$)			
Mean	28.26	31.4	54.2
Median	23.70	23.70	41.5
Gender (%)			
Female	47.8	41.4	31.3
Male	52.2	58.6	68.7
Average Age	43.3	49.2	46.9

Table 5 (continue)	Household Income(\$1,000)		
	Less or equal 10.0	10.1 to 30.0	More than 30.0
Race and Ethnicity (%)			
White	57.8	72.4	75.2
Black	33.3	17.9	18.0
Hispanic	4.4	6.7	2.8
Others	4.4	3.0	4.0
Marital Status (%)			
Married	23.4	44.4	67.4

Not married	76.6	55.6	32.6
Education (%)			
Less than High School	19.1	5.3	3.3
High School Graduate	44.7	46.6	21.8
Some College	19.1	28.6	27.9
College Graduate	12.7	15.7	32.3
Graduate School	4.3	3.8	14.6
Visited other casinos			
Yes	76.2	77.5	84.6
No	23.8	22.5	15.4
Distance of Residence from Casino (miles)			
Mean	25.1	26.4	27.2
Median	20.0	25.0	24.0

Table 5 (continue)	Household Income(\$1,000)		
	Less or equal 10.0	10.1 to 30.0	More than 30.0
Occupation			
Professional, managerial	7.0	10.2	24.6
Sales, services, technical	14.0	24.4	34.4
Clerical, government	11.6	4.0	7.1

Casino	2.3	0.8	1.7
Unskilled labor	7.0	12.0	11.8
Homemakers, student	18.6	13.4	5.7
Unemployed	18.6	0.8	0.5
Retired	20.9	35.4	14.3

Table five merely puts an emphasis on the information presented in table 4. Here we see again that the poor play much more than they can afford. We also note that the poor gamblers are more likely to be women, non-white, and not married. They are less educated, and they are 25 times as likely to be unemployed.

Table 6: Illinois' Players by Selected Groups

	Selected Groups				
	All Play-ers	Poor	Unemploye-d	Senior	Non-White
Illinois Residents (%)	100.0	7.7	1.9	14.8	26.9
Number of Visits					
Mean	9.0	12.8	21.6	8.1	10.9
Median	2.5	2.5	8.9	2.5	5.1
Gambling Loss as a Share of Income (%)					
Less than 1%	44.2	26.7	28.6	44.4	41.9
1.1 to 5%	29.1	26.7	14.3	26.4	24.0
5.1 to 10%	10.1	13.3	0.0	16.7	10.9
10.1 to 25%	9.5	13.3	14.3	8.3	10.1
Over 25%	7.1	20.0	42.9	4.2	13.2
Mean	1.6	4.5	12.0	1.1	2.3
Median	0.27	0.95	2.4	0.29	0.33

Gambling Loss per Visit (\$)					
Mean	46.83	28.26	39.89	37.85	48.67
Median	23.70	23.70	23.70	23.70	29.62
Household Annual Income (\$1,000)					
Mean	46.96	10.00	20.50	37.68	41.14
Median	45.0	10.0	10.0	35.0	35.0

Table 6(continue)	Selected Groups				
	All Players	Poor	Unemploye d	Senior	Non- White
Gender (%)					
Female	35.4	47.8	58.3	34.0	43.6
Male	64.6	52.2	41.7	66.0	56.4
Average Age	47.69	43.28	38.17	71.09	41.47
Race and Ethnicity (%)					
White	73.1	57.8	58.3	91.7	0.0
Black	18.5	33.3	33.3	7.3	69.0
Hispanic	3.9	4.4	8.3	0.0	14.4
Others	4.5	4.4	0.0	1.0	16.7
Marital Status (%)					
Married	59.5	23.4	33.3	70.5	53.8

Not married	40.5	76.6	66.7	29.5	46.2
Education (%)					
Less than High School	4.8	19.1	8.3	8.2	5.3
High School Graduate	29.7	44.7	58.3	43.3	33.3
Some College	27.3	19.2	25.0	28.9	24.0
College Graduate	27.1	12.7	8.3	14.4	26.9
Graduate School	11.1	4.3	0.0	5.2	10.5

Data presented on table six shows that the poor, unemployed, and non-white players play more often and play a larger percentage of their income. It is incredible to find that over forty percent of the unemployed gamblers spend over 25% of their income at the casinos. One eighth of the non-white gamblers wager over 25% of their incomes. The claim that casinos bring tax revenues to the state seems very weak as this information is examined. If casino are devices for gaining government revenues in Illinois, state residents are paying them. Even worse, the poor, the unemployed, the less educated are paying the lions share of these tax revenues. This is a regressive tax with perverse effects in terms of income redistribution.

Casino Players Behavior: The Out-of-State Visitor

Table 7: Out-of-State Players by Reason of Visiting the Area

	Casino as the Main Reason for Visiting the Area	
	Yes	No
State of Origin (%)		
IA, IN, MI, MO, and WI	89.1	48.1
Other States	10.9	51.9
Distance of Residence from Casino (miles)		
Mean	103.1	660.2
Median	60.0	250.0
First Visit (%)		
Yes	21.1	66.7
No	78.9	33.3
Number of Visits		
Mean	7.5	2.1
Median	2.54	1.48

Gambling Loss as a Share of Income (%)		
Less than 1%	82.0	100.0
1.1 to 5%	14.7	0.0
5.1 to 10%	1.7	0.0
10.1% to 25%	0.0	0.0
Over 25%	1.6	0.0
Mean	1.19	0.36
Median	0.20	0.35

Table 7 (continue)	Casino as the Main Reason for Visiting the Area	
	Yes	No
Gambling Loss per Visit (\$)		
Mean	44.6	59.4
Median	35.5	38.5
Length of Visit		
Less than a day	94.5	74.1
One night	5.5	22.2
Two or more nights	0	3.7
Where Staying		
Friends or relatives	6.6	29.6
Hotel outside casino	5.5	29.6
Day-trippers	87.9	40.7
Spend Money on Food and Drinks Outside Casino (%)		

Yes	9.9	18.5
No	90.1	81.5
Spend Money on Food and Drinks in Casino (%)		
Yes	38.6	35.5
No	61.4	64.5
Spend Money on Shopping Outside Casino (%)		
Yes	3.3	0
No	96.7	0
Spend Money on Shopping in Casino		
Yes	1.1	0
No	98.9	0

Table 7 (continue)	Casino as the Main Reason for Visiting the Area	
	Yes	No
Household Annual Income (\$1,000)		
Mean	50.1	61.7
Median	45.0	55.0
Gender (%)		
Female	38.9	25.9
Male	61.1	74.1
Average Age	51	47
Race and Ethnicity (%)		

White	90.1	96.3
Black	6.6	3.7
Hispanic	2.2	0.0
Others	1.1	0.0
Marital Status (%)		
Married	70.0	70.4
Not married	30.0	29.6
Education (%)		
Less than High School	4.5	7.4
High School Graduate	31.5	18.5
Some College	24.7	29.6
College Graduate	24.7	22.2
Graduate School	14.6	22.2

Table 7 (continue)	Casino as the Main Reason for Visiting the Area	
	Yes	No
Visited other casinos		
Yes	83.1	85.2
No	16.9	14.8
Occupation		

Professional, managerial	23.0	26.9
Sales, services, technical	19.4	42.3
Clerical, government	9.1	3.8
Casino	1.1	0.0
Unskilled labor	10.3	7.7
Homemakers, student	6.8	0.0
Unemployed	0.0	3.8
Retired	29.9	15.4

Among out of state visitors, those from adjacent states were most likely to come to Illinois for the essential purpose of gambling. Only 10.9% of those from further states came to gamble. Gambling in Illinois even for out-of-state gamblers is a convenience, not a vacation choice. The out of state who visit Illinois in order to gamble are not likely to stay for even one night. Only 5.5 stayed one evening, none stayed longer. Their expenditures outside of the casino were minimal. Overall, the experience of Illinois casino gaming has not been an experience of bringing tourist money into the state.

Chicago Better Government Association Report

Economic Impact of Riverboat Casinos in Illinois *June 11, 1996*

About the BGA

Mission:

"The Better Government Association (BGA) exists to expose waste, fraud corruption and inefficiency in government, to uphold high standards of public office and to educate the public."

BGA Overview

The BGA was founded in 1923 by a group of concerned citizens and business-people that saw the growing, pernicious influence of the Capone mob as a threat to the electoral process, the principals of good government and their liberty.

Seventy-five years later, the BGA has changed its structure and approach to adapt to the changing world, but it remains committed to the same principles that mobilized it's founders: to fight and expose waste, fraud and corruption in government, to uphold high standards of public service and to educate the public about the operations of their government.

Throughout the organization's history, the BGA's work has proven instrumental in changing poor policy, developing fair practices and in advancing significant government reforms on countless occasions. The BGA's recent successes have improved policies in almost every area of government, including nursing home regulation, health care administration, policies for the awarding of minority contracts, police accountability and the rules governing campaign financing.

The organization prides itself on producing tangible results. The BGA's investigations empower citizens by supplying them the information they need to make informed decisions and often provide the impetus for lively public debate, the most basic element of Democracy.

The BGA's reform efforts are divided into three main programs. The Investigative Program is staffed by investigators and attorneys who use journalistic investigative techniques and litigation to expose government waste and corruption. The Public Policy program works in concert with the Investigative Program to provide solutions to the problems we uncover. The Public Education program provides training for interns, archives of BGA investigations, investigative resources and voter information.

The BGA's multi-layered approach makes it unique in the country. The BGA partners with the local and national media to produce hard-hitting investigations and exposes. More than just a credible media source, the BGA's work is considered by many investigative journalists to be among the finest in the country. In fact, BGA media partners have won every major journalism award and citation—including three Pulitzer Prizes—for their work on BGA investigations.

The Better Government Association is a non-partisan, not-for-profit citizens group. The BGA receives broad-based support from citizens, businesses and foundations—taking no funding from government or political organizations.

Additional information on the BGA may be obtained from the BGA web site, <http://www.bettergov.org/>

Statement to the Press

By J. Terrence Brunner, Executive Director
Tuesday, June 11, 1996

Economic Impact Report of Riverboat Casinos in Illinois

Opening statement at a hearing before the Chicago Metro Ethics Coalition

"Casino riverboats do not contribute to the economic development of the state of Illinois."

"Casino riverboats are detrimental to the economic development of the local areas in which they operate."

These are the conclusions of a study by the Better Government Association and professors William N. Thompson and Ricardo C. Gazel of the University of Nevada Las Vegas, who have conducted a 12 month analysis of Illinois' state sanctioned system of riverboat gambling.

Thompson is a nationally renowned gambling expert.

An editorial in Casino Executive magazine suggested "wouldn't it be wiser to get independent academics like Bill Thompson involved in studying the phenomena that make our industry legitimately controversial, instead of asking the public to trust our trade organizations opinion? More than most industries, gambling needs independent, credible voices who support its right to exist and thrive - most notably customers, employees, and people like Bill Thompson. When push comes to shove, I daresay that these independent voices will have a greater impact on the skeptics than the distinguished Messrs. Wynn and Fahrenkopf." (April 1996)

The BGA, Thompon, and Gazel surveyed 785 gamblers at 5 Illinois riverboats in Aurora, Elgin, Joliet, Alton, and Rock Island.

The survey data, together with casino data and state statistics, have been factored into an economic model developed by Dr. Gazel, assistant professor if Economics, and associate director of the Center of Business and Economic Research, U.N.L.V.

Professor Dan Rickman, Department of Economics Georgia Southern University, also contributed

to the project. He is a nationally recognized expert in regional economic models; particularly the REMI model.

They found that:

The overall statewide monetary impact of casino gambling in Illinois is a negative \$6.7 million. In addition there are regulatory and infrastructure costs, and social costs which Thompson and Gazel estimate to be in the range of several hundred million dollars for Illinois. Which increases the negative impact!

The monetary impact on local areas in a 35-mile radius surrounding the casinos is very large, and very negative. The local areas lose \$239.7 million a year from their economics.

A typical riverboat with \$100 million in annual revenues will result in a loss of \$18,381,321 for the local economy.

For every dollar lost gambling on an Illinois riverboat 18.4 cents is lost from the local economy.

In order to understand riverboat gambling in Illinois it is necessary to revisit the original enabling legislation to ascertain the purpose of the statute. The legislative intent of the 1990 Riverboat Gambling Act [S.H.A. ch. 120, ¶ 2402] states that:

This Act is intended to benefit the people of the State of Illinois by assisting economic development and promoting Illinois tourism.

[A]uthorization of riverboat gambling will enhance investment, development and tourism in Illinois. ...

The stated purpose is to promote tourism and economic development. The statute omits raising additional taxes from its intent. It does not set forth the gambling tax system in the legislation.

It is clear from the report released by the BGA on April 26, 1996 that casino gambling, while a huge commercial success, has been a dismal failure in promoting tourism and economic development. The surveys indicate that 84% of the players are from Illinois and of the out-of-state players a majority come from within 50 miles of the riverboat. Almost no one stays overnight; 97.5% visit for less-than-a-day. Spill over retail sales in the riverboat towns are almost non-existent. Only 3% of out-of-state visitors spent money in town.

Consequently, because job creation and economic development are dependent on bringing new tourist dollars into a community rather than merely transferring sales from local businesses to the casino, there has been no significant economic development.

At the same time, the study has indicated the presence of a "back door" tax increase, which has fallen in an extremely regressive manner on minorities and the poor.

In response to the economic impact study, Michael Belletire, head of the Illinois gaming board, has argued in favor of Illinois riverboats. While admitting the absence of tourism and retail

economic development, he said that there is no doubt that Illinois riverboat communities are "doing better." And, Frank Farenkopf, President of the American Gaming Association, has also responded to our findings.

"Joliet's been an amazing success. How do you explain the fact that they've been able to cut property taxes, rebuild downtown? They're built a new police department and improved the fire department. Obviously, there's money staying somewhere." (*Christian Science Monitor*, June 3, 1996)

How can this wide discrepancy appear between two views of the same facts? Is riverboat gambling a loser as Thompson and Gazel maintain or is there the success described by Belletire and Farenkopf?

Obviously, both Mr. Belletire and Mr. Farenkopf are calling attention to infrastructure improvements in the towns made possible by the revenue from the gambling tax. It is noteworthy that at this point, five years into Illinois' gambling experience, neither attempt to argue for the existence of tourism or economic development. Governor Edgar recently noted that "[gambling] hasn't increased tourism or generated new income...most gamblers come from within a 10 or 20 mile radius of casinos." Edgar also said "a lot of states have allowed legalized gambling just to keep residents from going to other states to gamble." (*Chicago Tribune*, Wed., May 15, 1996)

Now, let's look at the question of infrastructure and governmental improvements in these towns. How do these improvements come about? The Illinois riverboat tax system taxes the "win" of casinos. That is another way of saying the "loss" by gamblers. The gaming tax for riverboats is 20 percent.

In other words, gamblers at the riverboats must lose \$100,000 to produce the \$20,000 in taxes. Of that \$20,000 in gaming tax revenue, \$15,000 goes to the state and \$5,000 goes back to the local community. So, again the gamblers must lose \$100,000 to get \$5,000 back for Joliet or Aurora.

Let's look at what happens to the "win." Three groups of people clearly benefit from Illinois' riverboat gambling policy.
First the winners:

The casino owners: The owners of the casino, who receive \$80,000 of the gamblers \$100,000, keep an estimated \$20,000 in after tax profits. Most have been enriched beyond their wildest dreams. Many are political insiders from both parties.

State politicians: State politicians who keep the citizens' \$15,000 of the gamblers \$100,000 to play with and spend. They do not have to vote to raise property taxes or income taxes. To them, it is like free money falling out of the sky. They then get an added bonus. The insider owners generously take part of their huge profits and give it back to the legislators in the form of campaign contributions. The gambling industry is now the top campaign contributor in Illinois. This allows our legislators to buy advertising to tell us how wonderful this system is, and how they are doing a great job looking out for the interests of Illinois citizens.

City officials: City officials in riverboat towns get \$5,000 to add to their budgets. They can buy more police cars, build downtown malls, plant trees, and expand municipal buildings. All of this at no apparent cost to anyone while the aging downtowns remain empty. It is so cheap it is almost free.

These three groups then explain to national media outlets how wonderful riverboat gambling is. And reporters from publications like *Time Magazine* say: "So, what is wrong with that?" East St. Louis got new squad cars. It must be a good thing. And besides, the casino owners point out that this is all "entertainment"- good, clean fun. Look at how much fun those Illinois citizens are having losing their money. Look at all those smiling faces coming out of the riverboat casinos. One fellow lost \$12,000 in Alton, but they gave him a free jacket.

So everyone is happy- life is grand.

Now, years later, there may be some social costs associated with gambling: problem gamblers, which everyone admits exist. Some suicides here and there, a few farms lost, some broken families, an increase in crime rates to pay for gambling losses. But our mayors are not going to worry about that now. That is later. It is a problem for someone else. They are having too much fun now spending this free tax money.

Is this an accurate picture? A comprehensive picture?

What about the losers? Who are they? How bad is it? Has this system of riverboat gambling boosted tourism, revitalized aging river towns, and jump-started local economies as our legislators promised us? We are reminded of Zeke Georgi's comments during the debate. He's the father of riverboat gambling.

"Now this [gambling] bill is a result of a lot of discussion and talk about economic development....The consensus of the task force is that this will indeed spur economic development, create jobs, boost tourism, bring new life to the rivers of Illinois, cause beautification along the riverbanks."

Our study attempts to put this picture in perspective. If everything is so wonderful, then why are downtown merchants so unhappy?

It is important to look at this because we should determine, six years after its inception, whether riverboat gambling in Illinois is wise public policy. Our state government does not know. Our state gaming board cannot tell us. The BGA and professors Thompson and Gazel have developed an economic model to measure the economic impact of casino gambling on the state and on the river towns. The study is based on state statistics and surveys of Illinois gamblers. We accounted for wages, tips, and benefits, money spent by riverboats in the community, taxes generated: all of the positive factors associated with a gambling enterprise. We also discounted for residential spending in the casino.

We did not factor in the negative social costs.

We applied all of the appropriate multipliers furnished by the U.S. Department of Commerce indicating the recirculation of money as a result of particular economic activity in our area. Thompson and Gazel provided a strict methodology to the approach and expert analysis to the data.

We have found that the monetary impact of casino gambling in Illinois is a negative \$6.7 million, before social costs, infrastructure costs, and cost of regulation. Further, the net monetary impact on local areas is very large, and very negative. As a result of the presence of riverboat casinos, the local areas lose 239.7 million dollars a year from their cumulative economies.

Typically, the operations of a boat with \$100 million in annual revenues results in a loss of \$18,381,321 for the local economy within 35 miles of the riverboat.

For every dollar lost gambling on an Illinois riverboat, 18.4 cents is lost from the local economy. As professor Thompson and Gazel conclude:

Casino riverboats do not contribute to the economic development of the state of Illinois

Casino riverboats are detrimental to the economic development of the local areas in which they operate

But how can this be true?

Remember, the casino owners, the state legislators, the local politicians, and *Time Magazine*, who bought into their explanation, all said that we are experiencing "amazing success." In Illinois we have learned how to gamble our way to prosperity. We have revitalized our aging river towns and built new municipal buildings all without raising anyone's taxes. It is truly amazing. Maybe we ought to apply it to our national defense budget next.

But, there is an overwhelming problem here, a fundamental flaw in this logic, a mistake of dramatic proportions at the heart of this concept. It was all dependent on tourists. And, they did not come. Only new, out-of-state tourists spending new money in the casino create jobs and economic development.

Remember our demographic report released in April. It shows that 84% of our gamblers come from Illinois unlike Las Vegas where 85% come from another state. In order to produce \$20,000 in tax revenue gamblers must lose \$100,000. Last year Illinois citizens lost \$914 million in order to improve the police department in Joliet and put in that mall, and new gutters, and plant new trees in Elgin, and build that fire station in Alton, and buy those police cars in East St. Louis.

Wildly expensive police cars! An expensive, goofy way to raise taxes.

How much did those cars cost? \$10,000? Put it another way, it costs local Illinois citizens owe \$120,000 a piece for those cars. See exhibit A.

We have perniciously developed a system of taxation in Illinois with people in economically depressed areas gambling, losing, and supporting other areas of the state through the taxes on

their gambling losses. The surveys have shown disproportionate play by the poor and minorities.

Thus, the state in its "wisdom" has devised a system meant to generate tourism and economic development, revitalize aging downtowns and jump start economies. In the words of the statute:

"[The Riverboat Gambling Act] is intended to benefit the people of the state of Illinois by assisting economic development and promoting Illinois Tourism."

In reality the state (our legislators) has created a system which strip mines the economies of areas surrounding riverboat towns in order to make casino owners rich and politicians happy. Riverboat gambling in Illinois has turned out to be a loser.

Can anything be done?

Professor Thompson and Gazel suggest that Illinois has created a "socially perverse" system. Clearly, the riverboat system today bears little resemblance to the state goals of the legislature six years ago. As Representative Brunsvold noted at the time:

"In 1980 everything collapsed. We've been struggling through the eighties, trying to diversify, get more jobs in the Quad Cities. Riverboat gambling? Is that the answer? No, that's not the answer, but it's piece of the puzzle that can help us in a different area. Tourism. So I ask you to support this riverboat Bill... gambling Bill because in our area, especially, it's going to be instrumental in helping us get the tourists and economic development that we need for the Quad Cities." (January 11, 1990)

The legislators thought they were buying an elephant, but they got a giraffe. But, surprise! It turns out that there are some people who really like giraffes. They wanted hordes of tourists. They needed hordes of tourists. But none came. They did get a tax increase without having to vote. And, they got a cascade of campaign contributions --\$1.2 million last year alone.

As far as economic development was concerned they produced the worst case scenario: The exact opposite of Las Vegas. Instead of almost everyone being from out of state, almost everyone was from Illinois. As Mayor Joan Laverty Jones of Las Vegas points out:

"Gaming in an area should bring in new people. If the gaming that you bring into your community only draws from the community itself, then that's too high a price to pay." ("The Gamble," *CNN*, Sun., March 27, 1994)

Obviously, if you don't draw "new tourists" you end up cannibalizing your own businesses. As professor Ryan, Director, Division of Business and Economic Research, University of New Orleans, stated in his Chicago testimony: "Many local retailers that sell lottery tickets have observed that their sales of bread, milk, soft drinks, snack food, and the like have decreased by the same amount as their sale of lottery tickets has increased."

Professor Thompson explains that a large supermarket chain in California stopped selling lottery tickets. They found their profit margin on lottery tickets to be much less than on sales of milk and bread.

But, again, surprise! There are those who look at the back door tax increase as a way to avoid having to vote to raise taxes, and if they say that some people want to gamble why should we care. And they are those very happy people the casino owners, the legislators, and the river town politicians.

The most, and maybe the only, significant positive results are those infrastructure improvements in riverboat towns. Those new squad cars in East St. Louis.

But at what cost?

They may be the most expensive squad cars in the nation- \$120,000 squad cars.

In reality, we have unintentionally created a strip mine through the heart of Illinois. We're sucking the money out of the areas most needing economic help. And, now that we have done it we can't seem to recall or explain why.

The original goals have failed, but they've been replaced by new, political beneficiaries who will fight to keep what they have acquired.

We have created an extremely regressive tax system. The people who are hooked, along with the compulsive gamblers, are the politicians. They are hooked on the money.

What we have now is a system in search of a rationale. As the old premises fall, the state will think up new ones.

We badly need a direction for a fundamentally flawed public policy.

As professors Thompson and Gazel remind us, "it is not the boat profits that should be of concern to the government, but rather the economy of the state." They conclude:

"[T]he findings of our study lead us to believe that the suggestions may provide a direction – a philosophy – for a rational future casino policy for Illinois. The policy should incorporate recognition of the facts we have discussed in this study of the monetary economic impacts of riverboat casino gambling as it exists today in Illinois. Certainly, the case has been made that the state desperately needs a guiding philosophy for its casino and gambling policy, and that philosophy will demand many changes."

The Monetary Impacts of Riverboat Casino Gambling in Illinois

William Thompson, Ph.D. and Ricardo Gazel, Ph.D.

I. Introduction

Does casino gambling work for Illinois? A better question would be "How does casino gambling work for Illinois?" Is casino gambling a tool for economic development and a good vehicle for tax revenues? Or is casino gambling a drain on state and local economies and a source of regressive taxation?

In April of 1996, we released a report suggesting that the ten riverboat casino sites in Illinois (nine now in operation) serve markets made up mostly of local residents (persons living close to the sites) and poorer residents to an undesirable degree. Still, that report left unanswered the question of the total economic impact of the casinos on the Illinois economy as a whole and on the local economies in the casino areas. This report seeks to answer this very important question.

II. The Monetary Impact Model

In order to assess the economic impacts of commercial riverboat casino gaming in Illinois, we conducted a detailed regional input-output analysis of gaming. We gathered information which would help us determine the revenues and the expenditures of the gaming operations. We also determined the source of the revenues and the locations of the recipients of the expenditures. We wished to identify monetary flows to and from the local areas around the casinos (areas within thirty-five miles) and also the monetary flows to and from the state as a whole. Quite simply, we are asking where the money comes from and where the money goes.

III. Data Sources

The analysis drew information from many sources. Casino revenues for Illinois were drawn from official state statistics. Taxation projections were determined on the basis of the Illinois state and local taxation rates.

As with the April report, critical data was provided in a survey of players at the casino sites. The player interviews were used to determine the origins of the moneys wagered in the casinos and to assess the spending behavior of the players within and away from the gaming areas. We sought to determine the size of gambling budgets and the frequency with which the players came to the specific casino, other casinos in the state, and casinos in other jurisdictions. Demographic information was collected along with information on other spending behavior of the players.

Personal interviews were conducted with 785 players in five Illinois riverboat casinos. Contacts were made in summer 1995. In eight days and nights during July and six days and nights during August, information was gathered from players at boats in Joliet, Elgin, Aurora, Alton, and Rock Island. The Illinois interviews were conducted by college student interns for the Better Government Association.

IV. Revenue and Expenditures Generated by Illinois Riverboat Casinos

The ten Illinois riverboat licensees generated over \$1.3 billion in revenue for the state economy in

1995. Official reports reveal that \$1.1 billion came from wagering. Our surveys were used to determine that an additional \$108 million was spent inside the casinos on food, beverage, and merchandise purchases. Tips were calculated to add \$46 million to the total. See Table I.

The non-local players spent an additional \$52 million outside of the casinos. Approximately 17% of the patrons were from other states. Non-local Illinois residents made up 22.1% of the players; whereas, 61.3% were local Illinois residents living within 35 miles of the casino sites. See Table II.

The out-of-state visitors were the source of 19.1% (\$249 million) of all the \$1.3 billion generated by visits to the casinos, while Illinois non-locals spent 23.0% (\$300 million), and locals spent 57.9% (\$755 million). See Table III.

By far, the biggest expenditures of the casinos were for employee wages and benefits. The Illinois riverboat casinos have 12,072 employees. We have made an assumption that average annual salaries are \$20,000, with additional benefits of \$5000. The composite wage package for all the employees is therefore \$ 302 million. An additional \$46.7 million was received by employees as tips. Twenty percent of this revenue was spent in federal income taxes for the employees; three percent was paid in state income taxes. The casinos also paid payroll taxes (social security) of \$19,315,200. We assumed that 90% of the employees live within 35 miles, while the others also live in the state.

Various state and local taxes--gaming related and others--constitute an additional expenditure of \$291 million. The 20% gaming win tax is approximately \$220 million, the admission taxes is \$47 million, property and sales taxes are \$7 million, and the state corporate tax is \$18 million. Federal corporate taxes take an additional \$117 million from the casinos. The casinos purchase goods and services worth \$248 million. This includes \$20.8 million worth of food and beverages given as complimentaries to customers. After direct expenditures are paid, the casinos retain profits of \$228 million. See Table IV.

TABLE I: CASINO GENERATED REVENUES ILLINOIS RIVERBOATS

Gambling.....	\$1,097,249,969
Food/Beverage in casino.....	\$104,116,394
Other revenue in casino.....	\$4,038,596
TOTAL REVENUE IN CASINO.....	<u>\$1,205,404,959</u>
Tips.....	\$46,688,966
Non-Locals spending outside of casino	
Transportation.....	\$1,881,298
Lodging.....	\$18,407,125
Food/Beverage.....	\$19,393,803
Shopping.....	\$11,843,219
TOTAL REV OUTSIDE CASINO.....	<u>\$52,071,445</u>
TOTAL CASINO GENERATED REVENUES.....	<u>\$1,304,165,370</u>

TABLE II: RESIDENCE OF PLAYERS

Local (w/in 35 miles).....	14,076,303 (61.3%)
Non-Local Illinois.....	5,392,996 (22.1%)
Out-of-State.....	3,875,184 (16.6%)
TOTAL PLAYERS.....	23,344,483 (100 %)

TABLE III: SOURCE OF CASINO GENERATED REVENUES

Local Players

Gaming.....	\$661,621,981
Food/Beverage in casino.....	\$62,780,312
Other Revenue in casino.....	\$2,435,200
Tips.....	\$28,152,606
Total.....	\$754,990,099 (57.9%)

Non-Local Illinois Players

Gaming.....	\$253,484,493
Food/Beverage in casino.....	\$24,052,761
Other Revenue in casino.....	\$932,988
Tips.....	\$10,785,992
Outside Rev (\$2.03 each).....	\$10,947,781
Total.....	\$300,204,016 (23.0%)

Out-of-State Players

Gaming.....	\$182,143,495
Food/Beverage in casino.....	\$17,283,321
Other Revenue in casino.....	\$670,407
Tips.....	\$7,750,368
Outside Rev.(\$10.60 each).....	\$41,123,664
Total.....	\$248,971,253 (19.1%)
TOTAL GENERATED REV.....	\$1,304,165,370 (100 %)

TABLE IV: CASINO EXPENDITURES—ILLINOIS RIVERBOATS

Total Wages/Benefits.....	\$301,800,000
Wages + Salaries.....	\$241,440,000
Benefits.....	\$60,360,000
Tips.....	\$46,688,966
Payroll Taxes.....	\$19,315,200
Complimentaries.....	\$20,823,279
Taxes.....	\$273,559,656
Gaming Tax.....	\$219,449,994
Admission.....	\$46,688,966
Sales.....	\$6,246,984
Property.....	\$1,173,712
Purchases.....	\$225,901,240
DIRECT CASINO COSTS.....	\$841,399,374
PROFIT PRE-CORP. TAX.....	\$364,005,585
ILLINOIS CORP. TAX (5%).....	\$18,200,279
FEDERAL CORP. TAX (34%).....	\$117,573,804
RETAINED PROFITS.....	\$228,231,502

V. Impact Analysis

In order to assess the economic impacts of casino gaming operations in Illinois, we made several calculations. The calculations and their resulting conclusions appear on Tables V and VI. To get to the bottomline, we had to do more than just consider the residency of the players. Our surveys told us critical information about players' behaviors. From the survey information, we estimate that 30% of Illinois gamers would gamble in other jurisdictions if casinos were not located in Illinois. Therefore we looked at 30% of the resident gaming activity as an import-substitution activity. That is, the money gambled was a positive factor for the state and local economies, as if the players were from out-of-state. On the other hand, we discounted a portion of the out of state players' expenditures as many said they would have made their excursion into the state and spent money even if there were no riverboat casinos in the state.

We made several assumptions about the taxes in Illinois. We looked beyond direct tax revenues and assumed that 20% of Illinois state taxes would be returned to the local area in terms of service activities. Therefore, we assigned that portion of general state taxes to the tax revenues of the local government (within 35 miles of the casinos) in addition to the portion of casino taxes that were specifically earmarked for the local governments.

Casino profits in Illinois are shared mainly by national corporations that may or may not be based in Illinois. In any case, their utilization of profits is not determined by loyalties to geographical areas. As Illinois has approximately 5% of the national population, we felt that local reinvestments would not exceed twice that percentage. We assumed that 10% of the bottomline net profits would remain in the state (equally distributed between local and non-local areas), and 90% of the profits would leave the state.

Accompanying the basic task of assigning revenues and expenditures to each geographic area identified is the task of determining the full impact of these additions and subtractions of money from each sector. This task is accomplished through the use of multiplier factors furnished by the United States Department of Commerce RIMS II Model for various economic sectors for each state. The multiplier is an identification of the recirculation of money as a result of a particular economic activity in a particular area. For instance, in Illinois, if we have a retail multiplier of 2.4184, that means for each additional dollar in final demand for the retail sector an additional \$1.4184 is generated in the area's economy. In short, the effect of spending one dollar on a retail item in Illinois actually will add \$2.4184 to the economy. Similarly, when a dollar otherwise heading for a retail sale is diverted to another area of spending (economic sector or geographic area), the economy loses \$2.4184. The RIMS II Model did not provide a "government sector" multiplier for Illinois. We made the assumption that the appropriate multiplier for governmental activity was the mean of multipliers for wholesale activity (purchase of goods by the government) and retail activities (due to wages and salaries and other expenditures). We assumed also that revenues gambled would otherwise be spent mostly in the retail sector and for these we used a retail multiplier. (A complete explanation of the RIMS II multipliers is found in U.S. Department of Commerce, B.E.A., Regional Multipliers: A User Handbook for the Regional Input-Output Modeling System RIMS II, Washington, D.C.: U.S. Government Printing Office, 2 ed., May 1992.)

A. Monetary Impacts for the Entire State

(1). Positive Impact factors.

The positive impacts are a compilation of all money generated by casinos and remaining in the state after the casinos make their expenditures. Direct impacts are supplemented by indirect impacts resulting from the application of appropriate multipliers in order to determine total impact.

All of the after-tax wages and most of the employee benefits remain in the state. Some of the benefits are expenditures given to out-of-state service providers. With the multipliers, the total wage positive impact is \$557.9 million, and the impact of benefits is \$88.3 million. We assume that 85% of the purchases are made from in-state vendors. These yield another \$404.6 million in positive impact. Non-resident expenditures outside the casinos result in another positive impact of \$118.4 million. This figure includes a portion of expenditures made by Illinois residents who otherwise would have left the state to gamble if Illinois did not have riverboat casinos. Retained profits provide an additional positive impact of \$55.6 million. The direct and indirect impact of state and local taxes is \$675.1 million.

The total of all the direct and indirect positive impacts is \$1,900.1 million (or \$1.9001 billion).

(2). Negative Impact factors.

The net monetary impact of riverboat casino gambling is a differential between the total positive and total negative impacts.

The largest negative impact results from losses to the economy due to residential spending. This spending--both on gaming and non-gaming activities stimulated by the presence of the casinos--produces a direct loss of \$738.6 million and an additional indirect loss of \$1,047.6 million for a total negative impact of \$1,786.3 million. This negative impact does not include the portion of local spending that we assume would have otherwise left the state had the riverboats not been operating in Illinois. Added to this negative impact is an additional negative impact of \$120.5 million which represents non-resident spending that would have been made in Illinois even if there were no casinos in the state.

The casinos generate total negative impacts of \$1906.8 million (or \$1.9068 billion).

(3). The Net State Impacts

The net monetary impact of the presence of riverboat casinos in Illinois is a negative \$6.7 million dollars.

Table V: MONETARY IMPACT OF THE CASINOS FOR ILLINOIS

Source of Impact (multiplier)	Direct Effect	Indirect Effect	Total
Wages and Tips after Income Taxes (2.4389)	\$228,774,399	\$329,176,162	\$557,950,561
Employees Benefits (2.4389)	\$36,216,000	\$52,110,043	\$88,326,043
Local Purchases of Goods and Services (2.1135)	\$191,458,226	\$213,188,735	\$404,646,961
Non-Local Expenditures in Non-Casino (2.4184)	\$48,947,159	\$69,426,650	\$118,373,809
Local Profit Rate (2.4389)	\$22,283,150	\$32,839,500	\$55,662,651
Plus All State and Local Taxes (2.2762)	\$296,612,995	\$378,532,759	\$ 675,145,754
Sub-Total -- Positive Effect	\$824,831,929	\$1,075,273,850	\$1,900,105,779
Minus Loss due to Residential Spending (2.4184)	(\$738,635,880)	(\$1,047,681,133)	(\$1,786,317,013)
Minus Loss due to Non-Casino Tourist (2.1135)	(\$57,014,418)	(\$63,485,554)	(\$120,499,971)
Sub-Total -- Negative Effect	(\$795,650,298)	(\$1,111,166,687)	(\$ 1,906,816,984)
Total Monetary Effect	\$29,181,632	(\$35,892,837)	(\$6,711,205)

Parenthesis indicate negative numbers

B. The Monetary Impacts for the Local Casino Areas

(1). Positive Impact Factors.

The monetary impacts on the areas within 35 miles of the casino sites is determined in the same manner as the overall state impact. Our analysis considers the cumulative local impacts of all casino sites (the Jo Davies County site was in operation at the time of data collection).

The wage and benefits impact is less than that for the state as a whole, as we assume that only 90% of the workforce lives within 35 miles of the casinos. The total impacts are \$506 million and \$79.5 million. Sixty percent of the purchases are from vendors living within 35 miles; thus, \$134.0 million in purchases yields a total positive local impact of \$283.1 million.

Non-locals (plus locals who would have left the area to gamble elsewhere in the absence of Illinois casinos) spent \$52.1 million outside of the casinos for a total impact of \$125.9 million. Locally retained profits provided an additional positive impact of \$27.8 million.

The local share of gaming and admissions taxes, plus other local taxes, and 20% of the general state taxes generated by the casino operations resulted in total positive impacts of \$279.5 million for the local areas.

The total cumulative positive impact for the local areas was calculated to be \$1,301.9 million (or \$1.3019 billion).

(2). Negative Local Impacts

The negative impacts include gaming and gaming inspired spending by the residents of the areas within 35 miles of the casinos who would not travel to gamble in other jurisdictions in the absence of the local casino. This spending and the spending by non-locals who would have come to the area even in the absence of casinos resulted in negative impacts of \$1,278.1 million and \$263.5 million for a total negative factor of \$1,541.6 million (or \$1.5416 billion).

(3). Net Local Impacts--Bottomline Conclusions

The differential between positive and negative monetary impacts for the local areas is very large. As a result of the presence of riverboat casinos, the local areas lose \$239.7 million dollars a year from their cumulative economies.

Table VI: MONETARY IMPACT OF CASINOS ON LOCAL AREAS

Source of Impact (multiplier)	Direct Effect	Indirect Effect	Total
Wages and Tips after Income Taxes (2.4389)	\$207,452,856	\$298,497,275	\$505,950,131
Employees Benefits (2.4389)	\$32,594,400	\$46,899,039	\$79,493,439
Local Purchases of Goods and Services (2.1135)	\$133,971,414	\$149,177,169	\$283,148,583
Non-Local Expenditures in Non-Casino (2.4184)	\$52,071,445	\$73,858,138	\$125,929,584
Local Profit Rate (2.4389)	\$11,411,575	\$16,419,750	\$27,831,325
Plus Local Taxes + 20% state taxes (2.2762)	\$122,827,154	\$156,750,049	\$ 279,577,203

Sub-Total -- Positive Effect	\$560,328,844	\$741,601,421	\$1,301,930,264
Minus Loss due to Residential Spending (2.4184)	(\$528,493,069)	(\$749,614,569)	(\$1,278,107,639)
Minus Loss due to Non-Casino Tourist (2.1135)	(\$124,662,787)	(\$138,812,013)	(\$263,474,799)
Sub-Total -- Negative Effect	(\$653,155,856)	(\$888,426,582)	(\$1,541,582,438)
Total Monetary Effect	(92,827,012)	(\$146,825,162)	(\$239,652,174)

Parenthesis indicate negative numbers

The losses we have discovered also can be explained in terms of total casino revenues. In Table VII, we show the economic impact losses resulting from the operations of a "typical" boat which generates \$100,000,000 in annual revenues. This is the approximate average revenue of a single boat in Illinois. The commercial activity of that one boat results in a monetary loss of \$541,749 for the state's overall economy, and a loss of \$18,381,321 for the local economy within thirty five miles of the boat. Another way of saying this is that for every one dollar that is lost gambling on an Illinois riverboat, 18.4 cents is lost for the local economy.

**TABLE VII
REVENUE IMPACTS OF A \$100 MILLION CASINO**

Total Revenues	\$100,000,000
Casino Revenues	\$96,007,275
Non-Casino Rev.	\$3,992,725

Monetary Impacts	
Local Area	(\$18,381,321)*
Entire State	(\$541,749)*

* Parenthesis represents negative numbers

Casino riverboats do not contribute to the economic development of the state of Illinois. Casino riverboats are detrimental to the economic development of the local areas in which they operate.

VI. Policy Recommendations

The findings of the study described above must become matters of concern for Illinois policy makers and for those with influence over the policy makers--e.g., the general public of the state of Illinois. Quite simply, these findings suggest the establishment of riverboat casino gambling has failed to accomplish the goals legislators sought when approving legalization in 1990. The casinos have not resulted in economic revitalization of depressed river communities. Instead, it appears that the casinos have had the opposite economic effect. Casinos have drawn monetary resources away from depressed communities and away from individuals who are economically poor--those who can least afford the costs of gambling. The situation we have described may be very much worse than the figures we identify in the findings. First, we believe that our assumptions are conservative; they are ones that probably make the situation appear better than it really is. Second, we have left other costs out of our monetary impact model. We have not considered the costs of certain external factors, such as the need for extra police services because of the presence of casino gambling, the need for extra public infrastructure because of the presence of casino gambling, the societal costs of crime that most likely

has appeared upon the Illinois scene as a result of the introduction of casino gambling, and most importantly, the societal costs of compulsive gambling behaviors arising from casino gambling in Illinois. We admit that it is very difficult to put precise cost figures on these items. However, that does not mean that they are not real, and that does not mean we should ignore these factors. All of these factors represent negative social costs for the casino communities and for the state of Illinois.

In a recent collateral study, we survey and address the social costs of casino gambling in Wisconsin. We determined through survey methodologies that 0.9% of the adults of Wisconsin were serious problem gamblers. Casinos in Wisconsin were deemed to be a determining factor in 0.38% of the total adult population's development of these problems. Moreover, we conservatively estimated (through a survey of problem gamblers) that each serious problem gambler imposed social costs of approximately \$8,600 per year upon the Wisconsin economy. These costs included items such as frauds, thefts, bad loans, bad checks, lost work time, unemployment and welfare benefits, insured or publicly supported medical costs, and criminal justice system costs. We suggest that the more rural nature of the Wisconsin population and the more rural setting for Wisconsin casinos (on Native American lands) make the numbers in that state considerably lower than we would expect to find in Illinois and in other areas of the country.

Nonetheless, if we accept, what we believe to be, the very low estimates from Wisconsin to be the same as would be found in Illinois, we have a large problem in Illinois. With an adult population of 8,570,000 (1992 estimate), we would expect 32,566 people in the state to be serious problem gamblers because of the presence of riverboat casinos. If each imposes social costs of \$8600 upon the state's economy each year, the state is experiencing an extra severe negative burden as a result of the riverboats. These conservative estimates lead us to believe that at least \$280,067,600 in social costs are lost to the economy because of the riverboat casinos in addition to the economic impact losses already identified. This is equivalent to 23% of the total gaming wins of all the casinos. The pattern of market activity being directed at local area gamblers further suggests that the bulk of this additional negative cost of gambling is also being borne by the local areas around the casinos.

What then should be the future course of policy making and of the study of casino gambling in Illinois? We suggest the following items for thought.

A. Gaming Expansion, Retraction, and Reinvestment

The current number of licenses for riverboat casinos should not be expanded. There should be no additional casino gambling if that gambling is made generally accessible to the public at-large as current riverboat gambling is.

Some thought should be given to ways to decrease the current volume of local-resident casino gambling in Illinois. One way might be to refuse to grant new licenses if any current licensee ceases to do business as a casino operator.

Current operators do not have good opportunities to reinvest profits into the casino communities. For instance, they are not allowed to expand gambling operations or put new boats into operations. The operators might be required to invest funds into tourist facilities such as hotels and motels in the direct vicinity of the boats. They should be encouraged to make reinvestment into the local areas. They should also be encouraged (or required) to develop marketing plans which emphasize tourism opportunities in Illinois. Hotel construction might be mandated for renewal of licenses over a reasonable period of time. Casinos should have incentives for maintaining high levels of occupancy in

the hotels.

As Illinois is located in the middle of the nation, in a population sense, and also in the middle of major traffic flows north and south, east and west, focused marketing attention should be directed at the traveler passing through from a home destination to a final destination. Boats with tourism amenities--especially hotels--are positioned to capture tourists headed for New Orleans and the Gulf Coast, for Nashville and Branson. The suburban Chicago casinos could welcome Chicago destined tourists by offering them day trips into the city for shopping, museum visits, or sports events. The East St. Louis and Alton casinos could do the same for visitors to St. Louis. Casinos near race tracks could even provide transportation for those staying at the casino hotel to the tracks. By linking into other entertainment experiences, the casinos will enhance their own products for visitors. It is obvious that such efforts will carry costs. At the present time, most of the boat operations might consider such costs to be frivolous, as the benefits would not be directly recognized. After all, the boats are now experiencing very good profits. However, it is not the boat profits that should be a concern to the government (as long as they are making adequate returns), but rather the economy of the state. The state should be prepared to work with casinos to make strong efforts to bring in guests from other states.

Illinois does not exist in a vacuum. Illinois residents will gamble whether or not there are casinos in Illinois. All the states surrounding Illinois offer opportunities for Illinois residents to gamble. Almost all of the Illinois population is within a convenient one day round trip to a casino in another state. Chicago residents have easy commutes to casinos in Wisconsin (Milwaukee and Baraboo) as well as in Indiana (soon in East Chicago, Gary, Hammond, Michigan City). Most of the residents of the southern and western portions of the state are also located within a one hour drive of casinos in either Iowa, Missouri, or southern Indiana (Evansville). Additionally, the growing complex of casinos just outside of Memphis (Tunica, Mississippi) is less than a half-day's drive from downstate Illinois. Of course, Las Vegas will always have its draw over persons seeking gambling opportunities. If all the Illinois casinos closed, all of the Illinois casino gambling (legal) would result in outflows of Illinois money. However, it is also certain that the amount of gambling by Illinois residents would be considerably less if there were no casinos in Illinois. The presence of Illinois casinos does create outflows of moneys from the state which are not matched by moneys coming into the state from visitor gamblers. The result is a net outflow of moneys from the state.

More large Illinois casinos, operated as the ones already in place, would cause greater diversions of revenues from the state and may also exacerbate any social costs attending to casino gambling in Illinois. A balanced policy should consider a freeze on the number of licenses for casinos and a freeze on the conditions of gambling operations. Cruises introduce a certain inconvenience that will discourage gambling. So do time-restricted operations and use of mock cruise schedules in bad weather. Some state incentives for marketing trade-offs might be considered in terms of allowing more dockside gaming albeit with set time schedules. Maybe casinos with hotels could offer extra dockside "cruises" after midnight. Perhaps they could offer open gaming exclusively for patrons staying at casino hotels or ones on special group tours. For casinos that do not succeed economically and close operations, strong consideration should be given to not permitting relicensing.

It would be wise not to consider plans to allow larger boats--that is to keep the 1200 gaming positions restriction in place. There should be no easily accessible large casinos for Chicago, either river or land based. The distance to the three suburban location serves as a barrier to impulse gambling for Chicago players. The similar distance and ambiance of northern Indiana locations serves as such a barrier also.

Horsetracks should not be given casino facilities, nor should they have to survive in the face of increased casino facilities elsewhere.

B. Disincentives for Local and Lower Market Players

Casinos should be required to have disincentives for local gamblers and lower income gamblers. These could include mandatory parking fees, higher mandatory admission fees that may not be waived and dress codes during peak seasons. Such fees might be included in hotel room rates for non-local visitors.

Casinos should eliminate the use of money machines. Players should be encouraged to use travelers checks and pre-approved checks drawn upon existing verifiable funds in banks. Under no circumstances should the casinos cash payroll checks, government checks of any kind, or third party checks. The state should strictly monitor any ATM machines within a reasonable walking distance of the casino area. Perhaps any ATM machine within five miles of a casino should be limited to single daily withdrawals which must be made against accounts with positive fund balances. On the other hand, the casinos should install "reverse" ATM machines which allow players to make deposits into their accounts. Simple credit card use for meals and gift shop items should remain as is. Cards should not be used for cash advances. The state should immediately assess the interest-rates and access-fees charged by credit card companies for cash advances in the casinos at present. The state should reveal to the public exactly who receives the commercial profits from these fees. The state should also make a general study of card use by persons on public assistance and persons entering bankruptcy to ascertain the extent of use of cards for gambling purposes.

C. Determination of Certain Social Costs—Programs to Control the Costs

The state must examine the issue of compulsive gambling. A Wisconsin study cannot be relied upon for estimating the extent of problem gambling in Illinois. There must be refined studies of prevalence rates and determinations of the societal costs attached to the compulsive gambling. Casino taxation should bear some relationship to these costs, although the state should be wary of developing taxes that will only extract more money from the local casino areas.

The state should fund 1-800 telephone numbers for services to compulsive gamblers, educational programs in schools warning of problem gambling, and some funding of treatment programs. The state should tap all of its gambling revenues sources (lottery, track, as well as casino) for these purposes.

Casinos should follow the lead of Harrahs Casinos and establish in-house programs to give services to employees and their families if they suffer from compulsive gambling behaviors. The employees should also be trained to recognize compulsive players, to intervene to stop compulsive play and to direct players to help services. Severe problem players should be banned for all Illinois casinos. Programs for voluntarily self-banning should be put into place immediately. Such voluntary banning could involve limits on play as well as complete banning.

The state should fund a comprehensive study of crime incidence in casino counties and other counties before and after the introduction of casinos and seek to assess the costs (or removal of costs) of crime because of casinos.

D. Taxation and Enterprise Zones for Local Economic Development

With the exception of regulatory costs and social costs attached to gambling, the casinos should be free

from the burden of state taxation. Any state gambling taxes which are taken from the casinos to be placed into the general fund or other funds which finance general services of the state governments are completely adverse to the interest of state casino policy. That policy calls for economic development of distressed communities. The taxation can only take money away from communities in need.

The state should immediately consider changing the taxation formula from one of taking 15% taxes for the state and 5% for local area to one of taking 15% for the local area and 5% for the state. All admission taxes should go to local areas. For tax purposes, the local areas should be expanded to include all the local governments within 35 miles of the casinos.

The local gaming tax money should not go to local governments for services that can be financed by existing local taxes. Rather, the money should be earmarked for grants and tax relief for state designated enterprise zones near the casino locations. Other enterprise zones could also be created in non-casino counties. The state's share of gambling taxes should underwrite these non-casino area enterprise zones. The basic incentive for the enterprise zone should be direct property tax relief for businesses and other relief from business taxes, licensing fees and code fees not directly related to services for the businesses and for public safety needs posed by the existence of the business. State lottery revenues could also be dedicated to this purpose.

While the Illinois congressional delegation should encourage federal studies which address the research needs identified above, the delegation should vigorously fight any effort to impose a new federal tax on gambling revenues. Such a federal tax would only exacerbate the negative monetary impacts to the local casino communities that have been identified by this study.

Casino businesses should have disincentives for taking business away from other community businesses. The admission fee for the casino should be collected from anyone patronizing a casino enterprise such as a restaurant, bar, or shopping area within the direct confines of the casino boarding area.

E. A Policy to Keep Casinos May Be Advisable?

The state may also wish to study possibilities for limited access casino gambling which could target affluent (certainly non-poor) persons especially those from other jurisdictions to replace some of the existing ones. Perhaps some thought could be given to a restricted access gaming center in interstate and international airports. A high-end, closed membership casino club might also be considered for business persons and out of town guests who come to Chicago.

F. We Raise Questions; We Don't Have All The Answers

Our study has not directly addressed all the specific suggestions just listed. Rather, the findings of our study lead us to believe that the suggestions may provide a direction--a philosophy--for a rational future casino policy for Illinois. The policy should incorporate a recognition of the facts that we have discussed in this study of the monetary economic impacts of riverboat casino gambling as it exists today in Illinois. Certainly, the case has been made that the state desperately needs a guiding philosophy for its casino and gambling policy, and that philosophy will demand many changes.