

MINUTES OF THE HOUSE JUDICIARY COMMITTEE

The meeting was called to order by Chairman Mike O'Neal at 3:30 P.M. on January 18, 2007 in Room 313-S of the Capitol.

All members were present except:

Ben Hodge- excused
Kevin Yoder- excused

Committee staff present:

Jerry Ann Donaldson, Kansas Legislative Research
Athena Andaya, Kansas Legislative Research
Jill Wolters, Office of Revisor of Statutes
Duston Slinkard, Office of Revisor of Statutes
Cindy O'Neal, Committee Assistant

Conferees appearing before the committee:

Representative Steve Brunk
Becky Gaughan, individual
Darren, Terri & Andrea Brooks
Beatrice Swoopes, Kansas Catholic Conference
Jeanne Gawdun, Kansans For Life
Senator Phil Journey

Representative Watkins requested a bill on behalf of Representative Wilk regarding counties enforcement of county codes and resolutions. He made the motion to have the bill introduced as a committee bill. Representative Proehl seconded the motion. The motion carried.

Representative Kinzer requested a bill relating to construction contracts. He made the motion to have the bill introduced as a committee bill. Representative Watkins seconded the motion. The motion carried.

Representative Ward requested two bill introductions:

- municipal courts enforcement of judgements
- blight regulations

He made the motion to have his requests introduced as committee bills. Representative Owens seconded the motion. The motion carried.

The hearing on **HB 2006 - Alexa's law; crimes against an unborn child**, was opened.

Representative Steve Brunk appeared as the sponsor of the proposed bill. He explained that it defines an unborn child as a person for use in the criminal code. The bill would not apply to any acts committed by the mother of an unborn child, such as any medical procedure performed by a licensed medical professional, including abortion. (Attachment 1)

Becky Gaughan, individual, relayed her story of losing her unborn child in an automobile accident in 1994 and how it affected her life. (Attachment 2)

Darren, Terri & Andrea Brooks spoke about Chelsi & Alexa, her unborn child, being kidnaped and murdered in 2006 and how mortified they were to find out that the alleged murders could only be charged with one murder instead of two. (Attachment 3)

Beatrice Swoopes, Kansas Catholic Conference, supported the proposed bill. This bill offers the opportunity to protect both the pregnant woman and her unborn child from violent assaults and murder. (Attachment 4)

Jeanne Gawdun, Kansans For Life, appeared as a proponent of the bill. The American legal system has a double standard on the significance and legal nature of the unborn child. Inheritance, insurance rights, certain wrongful death lawsuits and child custody orders already accommodate the unborn child. She provided information on other states and their fetal homicide laws. (Attachment 5)

CONTINUATION SHEET

MINUTES OF THE House Judiciary Committee at 3:30 P.M. on January 18, 2007 in Room 313-S of the Capitol.

Senator Phil Journey reminded the committee that the intent of the bill was to allow for the criminal prosecution if an unborn child is murdered. The bill does not address the viability of life issue. (Attachment 6)

Written testimony was provided by Kansas Coalition Against Sexual & Domestic Violence & Right to Life of Kansas. Both of which had concerns with the proposed bill. (Attachments 7 & 8)

The hearing on **HB 2006** was closed.

The committee meeting adjourned at 5:00 p.m. The next meeting was scheduled for January 22, 2007.

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**ALEXA'S LAW TESTIMONY
REPRESENTATIVE STEVEN R. BRUNK DISTRICT 85**

Thank you Chairman O'Neal and committee for allowing us to present this important bill to you today. It is our hope that you will consider Alexa's Law, and pass it out of this committee favorably and intact to the full House.

I will soon introduce the proponents of this bill to you. First, a brief history of the bill and a "walk through" is in order. It is just as important to know what this bill is not about, as it to understand the intent of the bill itself.

Alexa's Law has previously been known as the "Unborn Victims of Violence Act." It was introduced and passed through the House in 2003, only to move to the Senate where the movement of the bill stopped. In 2005, the beginning of our previous legislative cycle, the bill passed again through the House by an 85-38 margin, only to receive no committee action in the Senate.

We understand that the wheels of government move incrementally slow ... and that's not always a bad thing. The right timing, joined with public interest, will help move a bill to completion. Often a tragedy or the discovery of an injustice will be the needed impetus to get the right legislation moving.

We have some recent examples in our own legislature.

After 20 years of complaints about abuse at the Kaufman House in Newton, we passed legislation that expedited the reporting process and changed the way we treated the individuals and their complaints, all to bring help bring justice to future victims of abuse and neglect. When the women from the home came to testify, it was suddenly very personal and very public.

There was a much publicized case of animal cruelty. The public was engaged in the issue and enraged to discover that this kind of torture was not a felony. That despicable act of torture triggered a sequence of events that led to the passage of Magnum's Law.

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We hear all too frequently of a child that is abducted by a sexual predator. Early on our sensibilities were shocked, only to be dulled by the frequency of such abductions. After national attention was focused on the tragic taking and murder of little Jessica Lunsford in Florida, there was a surge of laws passed across the country that brought justice to sexual predators, and provided justice for the victims and their families.

Last year Kansas passed our own version of Jessica's Law. The timing was right ... the public was engaged ... and a tragedy was the impetus for justice through legislative action.

Such is the case today.

This past summer in Wichita Kansas Chelsea Brooks and her soon-to-be-born baby, Alexa Lynn, were brutally murdered. Chelsea was a minor girl, but "the man" who impregnated her was an adult, making this a crime in the state of Kansas. At 14 years of age and in the 8th grade, Chelsea accepted the consequences of her actions. She and her parents chose to keep the baby and raise her in the family.

When Chelsea was just days away from the birth of baby Alexa, the father of her child and two other hired men lured Chelsea into a vehicle and strangled her to death, killing both her and baby Alexa. They threw her body into a ditch and drove away. Five hundred bucks was the reported price the father paid his two companions to help him brutally murder Chelsea and Alexa, all to avoid the consequences of his actions.

While two human beings were murdered that day, Kansas law only allows for the prosecution of one. In Kansas, baby Alexa, just days this side of her birthday, is a non entity. A nothing. It's as if she never existed, was never wanted, was never loved and cherished by her family.

In Kansas there is no justice for Alexa. If this were a federal crime there would be justice for Alexa. If this were in Missouri there would be justice for Alexa. If this were in at least 34 other states there would be justice for Alexa. If this were in California there would be justice for Alexa. Do you remember Laci Peterson and her unborn baby Connor, murdered by her husband Scott Peterson? In California, that was two crimes ... not one.

But not in Kansas. Two deaths occurred... but only one of the murders will be prosecuted.

Alexa's Law is about justice.

I would like to draw your attention to the bill before you. Again, it is important to know what this bill is not about, in addition to knowing the bill.

First note that this is about crimes. It is not about probate, inheritance, or any other topic. In section 2 it changes the Kansas criminal code. This law is about crimes committed against unborn children.

Abortion is consistent with the existing definition in statute. There is no attempt or desire to change or redefine what an abortion is. This bill is not about abortion.

Note in line 19 of the bill that the unborn child must be "in utero". There is no attempt or desire to start or stop any existing, or future research, that would be conducted in a laboratory or research facility. This bill is not about research.

There are some specific exceptions in this bill. In Section 1. (c) and following, you will see that any act committed by the mother shall not apply. There are individuals and organizations that would like to distract you from the intent of this bill. They would try to convince you that a pregnant woman who uses drugs and injures her baby could be convicted under this law. Not so. The actions of the mother are specifically excluded.

You will see that the act of abortion itself is excluded from this bill and shall not apply. There are those who would have you believe that this bill will eliminate or hinder a woman's right to choose. Not so. The act of abortion is specifically excluded. Any statement to the contrary is simply false.

Additionally, please note that the lawful dispensation or administration of lawfully prescribed medication is also excluded in this bill.

In short, this bill has nothing to do with abortion.

It has everything to do with justice.

I have completely "depoliticized" this bill.
It is my desire to focus on justice and justice alone.

There are some who may come today to say that we shouldn't be talking about justice for an unborn human being. They may say that we should focus on strengthening the law as it applies to pregnant women and forget about justice for Alexa and those like her.

Why? What is there about a pregnant woman that would make her more "important" or "valuable" in the eyes of the law than a woman who is not pregnant? Or has just given birth? Is she suddenly less valuable seconds after the delivery of her baby?

Please note the photograph of this woman. I knew her when she was a little girl. Today she is an adult and not pregnant in this photo. She has a certain value in the eyes of the law. Is she less valuable than a pregnant woman?

Let's look at this woman. She is not pregnant in this photo, but as you can see she has five children. Have her pregnancies made this woman have more value then less value, more value then less value, more value then less valueand so on?

These two pictures are of the same woman ... Representative Masterson's wife, Marlo. Now with five born children, is she less valuable in the eyes of the law than she was while pregnant? Wait ... this is a current photo of her. Is she more valuable now? We see a very pregnant Marlo with her sixth child ... an unborn baby girl.

The opponents of Alexa's Law would like to use this argument to distract you from the focus of this bill. And the singular focus of this bill is about justice as it relates to crimes against unborn children. This bill is not about pregnancy.

Interestingly, there are already statutes in place as it relates to crimes against a pregnant woman. Attached to my testimony are the specific statutes that relate to crimes and punishment for injury to a pregnant woman. They were enacted in 1995 when SB16 was passed into law. In fact, the next proponent of Alexa's Law will testify about her own experience as it relates to SB 16, enacted 12 years ago.

I want to close by showing you something.

As I began talking about Alexa's Law before the election, it occurred to me that the public would like an opportunity to express their desire to see justice done. With the family's permission, I asked a friend to put up a website showing a picture of Chelsea and her baby, Alexa, along with a statement from the family. We provided a place to show their support and to download a petition asking that Alexa's Law be passed.

I could have asked them to write, call, and email all of you on this committee. I chose not to do that. Instead, I had them send their petitions, letters, or emails to me. I had no idea what to expect. Without any real effort on my part these people have either signed on line or have signed the petitions that you see now. There are an estimated 5,500 to 6,000 signatures so far. These are Kansans from all across the state that have heard about Alexa's Law, and have taken it upon themselves to get involved.

I want the committee to know that the public is becoming increasingly engaged in this issue, and that to date, I have intercepted thousands of emails and faxes that would have come to your inbox.

Please pass Alexa's Law intact out of your committee. The time is right, the public is engaged in the issue, and a devastating tragedy has occurred that cries out for justice. It is in our hands. It is right, it is just, and it is our duty to pass this bill.

Alexa's Law. It's about justice.

Representative Steven R. Brunk District #85

21-3440

Chapter 21.--CRIMES AND PUNISHMENTS
PART II.--PROHIBITED CONDUCT
Article 34.--CRIMES AGAINST PERSONS

21-3440. Injury to a pregnant woman. (a) Injury to a pregnant woman is injury to a pregnant woman by a person other than the pregnant woman in the commission of a felony or misdemeanor causing the pregnant woman to suffer a miscarriage as a result of that injury.

(b) As used in this section, "miscarriage" means the interruption of the normal development of the fetus, other than by a live birth, resulting in the complete expulsion or extraction from a pregnant woman of a product of human conception.

(c) Injury to a pregnant woman in the commission of a felony is a severity level 4, person felony. Injury to a pregnant woman in the commission of a violation of K.S.A. 21-3412, subsection (a)(1) of K.S.A. 21-3413, subsections (b)(1) and (b)(2) of K.S.A. 2005 Supp. 21-3412a or K.S.A. 21-3517, and amendments thereto, is a severity level 5, person felony. Injury to a pregnant woman in the commission of a misdemeanor other than a violation of K.S.A. 21-3412, subsection (a)(1) of K.S.A. 21-3413, subsections (b)(1) and (b)(2) of K.S.A. 2005 Supp. 21-3412a or K.S.A. 21-3517, and amendments thereto, is a class A person misdemeanor.

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

History: L. 1995, ch. 195, § 1; L. 2001, ch. 177, § 7; July 1.

21-3441

Chapter 21.--CRIMES AND PUNISHMENTS
PART II.--PROHIBITED CONDUCT
Article 34.--CRIMES AGAINST PERSONS

21-3441. Injury to a pregnant woman by vehicle. (a) Injury to a pregnant woman by vehicle is injury to a pregnant woman by a person other than the pregnant woman in the unlawful operation of a motor vehicle causing the pregnant woman to suffer a miscarriage as a result of that injury.

(b) As used in this section, "miscarriage" means the interruption of the normal development of the fetus, other than by a live birth, resulting in the complete expulsion or extraction from a pregnant woman of a product of human conception.

(c) (1) Injury to a pregnant woman by vehicle while committing a violation of K.S.A. 8-1567 and amendments thereto is a severity level 5, person felony.

(2) Injury to a pregnant woman by vehicle while committing a violation of law related to the operation of a motor vehicle other than K.S.A. 8-1567 and amendments thereto is a class A person misdemeanor.

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

History: L. 1995, ch. 195, § 2; May 4.

Testimony on HB 2006
House Judiciary Committee
1/18/2007

Chairman O'Neal and Members of the Committee,

March 26, 1994- a day that will forever be etched into my memory. Morgan Elizabeth Woodruff, beloved daughter, beloved sister, beloved granddaughter, beloved cousin, beloved niece.

My story begins like the story of many pregnant mothers awaiting the birth of a very much loved and cared for baby. The morning of March 26th, found my husband and I at the doctor's office. The doctor told us to be at the hospital on the morning of the 27th where a c-section would take place. We were thrilled that we would see our daughter (we already knew she was a girl) the next morning. That evening on the 26th I told my husband, "lets go to Ottawa and get something to eat". Little did we know as we left the restaurant that an eight time convicted drunk driver would be on the road with us. Several minutes into our ride home I felt a huge impact to my side of the car. Then I remember being transported to the hospital to be told by the doctor that an emergency operation would be performed and that there was little hope that the baby had survived. The first question I asked when I awoke from surgery was, "did Morgan die?" I was told yes. At that point my life stopped.

You may ask how the death of a baby I never knew affected me. Imagine having all the clothes ready, the room ready, cradle at the end of your bed, only to come home empty handed. Imagine your four year old daughter asking "when is Morgan coming home?" Imagine burying your loved baby in the ground knowing all your hopes and dreams of raising two daughters, two sisters come to an end. Imagine your marriage of ten year crumbling before your very eyes. There are some heartaches that psychologists and all the medicine they prescribe cannot cure. That was my daughter, my baby, my longing.

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In conclusion I hope that each one of you contemplates how this would affect your life if it happened to your daughter or wife. Would that little life so senselessly taken be just a blob to you? . Will you vote in favor of this bill or will you in the end be saying, "I wish, if only I would have ..."

STATEMENT OF TERRI BROOKS

Good afternoon, Chairman O'Neal and Members of the Committee:

It is an honor and a great responsibility to stand before you today to speak in support of House Bill 2006, Alexa's Law.

My name is Terri Brooks and I live in Wichita with my husband and our children. Our lives were forever changed on June 9, 2006, when my 14-year-old daughter Chelsea and her soon-to-be-born daughter (my first grandchild) Alexa were kidnapped and murdered.

As I said, my daughter was 14 years old and pregnant. She was involved in an illegal, illicit sexual relationship with a 20-year-old man, despite our trying to keep them apart and my promise to him that he would go to prison. When we found out she was pregnant, needless to say, we were very upset and angry. Initially, and for a long time, I wanted her to choose adoption – as a good friend said to me, “Terri, this baby is a gift. You guys just need to find out who the gift is for.” As time passed, the decision was made that she would keep Alexa and raise her with our help. Chelsea showed amazing maturity and strength throughout her pregnancy – she kept going to school, she played sports until the principal would no longer allow it, she kept her grades up, she continued to be a supportive friend. She took part in her 8th grade graduation just two weeks before she was murdered, proud to walk across the stage with her classmates despite the murmurs in the audience when they saw her very pregnant condition. She had already made preliminary arrangements for child care, taking the initiative to make appointments that were needed. A baby shower co-hosted by one of her closest friends and Alexa's

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step-grandmother was to take place on June 17th. She was already considering whether she would be able to participate in sports during the school year and how it could be worked out without her missing too much time with her daughter.

The baby clothes were washed and sorted and put away, ready and waiting for Alexa's arrival. The bassinet was set up in the bedroom. All we were waiting for was Alexa to arrive. And then the unthinkable happened, and instead of attending a baby shower we were making funeral arrangements for the two of them.

When the police formally notified us that they had positively identified Chelsea and Alexa and that they had one of their killers in custody, I said, "He'll be charged with two counts of murder, right?" I knew Laci and Conner Peterson's Law had been passed federally. I assumed that Kansas at the very least had the viable fetus rule. The detective told me, "No, only one count of murder, for Chelsea." In Kansas, for Alexa's life and death to count, she had to take a breath.

Who among you has not awaited the birth of a child or at least known someone who has? The unborn child is thought of by them as a person, alive and growing in her mother's womb. The birth of the child is a significant event, but I think most people don't say, "When the baby takes her first breath, then she's a real person." Her first breath outside the womb only signifies her arrival, not that she is suddenly a person where she was not before her birth.

There will be no justice for Alexa because in previous legislative sessions, the unborn victims of violence act has failed to make it through the legislative process. In the eyes of the law as it stands now, Alexa's life and her death don't count. But you and your fellow legislators can change that. TWO people died on June 9, 2006, and justice

demands that the law recognize that fact for other unfortunate future victims of violence.

Murderers should be held accountable for each and every life they take. Alexa's Law is about justice, justice for the taking of a life by violence. Alexa's Law amends the criminal code to recognize the life of an unborn child who is murdered.

I have heard some of the arguments in opposition to passing Alexa's Law.

Women's rights groups oppose the law because they say it does nothing to protect women. What law protects anyone, male or female? Did a law prohibiting murder protect my daughter and granddaughter (both female)? Did a so-called "protective order" protect the women who were stalked and abused by their husbands or boyfriends and who were later killed by that husband or boyfriend in spite of the protective order? If a person, male or female, has purposed in their heart to do harm to another, there is NO law that protects that victim. Alexa's Law is not about protection. Alexa's Law is about justice.

Another argument I have heard in opposition to similar laws proposed in other states is that now the government will be able to charge a woman with a felony if she smokes or drinks alcohol while pregnant. Alexa's Law contains an exception for acts by the mother. Alexa's Law is not about curtailing women's rights. Alexa's Law is about justice.

A third argument I have heard is from abortion rights advocates who fear that the right to abortion will be taken away if Alexa's Law is passed. Again, Alexa's Law, like the California law under which Scott Peterson was convicted for the murders of his wife Laci and unborn son, Conner, contains an exception for medical procedures including abortion (which could also fall under the exception for acts of the mother). When California passed their unborn victims of violence act, did it curtail or restrict abortions in

that state? I was not able to obtain statistics from the State of California – and I did try – concerning abortion rates before and after their law was passed, but my gut feeling is that the law had no effect whatsoever on the number of abortions performed. Alexa’s Law is not about abortion rights or restrictions. Alexa’s Law is about justice.

I urge you and your fellow legislators in the Kansas House and the Kansas Senate to pass Alexa’s Law. Alexa’s life should count and by passing this law, even though it is too late for justice for Alexa, Alexa’s life can count in the eyes of the law for future unborn victims of violence.

Thank you for your time and attention.

STATEMENT OF ANDREA BROOKS

Good afternoon. My name is Andrea Brooks. I am the sister of Chelsea Brooks and the aunt of Alexa Lynn Brooks. I cannot speak eloquently. I do not have speech writers, so I apologize in advance for this, but, messed-up words and all, what I say comes from my heart.

I followed the Scott Peterson trial, along with the nation. I saw him get convicted of two murders, Laci's and their unborn son, Conner's. I saw the Federal government pass Laci and Conner's Law, the federal unborn victims of violence act. I thought every state had a fetal homicide law. I didn't know that Kansas was one of only 16 that did not.

Chelsea was extraordinary. At 14 she was more prepared to be a mom than many women I know now. It makes me so sad to think about how she and Alexa missed out on all of that. My sister fought to keep her daughter and in one moment everything was taken from her. Her life was ended before it began because someone didn't want to take responsibility for his actions. I love and miss both my sister and my niece. Chelsea would have made a great mom.

When I heard of Chelsea's murder, I naturally thought they would be charging the men with double homicide. I was upset and angered when I found out this would not happen. My niece's death could not be charged as a separate murder. I became even more angry when I found out that the very thing that could have offered justice, the unborn victims of violence act, was denied by the Kansas Legislature more than once.

Many say it's just another way for pro-lifers to restrict abortions. Others say that it takes away a woman's right to make decisions for herself and her body. These accusations are completely ridiculous and unfounded. Alexa's Law makes exceptions for

acts of the mother, so that women still have complete control of their bodies. Also, the law allows that abortions do not fall under its jurisdiction. This law is simply to hold those who murder unborn children in acts of violence toward the mother accountable for their actions. By passing Alexa's Law, it can assure that a case like Alexa's does not happen to anyone else – someone who murders a pregnant woman will be charged with two murders instead of one. Though her voice is forever silenced, you have the power to make her life count by passing Alexa's Law.

STATEMENT OF DARREN BROOKS

I am not a great speaker like many of you. I am not a highly educated man like many of you either. But I am a father who comes to you today and all I can do is speak from my heart in the simple words I do know. My 14-year-old daughter Chelsea Ann Brooks and my unborn granddaughter Alexa Lynn Brooks were murdered. Their lives were taken because a 20-year-old man was having sex with Chelsea and got her pregnant. To conceal his identity as the father and to avoid prison, he had Chelsea murdered. In reality he was trying to get rid of Alexa. But either way you look at it, both of them were murdered. Alexa was only two weeks away from coming into this world and beginning her life outside Chelsea's womb. That's why we feel her life should count as a human being. I don't know if any of you have had a child who was murdered, but the pain is unbelievable. I hope it is something that you never have to experience. We don't know if Alexa's Law will prevent what has happened to our daughter and granddaughter from happening to anyone else, but by passing a fetal homicide law it will possibly at least make anyone thinking of taking a woman's life in order to hide a pregnancy to consider the outcome – that is, that they will be charged with not one murder, but two. So today, as a father and a resident of the State of Kansas, I urge you to pass Alexa's Law.



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**TESTIMONY IN SUPPORT OF H.B. 2006
ALEXA'S LAW**

Chairman O'Neal and members of the Committee:

Thank you for the opportunity to testify in support of H.B. 2006, Alexa's Law. My name is Beatrice Swoopes and I am Associate 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. 2006 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. 2006 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 as happened in the case of Chelsea Brooks. This bill is named in memory of her unborn child, Alexa.

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 DODGE CITY

MOST REVEREND JOSEPH F. NAUMANN, D.D.
Chairman of Board
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BISHOP EMERITUS - DIOCESE OF WICHITA

MOST REVEREND GEORGE K. FITZSIMONS, D.D.
BISHOP EMERITUS - DIOCESE OF SALINA

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Attachment # 4

House Judiciary Committee
January 18, 2007

We believe H.B. 2006 is constitutional; it complies with legal precedent, and mirrors laws in 24 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.

In conclusion I would again quote from the U.S. Catholic Bishops, this time from their statement "Living the Gospel of Life ..." They say:

"...the point when human life begins is not a religious belief but a scientific fact – a fact on which there is clear agreement even among leading abortion advocates." ...the sanctity of human life is not merely Catholic doctrine but part of humanity's global ethical heritage and our nation's founding principle."

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

Please consider H.B. 2006 on its merits and support its passage.

Thank you,



Beatrice E. Swoopes
Associate Director



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TESTIMONY IN SUPPORT OF HB 2006, "ALEXA'S LAW"
HOUSE JUDICIARY COMMITTEE
Thursday, January 18, 2007

Chairman O'Neal and members of the committee,

I am Jeanne Gawdun, senior lobbyist with Kansans for Life, here to testify in support of HB 2006, "Alexa's Law."

You will be hearing some of today's conferees testify as to their anguish following the sudden and violent criminal deaths of family members, including unborn babies. To add insult to injury, these families are re-victimized by our Kansas legal system which denies them full prosecutorial justice.

Why? Because this state continues to be bullied by the abortion industry and their false assertion that fetal homicide cannot be prosecuted while Roe v. Wade reigns.

Noted legal scholars who support abortion deny that fetal homicide prosecution infringes on Roe v. Wade (see Attachment A). For example, fetal homicide has been prosecuted in California before and after Roe, without any effect on the huge numbers of abortions which continue to occur in California. Most notoriously, Scott Peterson was convicted 26 months ago in California for the double murder of his wife Laci, and unborn son Connor.

Moreover, despite access to the best legal talent the abortion industry can buy, every Constitutional challenge to fetal homicide related to Roe and/or denial of equal protection, has failed (see Attachment B).

The American legal system already has a double standard on the "significance" and legal nature of the unborn. Inheritance, insurance rights, certain wrongful death lawsuits and child custody orders already accommodate the unborn child.

Our nation is more acutely aware than ever before of the concrete humanity of the unborn child, thanks in part to advancements in technology. Amazing pediatric surgery is performed on the unborn. A fascinating film of unborn triplets taken by 4-D sonography was shown on Discovery cable TV this week. Therefore, it is not surprising that polls show Americans overwhelming support justice for unborn victims of violence.

If the families you hear from today had been victimized in 34 other states, those states' prosecutors would be allowed to press charges for the separate death of the unborn (see Attachment C).

If the families you hear from today had been victimized within federal or military jurisdictions, those prosecutors would be allowed to press charges for the separate death of the unborn (See Attachment D).

But these families had the misfortune of being crime victims in Kansas, whose legal system has been held hostage by the abortion industry. Let's end this injustice and pass Alexa's Law.

Thank you. I stand for questions.

Kansas Affiliate to the National Right to Life Committ
With over 50 chapters across the state of Kansas

House Judiciary
Date 1-18-07
Attachment # 5

Legal experts who support abortion say that fetal homicide laws don't affect Roe v. Wade

1) Professor Michael Dorf is a former Supreme Court clerk who, by some accounts, drafted some key parts of the 1992 5-4 ruling in *Casey v. Planned Parenthood*, which reaffirmed *Roe v. Wade*. This passage is excerpted from Dorf's essay for Findlaw.com, titled "How Abortion Politics Impedes Clear Thinking on Other Issues Involving Fetuses," under the subheading, "Why Feticide Prohibitions that Exempt Abortion Are Consistent with *Roe*." http://writ.news.findlaw.com/scripts/printer_friendly.pl?page=/dorf/20030528.html

There are two satisfactory answers to the worry that supporting anti-feticide laws undermines *Roe*.

First, laws treating feticide as murder do not need to define fetuses as persons. California's law is illustrative. It defines murder as the killing of a human being or a fetus.

Second, there is nothing especially troubling about permitting the law to define the word person differently for different purposes. Statutes routinely define various words, including person, so that they will mean exactly what the legislature intends in a particular context, and even general constitutional language can be interpreted differently depending upon the context. Corporations, for example, are persons under the Fourteenth Amendment in the sense that their property cannot be taken without fair processes, but not in the sense that they are entitled to vote on equal terms with natural persons.

Roe v. Wade said that states are not obligated to treat fetuses as persons. It also said that in a conflict with the constitutional liberty of a pregnant woman seeking an abortion before the fetus is capable of survival outside the womb, the fetus may not be given the same rights as the woman. However, that certainly does not mean that there are no circumstances in which fetuses can be given legal protection. Again, it all depends on the context.

2) Walter Dellinger of Duke University School of Law was at one time perhaps the most prominent legal advocate in the pro-abortion-rights movement. He was closely associated with NARAL, and until 1992, he co-chaired a NARAL-sponsored commission to defend *Roe v. Wade*. After President Clinton was elected, Dellinger was appointed as a White House advisor to Clinton on constitutional issues, in which capacity he says he drafted five executive orders that were issued by President Clinton on his third day in office, nullifying various anti-abortion policies adopted by earlier presidents. Dellinger later served the Clinton Administration as Assistant Attorney General and as Acting Solicitor General of the United States. On July 13, 2003, the Raleigh News-Observer published the following passage in a story titled "A Question of Rights," posted here: <http://newsobserver.com/news/v-print/story/2690147p-2494289c.html>

Walter Dellinger, a former solicitor general with the Clinton administration who teaches at Duke University, says that, although he is a strong advocate for a woman's right to choose abortion, he sees no major problem with the fetal-homicide laws. "I don't think they undermine *Roe v. Wade*," he said. "The legislatures can decide that fetuses are deserving of protection without having to make any judgment that the entity being protected has freestanding constitutional rights. I just think that proposals like this ought to be considered on their own merit."

Constitutional Challenges to State Unborn Victims (Fetal Homicide) Laws

December 30, 2006

(All challenges were unsuccessful. All challenges were based at least in part 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

On December 27, 2006, in the case of *Commonwealth of Pennsylvania v. Bullock* (J-43-2006), the Pennsylvania Supreme Court unanimously rejected an array of constitutional challenges to the Crimes Against the Unborn Child Act, 18 Pa. C.S. Sec. 2601 et seq., including claims based on *Roe v. Wade* and equal protection doctrine. Although the law applies "from fertilization until birth," a convicted killer, Matthew Bullock, had argued that U.S. Supreme Court precedents allowed such a law to apply only after the point that the baby is "viable" (able to survive indefinitely outside of the womb). The Pennsylvania justices rejected this argument, stating that "to accept that a fetus is not biologically alive until it can survive outside of the womb would be illogical, as such a concept would define fetal life in terms that depend on external conditions, namely, the state of medical technology (which, of course, tends to improve over time). . . viability outside of the womb is immaterial to the question of whether the defendant's actions have caused a cessation of the biological life of the fetus . . ."

Also: On January 24, 2003, in *Commonwealth of Pennsylvania v. Corrine D. Wilcott*, the Court of Common Pleas of Erie County rejected challenges asserting that the law is unconstitutionally vague, violates U.S. Supreme Court abortion cases, violates equal protection clause, and conflicts with state tort law on definition of "person."

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).

State Homicide Laws That Recognize Unborn Victims (Fetal Homicide)

National Right to Life Committee
December 30, 2006

What appears below is a summary of the laws of the 34 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 (24)

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

Alabama: Legislation taking effect July 1, 2006 (HB 19) amended Section 13A-6-1 of the Code of Alabama to include "an unborn child in utero at any stage of development, regardless of viability" as a "person" and "human being" for purposes of the state laws dealing with murder, manslaughter, criminally negligent homicide, and assault.

Alaska: Alaska Statutes 11.41 (as amended by Senate Bill 20, enacted June 16, 2006) establishes the crimes of "murder of an unborn child," "manslaughter of an unborn child," "criminally negligent homicide of an unborn child," and "assault of an unborn child." Alaska Statutes 11.81.900(b) defines "unborn child" as "a member of species Homo sapiens, at any stage of development, who is carried in the womb."

Arizona: The "unborn child in the womb at any stage of its development" is fully covered by the state's murder and manslaughter statutes. For purposes of establishing the level of punishment, a victim who is "an unborn child shall be treated like a minor who is under twelve years of age." Senate Bill 1052, signed into law on April 25, 2005, amending the following sections of the Arizona Revised Statutes: 13-604, 13-604.01, 13-703, 13-1102, 13-1103, 13-1104, 13-1105, 13-4062, 31-412, 41-1604.11 and 41-1604.13.

Georgia: Legislation taking effect July 1, 2006 (SB 77) recognizes an "unborn child" (defined as "a member of the species homo sapiens at any stage of development who is carried in the womb") as a victim of the offenses of feticide, voluntary manslaughter of an unborn child, assault of an unborn child, and battery of an unborn child. (Official Code of Georgia Annotated, Sections 16-5-20, 16-5-28, 16-5-29, 16-5-80)

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. §§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) In addition, "The Assault of an Unborn Child Act," effective April 13, 2006, provides that a criminal attacker who causes "serious bodily injury" to an unborn child commits the offense of "assault on an unborn child" in the first, second, or third degree. "Unborn child" is defined as "an individual member of the species Homo sapiens at any stage of development in utero." (LB 57, 2006)

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).

Oklahoma: House Bill 1686, signed into law on May 20, 2005, recognizes "an unborn child" as a victim under state laws against murder, manslaughter, and certain other acts of violence. The law defines "unborn child" as "the unborn offspring of human beings from the moment of conception, through pregnancy, and until live birth including the human conceptus, zygote, morula, blastocyst, embryo and fetus." Following upon the law enacted in 2005, Senate Bill 1742, signed into law May 23, 2006, ensures that Oklahoma's recognition of the unborn child as a separate victim applies uniformly across all of Oklahoma's homicide statutes.

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 (1997) "Unborn child" and "fetus." Each term shall mean an individual organism of the species *Homo sapiens* from fertilization until live birth." On December 27, 2006, in the case of *Commonwealth of Pennsylvania v. Bullock* (J-43-2006), the Pennsylvania Supreme Court unanimously rejected an array of constitutional challenges to the law, including claims based on *Roe v. Wade* and equal protection doctrine.

South Carolina: S. 1084, signed into law and effective on June 2, 2006, recognizes a "child in utero" who is injured or killed during an act of criminal violence as a separate victim of a separate offense. The term "child in utero" is defined as "a member of the species *homo sapiens*, at any stage of development, who is carried in the womb."

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). See Utah Supreme Court decision in *State of Utah v. MacGuire* (January 23, 2004).

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.

West Virginia: 2005 Senate Bill 146, signed into law on May 20, 2005, provided that "a pregnant woman and the embryo or fetus she is carrying in the womb constitute separate and distinct victims" for purposes of the state laws governing murder, manslaughter, and certain other crimes of violence. Code of West Virginia Section 61-2-30.

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 (10)

(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 unlawful killing of an "unborn quick child" is murder in the same degree as if committed against the mother. [Fla. Stat. Ann. § 782.09 (West 2005)]. Other provisions cover the killing of an "unborn quick child" as manslaughter [Fla. Stat. Ann § 782.09 (West 2005)], vehicular homicide [Fla. Stat. Ann. § 782.071 (West 1999)], and DUI manslaughter [Fla. Stat. Ann. § 316.193 (West 2005)]. Under Fla. Stat. Ann. §§ 316.193 and 782.09, the term "unborn quick child" is the same as the term "viable fetus," which is defined in the following way: "... a fetus is viable when it becomes capable of meaningful life outside the womb through standard medical measures." [Fla. Stat. Ann § 782.071 (West 2005)].

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.

Maryland: Under 2005 House Bill 398, amending Section 2-103 of the Annotated Code of Maryland, signed into law on May 26, 2005 and effective October 1, 2005, "A prosecution may be instituted for murder or manslaughter of a viable fetus," if the person prosecuted "intended to cause the death of the viable fetus, intended to cause serious physical injury to the viable fetus, or wantonly or recklessly disregarded the likelihood that the person's actions would cause the death of or serious physical injury to the viable fetus."

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).

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).

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).

Key Facts on the Federal Unborn Victims of Violence Act ("Laci and Conner's Law")

□ The Unborn Victims of Violence Act (also known as "Laci and Conner's Law"), signed into law by President George W. Bush on April 1, 2004. The House of Representatives approved the bill on February 26, 2004 (254-163) and the Senate approved it on March 25, 2004 (61-38).

□ The Unborn Victims of Violence Act recognizes that when a criminal attacks a pregnant woman, and injures or kills both her and her unborn child, he has claimed two human victims. The bill would establish that if a "child in utero" is injured or killed during the commission of certain federal crimes of violence, then the assailant may be charged with a second offense on behalf of the second victim, the unborn child. The exact charge would depend on which federal law is involved, the degree of harm done to the child, and other factors. The law applies this two-victim principle to 68 existing federal laws dealing with acts of violence. These laws cover a considerable number of activities defined as federal crimes wherever they occur, including interstate stalking, kidnapping, bombings, and offenses related to major drug trafficking, and attacks on federal employees. In addition, these laws cover federal geographical jurisdictions, such as federal lands and tribal lands, and the military justice system.

□ Prior to enactment of this law, an unborn child was not recognized as a victim with respect to violent crimes. Thus, for example, if a criminal beat a woman on a military base, and killed her unborn child, he would be charged only with the battery against the woman, because the unborn child's loss of life was not recognized by the law. Likewise, a bombing that injured a woman and killed her unborn child was not recognized as involving any loss of human life.

□ The law covers the "child in utero," defined as "a member of the species homo sapiens, at any stage of development, who is carried in the womb." The law explicitly provides that it does not apply to any abortion to which a woman has consented, to any act of the mother herself (legal or illegal), or to any form of medical treatment. The National Right to Life Committee strongly supported enactment of the law because it achieved other pro-life purposes that are worthwhile in their own right: The protection of unborn children from acts of violence other than abortion, the recognition that unborn children may be victims of such violent criminal acts, and the just punishment of those who harm unborn children while engaged in federally prohibited acts of violence.

SENATOR PHILLIP B. JOURNEY

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TOPEKA

SENATE CHAMBER

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OVERSIGHT (JOINT)

SOUTH CENTRAL DELEGATION, CHAIR

**Testimony for the
Kansas House of Representatives Judiciary Committee
Presented January 17th, 2007
In Support of House Bill 2006**

It is a privilege and an honor to have the opportunity to address the Kansas House of Representatives Judiciary Committee and offer comments in support of House Bill 2006.

House Bill 2006 amends the Kansas Criminal Code in adding to the definition of person and/or human being an unborn child. For most purposes under the Kansas Criminal Code, there are reasonable exceptions to the application to this definition of the Criminal Code including any act or admission by the mother of the unborn child and medical procedures including but not limited to abortion when performed by a licensed medical professional at their request or that of their legal guardian. It also includes the lawful dispensation or administration of any lawfully prescribed medication as an additional exception.

It is clear that the intent of the author, Representative Brunk, and those who have supported identical legislation in the 2005 Legislative Session when this proposed bill took the form of House Bill 2300 and is currently pending in a nearly identical form of legislation drafted by myself as Senate Bill 2. Legislative history of this issue has been successful attempt at passage in the Kansas House of Representatives and has been unable to receive consideration by the body of the Senate in the last two legislative sessions. It is my personal belief that there are at least 22 votes in support of this legislation on the floor of the Senate and as there is a high probability it will be passed in the House, I believe this bill should be moved forward.

While opponents to the legislation are concerned about its effect in other areas of the law outside the Criminal Code, it's quite clear that this is narrowly crafted so that it does not affect other areas of the law such as in civil, probate or other matters that could become pending before a court. It is intended to give the criminal defendant convicted of crimes involving injury or death to a human being the appropriate level of punishment commiserate with the severity of the crime inflicted. It recognizes the individuality of the genetically distinct individual in the womb of the mother and appropriately by its incorporation in the Criminal Code allows for charging the defendant with multiple counts when multiple persons are victims of the crimes they perpetrate. The greatest effect of two person felony convictions as compared to one is when the defendant receives a new case. Almost any felony will then be presumptive prison as opposed to probation or border box status.

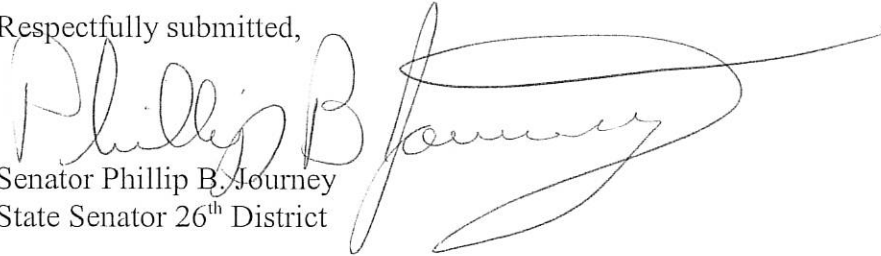
House Judiciary

Date 1-18-07Attachment # 6

I support House Bill 2006 as I supported House Bill 2300 in the last two years, and I also support Senate Bill 2 this year which is pending before the Kansas Senate Judiciary Committee. I urge this Committee to recommend this bill out favorably.

Respectfully submitted,

Senator Phillip B. Journey
State Senator 26th District

A handwritten signature in cursive script, appearing to read "Phillip B. Journey". The signature is written in dark ink and is positioned to the right of the typed name and title.

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House Judiciary Committee
HB 2006
OPPOSE
January 18, 2007

Chairman O'Neal and Members of the Committee:

Thank you for the opportunity to submit written testimony about our concerns regarding HB 2006.

The Kansas Coalition Against Sexual and Domestic Violence represents the 30 Kansas sexual and domestic violence programs and the victims they serve. Those programs served more than 20,000 people last year. During that time programs also answered more than 22,000 crisis hotline calls from victims of sexual and domestic violence.

The introduction of HB 2006 follows a heinous murder in Wichita. Chelsea Brooks was just 14-years-old and pregnant when her former boyfriend, Ray Robinson, orchestrated a murder-for-hire scheme that led to her death at the hands of Robinson's friend in June 2006. Since that time KCSDV is aware of at least 8 domestic violence-related murders that have occurred here in Kansas. During the past decade, KBI statistics indicate that at least 223 domestic violence murders have occurred – each a tragedy. It is important to note that these numbers do not include the numerous murders that resulted from rape, sexual violence, and stalking where a previous intimate relationship did not exist. We have to do more to stop these senseless but predictable murders, to stop this violence against women and girls.

So, why would an advocacy group who works to end sexual and domestic violence be opposed to a bill that enhances penalties for offenders who commit these crimes: because it is too little, too late!

Over the past 25 years I have worked with numerous family members who are grieving the murder of a loved one, and many more who are coping with their family members' serious injuries. I can assure you that each and every one of them would exchange any

level of penalty for an early intervention that would have saved the life of or prevented the serious injury to their family member.

These sexual and domestic violence-related crimes may be senseless, but they are not unpredictable. Gavin De Becker, a personal security expert and consultant is best known as the author of the book, The Gift of Fear (Random house, 1997). De Becker is also the primary developer of MOSAIC, a domestic violence lethality prediction program used by many law enforcement agencies. De Becker tells us that *domestic homicide is America's most predictable murder*. He suggests three actions we can take to prevent these murders (and therefore injury): refer women to community battered women's shelters; refer men to batterers intervention programs; and, stop participating as bystanders. In short, these injuries and murders are a failure of our society to intervene appropriately and early. KCSDV believes it is unconscionable to wait to act until women are injured or killed, regardless of whether they are pregnant or not.

The Kansas Legislature has a long history of enacting strong anti-sexual and domestic violence laws. Kansas was one of the first states to enact a protection from abuse act, one of the first seven states to remove the marriage defense from the rape statute, one of the states that has enhanced penalties for third-time domestic batterers, and one of the states that has created penalties for crimes perpetrated against pregnant women. But, what Kansas has not done is make a serious commitment to provide the three actions that De Becker suggests.

- There are still only 30 sexual and domestic violence programs covering 105 counties
- Timely crisis services are available in only 38 percent of counties
- Children's services are available in only 26 percent of these programs

There are a number of steps the Kansas Legislature can take to more effectively address violence against women. The Kansas Legislature could:

- 1) Ensure that emergency safe shelter is easily accessible and available in locations that do not make women choose between keeping their children in school, being close to family and friends, or keeping employment in order to seek safety.
- 2) Ensure that appropriate batterers intervention programs are available in every judicial district in Kansas.
- 3) Ensure that children's advocacy programs are available in every sexual and domestic violence program in Kansas.
- 4) Support training of health care workers to screen and identify sexual and domestic violence, and take appropriate action to support victims.
- 5) Fully fund the courts so women have timely access to protection orders.
- 6) Adequately fund welfare programs, employment programs, and family support programs so women have economic options to get away from the abuser.
- 7) Support training and a statewide campaign that teaches citizens how not to participate in this violence as bystanders.

- 8) Support the development of safe and affordable housing options.
- 9) Fund training and support for law enforcement and prosecutors to appropriately enforce current state laws.
- 10) Support the development of data collection systems that provide adequate information for the formation of public policy and service delivery.

KCSDV believes HB 2006 is an ineffective remedy to protect women.

KCSDV appreciates your commitment to ending violence against women and looks forward to working with you to address this most urgent social problem.

For more information about sexual and domestic violence in Kansas, visit our website at www.kcsdv.org, or contact KCSDV at 785/232-9784.



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**TESTIMONY CONCERNING HOUSE BILL 2006
THE UNBORN VICTIMS OF VIOLENCE ACT
Before the House Judiciary Committee January 18, 2007**

Chairman O'Neal and members of House Judiciary Committee

While we wholeheartedly endorse the concept of HR 2006 we must oppose the Unborn Victims of Violence Act as presently written.

Section 1, subsections (b)(2) and (b)(3) rightfully recognize that an unborn child exists from the moment of conception. In addition, Section 2 includes the unborn child within the criminal code statutes' definition of a person and/or a human being. This action effectively makes the killing of an unborn child murder, as it truly is.

However, we cannot accept the provisions outlined in Section 1, subsections (c)(1), (c)(2) and (c)(3). These subsections allow the mother of an unborn child to hire a professional killer, an abortionist, to murder her child for her. Or she may use any lawfully prescribed medicine, chemicals, to kill and then induce the delivery of a dead child. She may even use a gun to shoot herself in the stomach in order to kill her child, much as the young woman in the state of Virginia did and had all charges dismissed because of a similar law. (See attached news account).

An isolated case? Yes! But, thankfully, so is the horrible situation that resulted in little Alexa's death in Sedgwick County.

But, perhaps the most serious failing of this proposal is the denial of the equal rights of the unborn person. It is inconsistent to officially recognize the unborn child as the person we know that child to be and then, in the same bill, deny that same person the equal and inalienable right to life guaranteed by Section 1 of the Bill of Rights of the Kansas Constitution.

Kansas courts have consistently held that the equal rights provision of the Kansas Bill of Rights be applied in the same manner as the Equal Protection Clause of the Fourteenth Amendment to the U.S. Constitution.

We realize that as long as *Roe v. Wade* and its progeny continue to be called the law of the land, the Supremacy Clause of the U.S. Constitution will prevent any meaningful legislation by the states to limit mothers killing their unborn children.

But, *Roe v. Wade* will be overturned and the abortion controversy returned to the states. At that time, the legislature will first need to repeal any provision such as that contained in HR2006 before abortionists can be put out of business in Kansas.

Are we to believe that it will be easier to repeal such a provision than to leave it out in the first place?

Mr. Chairman and members of the Judiciary Committee, we respectfully ask that all reference to abortion be removed from HR2006.

Prepared by Elmer Feldkamp, President
Right To Life of Kansas, Inc.

House Judiciary
Date 1-18-07
Attachment # 8

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Suffolk woman who shot herself to induce abortion has all charges dropped.

Tammy Skinner, the Suffolk woman who admitted to shooting herself in the stomach to kill her unborn child, was back in court today, but not for long.

She walked out a free woman as a judge dismissed the indictment against her.

"I'm just glad it's over so I can move on with my life," Skinner said after the court hearing.

Suffolk Circuit Court Judge Westbrook J. Parker said the laws on the book do not apply to expectant mothers, and made the decision to drop the case.

But he, the prosecutors, and defense attorneys all agree that the facts of the case are disturbing.

But, they could not prosecute Skinner.

According to a report by our partners at the Daily Press, prosecutors wanted to put to the test a 1950 state law that would for the first time hold a mother criminally liable for aborting her child.

They planned to argue that the law states that "any person" who causes an abortion should be considered culpable.

But Judge Parker noted that a 2004 law specifically excludes mothers and refers to "any person ... who kills the fetus of another. ..." Lawmakers enacted the 2004 law because they didn't want to punish a pregnant woman as harshly as someone who aborts someone else's fetus.

A District Court judge has already dismissed the charges in May, citing the same legal language. But determined prosecutors took the case to a grand jury and Skinner was re-indicted in Circuit Court in June.

The 22 year-old Skinner was scheduled to give birth to her third daughter on Feb. 23, the day of the shooting. She called 9-1-1 from a downtown parking lot and told the dispatcher that someone shot her. Police later learned she had shot herself.

She was initially charged with illegally inducing an abortion, filing a false police report and using a firearm in the commission of a felony.



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