

MINUTES OF THE SENATE JUDICIARY COMMITTEE

The meeting was called to order by Chairman John Vratil at 9:31 A.M. on March 15, 2007, in Room 123-S of the Capitol.

All members were present except:

- Barbara Allen arrived, 9:35 A.M.
- Derek Schmidt arrived, 10:00 A.M.
- Dwayne Umbarger arrived, 10:00 A.M.

Committee staff present:

- Athena Anadaya, Kansas Legislative Research Department
- Bruce Kinzie, Office of Revisor of Statutes
- Nobuko Folmsbee, Office of Revisor of Statutes
- Karen Clowers, Committee Assistant

Conferees appearing before the committee:

- Rep. Mitch Holmes
- Kip Elliott, Attorney
- Doug Anstaett, Executive Director, Kansas Press Association
- Rep. Steven Brunk
- Terri Brooks
- Jeanne Gawdun, Kansans for Life
- Becky Gaughan
- Brad Burke, Attorney
- JoAnn Van-Meter, Attorney
- Jennifer Roth, Kansas Association of Criminal Defense lawyers
- Erin Thompson, ProKanDo

Others attending:

See attached list.

The hearing continued on **HB 2001--Civil commitment of sexually violent predators; rights and rules of conduct; transitional release when predator suffers from permanent dementia; battery against a mental health employee.**

Rep. Mitch Holmes appeared as a sponsor of the bill and provided background on its development. The rights defined for mental patients were set years before the creation of the Sexual Predator Treatment Program. The sexually violent offender is a different category of patient with normal cognitive abilities. Rep. Holmes stressed that **HB 2001** will not require that mail be censored but allow the search for contraband. The rights as stated through rules and regulations are based on Wisconsin's law which has been challenged in court and found to be constitutional (Attachment 1).

Kip Elliott spoke in opposition, indicating persons involuntarily committed are detained civilly and under U.S. Supreme rulings must be provided all the rights that accompany any person civilly committed. Mr. Elliot claims differential treatment violates equal protection and other constitutional rights. It is Mr. Elliot's position that locking patients in their rooms at night does not conform to the "least restrictive environment"; is unreasonable seizure under the 4th Amendment; and violates the patient's substantive due process rights. Mr. Elliot also voiced concern regarding the opening of mail outside the presence of the patient. Enactment of this bill will likely lead to costly litigation (Attachment 2).

Doug Anstaett appeared in opposition to the House floor amendment prohibiting sexual violent offenders from sending unsealed material to members of the news media. Prohibiting anyone who is incarcerated from having direct uncensored contact with news media is the means for corruption, abuse and inhuman treatment to go unchecked. This amendment prevents patients from having direct access to the media who serve vital roles as watchdogs over government and how it provides services (Attachment 3).

Written testimony in support of **HB 2001** was submitted by:

- Linda Henderson, President, Larned Area Chamber of Commerce (Attachment 4)
- Anonymous, Former Larned State Hospital Employee (Attachment 5)

CONTINUATION SHEET

MINUTES OF THE Senate Judiciary Committee at 9:31 A.M. on March 15, 2007, in Room 123-S of the Capitol.

Written testimony in opposition of **HB 2001** was submitted by:

Garen Stockwell ([Attachment 6](#))

Mark Brull ([Attachment 7](#))

There being no further conferees, the hearing on **HB 2001** was closed.

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

Rep. Steven Brunk appeared as a sponsor of the bill and provided a brief history of its development. Rep. Brunk stressed that the bill is about crimes committed against unborn children and several states have passed similar legislation. This bill will allow for the prosecution of two deaths rather than one ([Attachment 8](#)).

Terri Brooks appeared in support, relating her personal experience in the kidnaping and murder of her daughter Chelsea and Chelsea's unborn child ([Attachment 9](#)).

Jeanne Gawdun spoke in support, providing information on legislation in other states regarding fetal homicide laws. Ms. Gawdun stated prosecution for fetal homicide will not jeopardize Roe v. Wade ([Attachment 10](#)).

Becky Gaughan spoke as a proponent, relating her personal experience of losing her unborn child in an automobile accident in 1994 ([Attachment 11](#)).

Brad Burke appeared as a proponent, stating that from a criminal prosecutor's perspective **HB 2006** would allow prosecution to both the mother and unborn child. The State currently has limitations for prosecution. This bill would allow for prosecution for injuries caused to an unborn child and a variety of degrees of murder if the unborn child dies as a result of the injury sustained ([Attachment 12](#)).

JoAnn Van Meter spoke in opposition, suggesting the crime prompting this bill is in actuality a crime of domestic violence. Ms. Van Meter voiced concern that the law is intended to become effective at conception, a time unknown to many women. An equal application of this law would require any woman who is the victim of a person crime be tested for pregnancy. Ms. Van Meter also had concerns with the definition of "unborn child" and unintended consequences of the language used ([Attachment 13](#)).

Jennifer Roth appeared in opposition, suggesting amendments to existing laws will provide more justice for women and unborn children than **HB 2006**. Ms. Roth voiced concern that **HB 2006** could lead to prosecution of pregnant women, could impact wrongful death or tort law and could unintentionally expose people to criminal charges ([Attachment 14](#)).

Erin Thompson spoke in opposition, suggesting enhancements to existing law which would eliminate the politics of this issue. Suggested changes include strengthening K.S.A. 21-3440, injury to a pregnant woman and K.S.A. 21-3441, injury to a pregnant woman by vehicle, by amending the statutes to run consecutively rather than concurrently, amending the statutes to clearly state that usage of these crimes would not bar other convictions with which the perpetrator might be charged, increasing the severity level for both statutes, and adding a provision to K.S.A. 21-4636, aggravating circumstances ([Attachment 15](#)).

Written testimony in support of **HB 2006** was submitted by:

Darren Brooks ([Attachment 16](#))

Andrea Brooks ([Attachment 17](#))

Judy Smith, Concerned Women for America ([Attachment 18](#))

Michael Farmer, Executive Director, Kansas Catholic Conference ([Attachment 19](#))

Written testimony in opposition of **HB 2006** was submitted by:

Elmer Feldkamp, President, Right to Life ([Attachment 20](#))

Sandy Barnett, Director, Kansas Coalition Against Sexual & Domestic Violence ([Attachment 21](#))

There being no further conferees, the hearing on **HB 2006** was closed.

The meeting adjourned at 10:30 A.M. The next scheduled meeting is March 19, 2007.

PLEASE CONTINUE TO ROUTE TO NEXT GUEST

SENATE JUDICIARY COMMITTEE GUEST LIST

DATE: 3-15-07

NAME	REPRESENTING
Katie Firebaugh	Kearney & Associates
Lindsey Douglas	Hein Law Firm
Paul J. O'Connell	C. W. A.
Marianne O'Connell	C. W. A.
Cheryl Ryan	CWA.
Jed Smith	CWA of KS
Shirley Allen	Planned Parenthood
Tracee Cleason	Planned Parenthood
Joyce Grover	KCSOV
Dan Gibb	KSAG
Whitney Jamron	KS Bar Assn.
Lana Walsh	OJA
Erin Thompson	ProKaDo
John Van Mink	Planned Parenthood
W. G.	
Brad Burke	Johnson County DA's Office
Ray Dalton	SRS
REP. STEVE BRUNK	ALFA'S LAW

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HOUSE OF REPRESENTATIVES

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MITCH HOLMES
114TH DISTRICT

Testimony on House Bill 2001
March 14, 2007
Proponent

House Bill 2001 had its genesis back in 2005 while attending a Legislative Tour of the Isaac Ray building located at Larned State Hospital. At that time I heard a lot of stories from a former employee about abuses of rights that were intended for patients with mental illnesses, most of whom had no advocates and cannot advocate for themselves.

At that time I arranged to meet with officials of LSH to see how we could make it a better place for all involved. We met and the attendees included more than just officials at LSH. There were also members of the Citizen's Advisory Board attending the meeting.

We created a list of changes including easier prosecution of crimes committed by patients against staff and other patients, and the ability to collect child support and property damages. The really big issue though, was the fact that the predators were able to easily obtain contraband (including child pornography), and they were also known for continuing to contact and harass their victims through unrestricted use of the phone and mail.

I had the bill drafted during last year's session. Then we asked SRS for their approval of the bill. After receiving their blessing, we basically just ran out of time and the bill never got a hearing. It then died at the end of the 2006 session.

The crux of the matter is that a set of rights had been defined for mental patients many years before the creation of the Sexual Predator Treatment Program. The sexually violent offender is a different category of patient. They have been determined by the judicial system to be unsafe to return to society, but they've already served their time in Corrections. The screening process ensures that everyone that ends up in LSH is someone who is truly dangerous.

HB 2001 originally gave SRS the authority to write a set of rights through rules and regs. However, SRS felt it would be better to put these rights into statute. Hence the length of the bill. These rights were taken from Wisconsin's law, and has already been challenged in court and found to be constitutional.

Senate Judiciary
3-15-07
Attachment 1

I have read in the papers that this bill authorizes LSH to censor mail that is sent and received by patients. However, HB 2001 does not allow any censorship. It does allow for the search for contraband in mail, but not the reading or censoring of letters.

HB 2001 passed unanimously in both the House Judiciary committee and Committee of the Whole.

A handwritten signature in cursive script, appearing to read "Mitch Holmes".

Elliot Law Office

2500 Wallace Rd . Lawrence . KS . 66044 . (785)224-1317 . kip@elliottlawoffice.com

**Testimony on House Bill 2001
Senate Committee on Judiciary
March 14, 2007**

By Kip Elliot, private attorney

Chairperson Vratil and Members of the Committee:

Thank you for allowing me to present this testimony on House Bill 2001. I am a private attorney who was appointed to represent a resident of the Sexual Predator Treatment Program on a civil rights petition. I submit this testimony in opposition of HB 2001 for the following reasons.

Persons involuntarily committed under K.S.A. 59-29a01 *et seq.* are detained civilly and under clearly established U.S. Supreme Court rulings must be provided all the rights that accompany any person who is civilly committed. Patients in the Sexual Predator Treatment Program (SPTP) are detained for the purpose of treatment not punishment.

HB 2001 denies patients in the SPTP the same patient's rights provided to others who are civilly committed in Kansas. Differential treatment between SPTP patients and others civilly committed violates equal protection as well as other constitutional rights.

HB 2001 specifically allows for restraints and seclusion to be used for reasons other than security or safety concerns. Locking patients in their rooms at night does not conform to the "least restrictive environment"; is unreasonable seizure under the 4th Amendment; and violates the patient's substantive due process rights. Due process requires that the conditions of confinement are reasonably related to the purpose for which the person is confined.

The provisions regarding the sending and receiving of mail in HB 2001 are excessively restrictive, especially provisions allowing for opening mail outside the presence of the patient, and allow for abuse by hospital staff. It is not difficult to envision a staff member deciding to open all patients' mail under "suspicion of contraband." Unusual smells or bulky letters would suffice under this proposed amendment.

HB 2001, restricting SPTP patient's rights, is fraught with unnecessary restrictions that, if passed, will lead to costly litigation as suggested by the Office of Attorney General in the Fiscal Note for HB 2001. I encourage you to oppose HB 2001.

Respectfully Submitted:



Kip Elliot

Senate Judiciary

3-15-07

Attachment 2



Kansas Press Association, Inc.

Dedicated to serving and advancing the interests of Kansas newspapers

5423 SW Seventh Street • Topeka, Kansas 66606 • Phone (785) 271-5304 • Fax (785) 271-7341 • www.kspress.com

March 14, 2007

To: Sen. John Vratil, chairman of the Senate Judiciary Committee, and committee members

From: Doug Anstaett, executive director, Kansas Press Association

Re: HB 2001

Thank you, Mr. Chairman, and members of the committee.

The Kansas Press Association wishes to express its opposition to a small but ill-advised amendment offered on the floor of the Kansas House to prohibit sexually violent predators from sending unsealed mail to members of the news media.

This is not because anyone in Kansas has sympathy for sexually violent predators. They are a despicable lot and should be dealt with accordingly, which the state does by requiring that they be sentenced to treatment and incarceration at Larned State Hospital.

However, we do have a problem with prohibiting anyone who is incarcerated from having direct, uncensored contact with the news media of Kansas. This is a prime way for corruption, abuse and inhumane treatment to go unchecked.

If we allow prison officials to open mail that is destined for a reporter at a newspaper, we are allowing those in control to cover up their own errors and misdeeds. Our nation thrives because we make sure those in positions of authority cannot exercise their power with impunity. We put into place checks and balances that work together to help avoid such abuses.

Even though we have prisons to punish people and Larned State Hospital to house those who can no longer live in our open society, we also believe that our inmates and patients retain the right to be treated with dignity. If they are not treated humanely, this amendment prevents them from having direct access to the media, who serve vital roles as watchdogs over government and how it provides services.

In opposing the measure on the floor of the House, Rep. Candy Ruff expressed our sentiment about as clearly as it can be stated. She said sex offenders, although often mentally ill, often are some of the few patients at Larned with the mental acuity to report instances of abuse throughout the facility.

“They can see, they can walk around, they can look and they can express themselves, and they can oftentimes bear witness to some of the things that are going on in this institution,” Rep. Ruff said. She went on to say restricting access to the media is something usually to be avoided.

We agree.

The representative who offered the amendment to exclude the news media said he trusts the facility's superintendent not to divert complaints about conditions at the hospital. So, he trusts those who are in charge and whose jobs depend on their performance — essentially the foxes — to guard their own henhouse.

Senate Judiciary
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Attachment 3

We're sorry, but we could not disagree more. Freedom from scrutiny is not the best way to deliver good government.

The Wichita Eagle reported about abuses at Larned after receiving a tip about a KDHE survey from a patient in the sexual predator program. That report cited filthy conditions, cold showers, violations of patient privacy and inattention that led to the choking death of a female patient who had a swallowing disorder.

The survey had not been shared with legislators ... in fact, most legislators learned of the situation only after the newspaper's reporting of the survey's results. So much for trust in those in charge.

We understand the need to keep sexual predators from contacting their former victims or from sending out obscene materials. We don't want that to happen either.

But prohibiting direct contact with the news media is not the answer to that problem. Reporters would be the last place predators seek out to disseminate such offensive material.

The striking of those five words — "members of the news media" — is wrong because it removes a critical check from the system. We ask that the phrase be reinstated so that the performance of prison and state hospital officials continues to be open to public scrutiny, even if the tip comes from someone we as a society so despise.

The news media may in fact be a patient or prisoner's last resort to correct problems of abuse, neglect and corruption.

Pawnee County Economic Development Commission Supports House Bill 2001

The Pawnee County Economic Development Commission is supporting House Bill 2001, which would allow the Larned State Hospital to monitor the incoming and outgoing mail and phone calls of sexual predators. This support is based on the following points concerning the Sexual Predators at the Larned State Hospital's Sexual Predator Treatment Program:

* They are continuing to victimize their victims. Currently the Sexual Predators in the LSH SPTP can continue to victimize their victims through the postal service via a third party mailer. They are sending letters to their victims by enclosing the letter in an envelope addressed to the victim and then placing that envelope in a second envelope and mailing it to another individual asking them to put the enclosed envelope in the mail to them.

* They are creating new victims. Recently the Larned State Hospital learned how individuals from the Sexual Predator Treatment Program had received names of two young ladies who are part of Sunflower Diversified's program and are mentally challenged. They sent these two young ladies were sent phone cards and asked to call the individuals back. The sexual predators then proceeded to have phone sex with the young ladies. The only reason that the Larned State Hospital staff even found out about this activity is that a women who has regular contact with the young ladies, noticed a major change in their behavior and after doing some digging with them discovered the truth. The Larned State Hospital at this time has no idea how many times incidences like this take place with new victims.

* They are networking to discover new ways to victimize the State of Kansas. The individuals in the LSH Sexual Predator Treatment Program receive a publication called "Lifers Union Bulletin", which is a monthly newsletter as large as 36 pages per issue. Their purpose in this publication is to "ensure that complaints of abuses and otherwise harsh conditions prevailing in your state not go unreported. Collect complaints and send them to us and also send any motions, briefs and decisions which you believe we should know about. Send our flyers and publications to people confined in your state, and/or their friends and families so that our Liaison and families/friends support network continues to grow." Other publications they also distribute include: "Fighting Civil Commitment", "Sex Offender Civil Commitment Laws" and "Guide to Rights of Individuals Civilly Committed." These publications are used as an educational tool to help the sexual predators discover "new" ways to sue the State of Kansas. The information from these types of publications is used to continue to victimize the State of Kansas and its taxpayers by wasting precious resources of both time and money for frivolous actions.

* They are victimizing LSH Staff by exposing them to x-rated materials.

Senate Judiciary
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Attachment 4

LSH Sexual Predators have managed to get pornography videos into the confines of the hospital by disguising them as religious videos, etc., in new vacuum-sealed tape case. Of course, these pornography videos are not on the recommended treatment plan of the Larned State Hospital.

* They are victimizing Kansas legislators and taxpayers. Currently, an individual in the Sexual Predator Treatment Program at the Larned State Hospital by the name of Mark Brull has been victimizing Kansas State Legislators and their staff with repeated phone calls asking them to investigate the allegations of KDHE at the Larned State Hospital. Of the complaints, over 70% of them came from the Sexual Predator Treatment Program and all of the phone calls to the KDHE hotline came from the sexual predators at LSH. The sexual predators are making a concentrated effort to place the focus on the Larned State Hospital and take it off of HB 2001 in attempt to weaken its support.

Maybe its now time to shine the light on who is Mark Brull. Mark Brull was civilly committed to the Larned State Hospital's Sexual Predator Treatment Program after time served incarcerated for indecent solicitation of a child and sexual act. Individuals are committed to the Sexual Predator Treatment Program by the judicial system with they feel that the individual is not safe to be returned to society. Of all of the sexual predators who are incarcerated, only the top 3% are committed to the Sexual Predator Treatment Program at the Larned State Hospital. Is this really the type of person who's word you want to take concerning the ramifications of House Bill 2001? It is individuals like Brull throughout the country, who do not want HB 2001 to pass since the passing of this bill will set precedence across the nation.

House Bill 2001 will help curtail all of these efforts and save precious tax dollars and time of all concerned. The Sexual Predators at the Larned State Hospital have "earned the right" to their civil commitment and nothing more.

Linda Henderson

President/CEO

Larned Area Chamber of Commerce

Pawnee County Economic Development Commission

502 Broadway

Larned KS 67550

I do not want to list my name, to protect myself from potential harassment from the Sexual Predators at the Larned State Hospital. I would be happy to speak with any of you by phone or in person. If you would like my information please contact Mitch Holmes. (Mitch, If you think I should put my name there...I will, I just do not want this cycling at LSH/SPTP or the Predators family members)

I started at the Sexual Predator Treatment Program in October of 1997. I continued to work there until my resignation in January 2004. I was in a professional position which required a Bachelor of Science. I have mine in Sociology from Kansas State University. I left on good terms with my fellow workers, but chose to take another position in the private sector. When I started there were 9 residents and the Supreme Court had just made their decision that the law was constitutional. When I left S.P.T.P. there were over 100 residents in the program. I got to see many changes and dynamics in the program during my time there. It was an interesting job with good employees, however, the attitude of the residents was the main reason that I left and my safety was a big concern.

I always tried to maintain a professional attitude while working and never had any issues that ever required reprimand from my superiors, with that said, I want to tell you why I think that the House Bill 2001 should be passed (is this the correct verbiage Mitch?)

In the first two years at SPTP, we had such a small group of Sexual Predators and had a close staff and were able to monitor the resident's behavior closely, and for the most part it appeared to me that the majority of the residents wanted treatment and wanted to return to society and stop victimizing. There were good therapy sessions and a lot of emotion was shown. As the population grew we started to get Predators that had been in prison for many years. If you have ever worked in a Prison, you will understand this because with the time that you do in prison (the sentence) brings a prison mentality to many of them. They learn to survive with "crunch", contraband/cigarettes or goods from the canteen and sexual favors. For many of them this is a way of life. They spend their entire day thinking about how they can get something that they don't have or need. Many lie, steal, work on lawsuits and try to have inappropriate relationships with staff and are constantly looking for a loop hole in the system. For the most part, a very large number of the predators do this daily. They don't feel that there is any way to get out of the system, they feel victimized, continue to have the "prison mentality" and look for ways to make the staff miserable and or continue to prey on victims. I have so many stories of what went on while I worked there that I really was sick to my stomach and drained emotionally at the end of many work days.

We as staff had to be very careful that we did not interfere with the "resident's rights". Staff constantly got reprimanded by grievances and accusations that the residents made. Many of the residents refused to do treatment, would stay on the unit and not go to therapy and would watch TV in their rooms. We had to constantly monitor them to see that they were not watching PBS Kids, but had to do this unobtrusively. And if you did make a comment on the particular program, they would get very upset and would say that it wasn't our business. Some of them would find pictures of kids even in the newspaper and would cut them out and would hide them in their rooms. They also used JCPenney catalogs, basically any catalog they could get their hands on and would spend a significant amount of time on the phone. We didn't know who they were talking to and had no way to police this. We showed movies to the residents weekly and one of the residents could not control his attraction to a very young boy (actor) that he actually got up out of his chair and humped (sorry for the wording but I cannot find another word to describe) the television. These residents would complain that they had rights and that we had no right to check in on them, but even some of the ones that we thought really wanted therapy would surprise us and would help the others find victims or cut outs (pictures) and would enable them to continue their cycle. With their complaints and grievances they were allowed to get in movies and have VCR's in their rooms. It really was impossible to know what every movie was... if they had kids in it or not, if it was appropriate for them, etc. It didn't really matter, because each one had a different preference some liked babies, and some liked little girls with blonde hair, or African American women....hopefully you get my point that the victim template could be anything, unfortunately

even animals. One particular incident that really upset me was a resident that received a "Jesus of Nazareth" video during the Easter Season. This video was sealed, which was a requirement at the time for any incoming video. The person that sent it to him took the inside of the video out and replaced it with, what I would call soft porn. Then sealed it back up. This particular resident also disclosed that there were organized groups in society that actually gave hints as to how to have sex with an infant, toddler and not get caught...as in how to not leave evidence such as tares or cuts on the child genital area. They helped each other and corresponded with some of the residents. Really, there was no way that we as a program could control what the residents were allowed and to keep it as consistent as possible. As I said, "Barney the Dinosaur" on PBS for some of them was similar to what it would be like for a teenage boy to look at a Playboy magazine as in the same satisfaction and gratification sexually.

We also had a Predator that married a woman while incarcerated in Prison. This woman had children and grandchildren that she would bring to visitation. This man had no blood (genetic relation) with any of these kids, but these poor very young kids were brought into visitation. We as staff felt that he was parading them for the other residents and getting a thrill from having them there. This resident also received a composite of one of the young kids school class, which was I am guessing between first and fourth graders and was making a frame out of yarn and plastic canvas for the picture, in front of the other residents. These were kids that lived in Great Bend, Kansas (20 miles away) can you imagine the outrage that their parents would have if they knew their child's class composite picture was in a sexual predator program? I would not have been impressed if that were my child. But there was nothing we could do about it as staff because it was their right.

The problem with a large majority of the residents is quite frankly that they are never going to be what society feels is normal. My analogy would be that I am a married women married to a man, obviously my preference is men. Can you ever change that and make my sexual preference women or kids? No. Can some of them find ways to get therapy and someday live a normal, victim free life in society with never reoffending? Hopefully. I did see a few success stories and have been very proud of their continued success, but there are such a large number of them that see no point in working the program, no chance to get out and only feel that they are victimized by society and by the Law. Why should we enable them to call their victims, and continue to prey on innocent people, women, children, etc? Please believe me in that some of them are constantly looking for a thrill and a victim and only live to do this. We had one resident that masturbated 3-4 times a day and would sit outside in recreation yard and was so good at hiding it you would have to sit right by him to make sure that he didn't do it. These are very very sick men. They need help and as long as they are getting letters, making phone calls, getting videos and continuing their cycle of abuse they cannot be helped.

Thank you for your time and consideration. This is a problem that society will always have. It is inevitable. Please don't continue to let these residents victimize, especially young innocent children, many who eventually become sexual predators themselves. Try to stop the abuse. They have serious problems, it is obvious they are in treatment and have been found to be a threat to society. Do not continue to allow them to victimize. They are there for Therapy; it is what my tax dollars and yours are paying for.

From: Garen Stockwell
Larned State Hospital
Sexual Predator Treatment Program
1301 KS HWY 264
Larned, KS 67550

January 29, 2007

Residents Phones: (620)-285-6475 / (620)-285-6411

The Honorable John Vratil
Senator
State Capital, Room # 281 E
300 S.W. 10th AVE.
Topeka, KS 66612-1504

RE: Concerns, questions, comments about House Bill 2001.

Dear Mr. Vratil,

Hi my name is Garen. I have lived in Kansas for most of my life. I am a tax payer. I wanted to express a few questions, comments, & concerns about House Bill 2001. I hope you will consider when voting on this Bill. I am asking you to **Vote "NO" on House Bill 2001**. I am asking individuals who receive this letter to share it with other Senators do to my lack of funds to send each one of you a personal letter. I apologize for any inconvenience.

More than one patient has died due to their neglect. On Dec. 21, 2006 a patient died while being strapped in a restraining chair. This is just one example of where room for neglect has taken place and a person died. Why are not the current restraining & seclusion laws adequate? Why are not the giving patients medication protection not adequate? The typical solution to dealing with individuals in hospitals like this is to medicate them. I find the typical response in institutions as LSH that restraints, seclusion, and medication is used too loosely. The medication part of Bill should be **removed** to protect the individuals rights not make it more loosely to impose medication on any one.

Grievance Procedures are currently being run by Patients themselves. This impedes upon my privacy, confidentiality, a fair and impartial proceedings. What I file is no other patients business. I live here long term and patients hold grudges, animosity toward others. There is no way I or any patient can get a fair and impartial action taken on their behalf from any other patient. I am proposing that a LAWYER be hired by the State to handle all grievances. They should be given the power to enforce the State, Federal, Civil Rights, and any other LAWS of the Land.

Why would the State of Kansas want to take rights away from individuals? I know we are not well liked. But we are people too. Some day any one of you could have a relative, a friend, a neighbor, or some one you know who might end up in a institution like this one some where in Kansas. I would think that know one would want that but it could become reality.

The Dillon Building and other buildings on the LSH grounds where many of these violations of the KDHE Survey occurred was just remodeled. Residents just moved in on 4 / 29/ 06 in the Dillon Building. So where did the money all go? What was it spent on? I lived in Dillon Building before the remodeling & all I see is they slapped up some paint, new windows that is basically it. Tax dollars was spent but on what?

Stopping Patients from sending mail to the Media. After the KDHE Survey just cited the hospital for violations. Is there a connection to stop all mail that could leak out abuse, or violations of Civil Rights & other Laws of the Land? I think so. By opening all mail without a Patient present will leave room for theft, destruction of Patients property, use it for their own personal gratification. False accusations could occur if an employee decided to seek revenge by planting stuff that never actually came in the mail. I propose that all mail be opened by the Patient themselves to avoid the above.

Being filmed or taped could be taken and sold on the internet or taken home for their own gratification. Whether it be sexual or other wise. This could also be used as a manipulation tactic, & discrimination could occur as well as abuse. Staff in past have had sex with Patients, brought drugs to patients as well as pornography.

Senate Judiciary
3-15-07
Attachment 6

LSH /SPTP /SRS have violated the LAWS OF THE LAND and should be held accountable. I was when I broke the law. They are no different. They are not above the law. What does it teach people if some can get by breaking the law and others can not? Many individuals here in SPTP are mentally ill. I would hope & want Kansas to preserve the rights of all. What ever happened to Equal Protection for all? That will put a black eye on Kansas forever. Taking rights away because a selected group of individuals are not liked. That is how Concentrations Camps got started.

There are LAWSUITS pending at this time against LSH/ SPTP / SRS. Out of site & out of mind does not mean that patients / Residents should be punished by taking away there civil liberties, constitutional liberties. This is suppose to be a Program of Therapy. What ever happened to Civil Commitments having more rights then Prisoners?

Visitations should be allowed as they are today. If we go on what affects others treatment. Then in reality they could say that all who visit Patient "X" affects some one here so they can never have any visits. This allows for discrimination, & possible other violations of the law. Discrimination against the Patient themselves & there visitor(s).

These types of sex offenses are a choice. So if they are a choice then use the sentencing of 40 years in the criminal statues. If these sex offenses are a illness then individuals should be treated as so. So what is it? By taking our rights away I find it to be treating Patients as criminals. We have more rights then prisoners by law.

In support of I asking you to Vote NO on HB 2001. I hope the comments, questions, that I have brought forth will demonstrates that this Bill will leave a very loose cannon for discrimination, denial of equal protection rights, neglect, abuse, & violating civil liberties, constitutional liberties. Attorney General opinion or 2006 states this HB would lead to more Lawsuits. Which leads to tax payers flipping the cost.

Thank you for your time regarding this matter. Think of the future of Kansas. Kansas does not need to be known as the State who takes individuals rights away. Kansas should be known as the state who preserves the rights of all Kansas people.

Sincerely,

Garren Stockwell

12 March 2007

Mark D. Brull
1301 Kansas Highway 264
Larned, Kansas 67550

To: Senator John Vratil, Chair, Judiciary Committee

Senator Terry Bruce, Vice-Chair, Judiciary Committee

Senator Greta Goodwin, Ranking Minority, Judiciary Committee

Members of the Judiciary Committee

Subj: Amended House Bill 2001, comments

My name is Mark D. Brull. I am a resident of Larned State Hospital, Larned, Kansas. I have been civilly committed for the last ten years. My friend, Malcom J. Todd, helped me prepare this letter and ensure its delivery to you in a timely manner. I have reviewed Amended House Bill 2001 and would like to provide you with my views, comments and concerns. I hope that you will find this helpful.

I would like to start off by asking whatever happened to KSA 59-2977? (Seclusion and Restraint law of 1996). And KSA 59-2978 (The Kansas Patient Bill of Rights)? Why are these statutes not adequate to handle the needs and requirements of the hospital and there patients throughout Kansas. These two statutes meet the constitutional requirements of state and federal statutes; amended HB 2001 does not. Furthermore, Larned State Hospital (LSH) and SRS have not shown sound discretion in recent decisions as is evidenced by the KDHE Survey of 16 November 2006 as well as the two recent deaths. It is also clear that LSH and SRS are unwilling to except accountability, cover up and minimizes its actions, and silences its patients who speak out. This does not sound like an organization that needs more discretionary power, such as censoring mail, or broader seclusion/restraint laws etc. I believe this could be more cause for lawsuits if this bill is allowed to pass. (See Attorney Generals opinion of 2006).

As for patient rights, whatever happened to equal protection and anti-discrimination? Mental patients are not exclusive to one type of illness, in the general sense, but a broad range of issues including 'sexual abnormalities'. These men, LSH residents, sex offenders, and other mentally ill patients are already locked away from society. So does that mean we need to further punish them by depriving them of their civil and constitutional liberties while being held in what is supposed to be 'therapy'?

I hope that you are aware of the civil lawsuits pending against LSH/SPTP/SRS relating to the unconstitutional conditions of confinement? When will the legislature notice the discrepancies and correct these very serious shortfalls. How much longer will the taxpayer be forced to support LSH/Larned/Pawnee county area residents, for this poor use of treasury, under the guise of treatment? What happened to the new criminal statutes giving sex offenders 20 year, 40 years and life for repeat offenses? Doesn't this statute solve this problem? Isn't this type of sexual behavior a choice? It would appear that we have a double standard here; either the crime is based

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on illness or a choice. If it is an illness, why aren't we treating them prior to prison? If it is a choice, why aren't they in prison instead of treatment?

I would like all policy makers to answer some of these questions without stonewalling the public or use fear/scare tactics. It would mean more to me to know that someone is in control, and making fact based decisions to benefit all.

In support of my letter to you, regarding amended HB 2001, I believe the bill has the potential for abuse, negligence, discrimination, denial of equal protection rights, and violates civil and constitutional rights. It is noteworthy that some of the house bill is good, if it was only enforced. I have several concerns regarding this bill, including the following:

Page 10, lines 2 through 5 (what is the punishment for violating the patients rights under HB 2001?),

Page 10, lines 6 through 8 (equal protection??);

Page 11, lines 19 through 22 (are these rules and regulations and directives constitutional?),

Page 11, line 26 through 28 (what about due process prior to being returned to LSH?);

Page 12, line 5 through 14 (how can we make patients or their families pay for forced civil commitment against their will?). If Kansas wants this program, then Kansas should pay for it, not the ill patient or their families.

Page 12, line 21 through 28 (sounds like denial of access to the courts, as these patients are most likely indigent),

Page 12, line 29 (who will enforce this, as it is not currently being enforced).

In closing I would like to thank you for your time and attention to this very serious matter. Currently, we must all be mindful that anyone of us or our families could end up in a situation where we could be a patient in a hospital and need a constitutional bill of rights to guard our civil liberties.

Respectfully,

Mark D. Brull

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STATE BUILDING & CONSTRUCTION

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

Chairman Vratil and committee, thank you 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 Senate.

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. In 2005, the beginning of our previous legislative cycle, the bill passed again through the House by an 85-38 margin. It passed again earlier this session in an amended, narrower version, by an even larger vote of 94-28.

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 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 are 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. 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 buried her body in a field 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 there will only be prosecution for one.

Alexa's Law is about justice.

I would like to draw your attention to the bill before you.

Again, it is just as important to know what this bill is not about, in addition to knowing the bill itself.

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. Specifically they are:

Murder in the first degree, murder in the second degree, voluntary manslaughter, involuntary manslaughter, vehicular homicide, battery, aggravated battery, and capital murder.

On line 16 of the bill you will see that 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, or “shall not apply to”s in this bill. In Section 1. (c) (beginning on line 24) 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 abuses her own body with alcohol or drugs and injures her baby could be convicted under this law. Not so. The actions of the mother are specifically excluded in this bill.

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 inaccurate.

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

Additionally, there is no trigger mechanism that changes the law in the future. This bill can not lead to any thing else in the future.

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 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?

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, or women who are pregnant.

Interestingly, there are already statutes in place as it relates to crimes against a pregnant woman. They were enacted in 1995 when SB16 was passed into law.

I want to close by showing you something.

As I began talking about Alexa’s Law during 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 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 over 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” or received thousands of emails and faxes from Kansans showing their support. These signatures come from over 200 different cities so far. I have provided a list for you, and also a spreadsheet of names from only those who reside in Kansas and am submitting that as part of my testimony.

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

STATEMENT OF TERRI BROOKS

Good afternoon, Chairman Vratil and Members of the Committee:

Thank you for allowing our family 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 (our 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 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, 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 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 we were formally notified 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. The reason for their deaths, Alexa, the baby she was carrying, didn't exist in the eyes of the law. I wish someone would have told their killers that she really didn't exist.

Who among you has not awaited the birth of a child? The unborn child is thought of by them as a person, alive and growing in utero. 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. Do you think of an awaited child as something less than human? I think not.

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. We should not even be here today asking you to do the right thing and pass this bill.

Women's rights groups oppose Alexa's Law; instead they want to pass a law enhancing penalties for injury to a pregnant woman. I remember in the not so distant past when women wanted to be considered for military jobs considered to be "combat jobs." The argument? "Don't shut me out because I can bear children. I want to be treated like anyone else." What is proposed by these groups is giving special status to a pregnant woman. Why? Because of the life she carries inside her. What makes a pregnant woman's life more valuable than a man's or even a woman who is not pregnant? Is that not the same double standard that has been fought against by women's rights groups for decades? It is the life that is carried in the womb that makes the pregnant woman "special." Why not just recognize it for what it is? You are not going to overturn 35 years of *Roe v. Wade* if you vote in favor of this bill. Alexa's Law is about justice, and it's time that people put away these arguments. The word "choice" implies that there is more than one option. We made a choice to give Alexa life, but in making that choice it

seems we have no rights.

Kansas is not blazing a new trail when it comes to fetal homicide laws. In fact, we are one of the few remaining states to consider it. It's been time- and court-tested in many other states and holds up to scrutiny. In fact, Alexa's Law is patterned after the laws in many other states that have withstood judicial review.

There are members of this committee who were instrumental in passing Magnum's Law a couple of years ago. It's time for you to show the people of Kansas that you care about the children of Kansas as much as you care about abused puppies.

I urge you and your fellow legislators 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, my granddaughter's life can count in the eyes of the law for future unborn victims of violence.



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SENATE JUDICIARY COMMITTEE

TESTIMONY IN SUPPORT OF HB 2006, "ALEXA'S LAW"

Thursday, March 15, 2007

Chairman Vratil 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 prosecution for fetal homicide jeopardizes *Roe v. Wade*.

However, 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. (For other detailed opinions, see also *People v Taylor* (2004) S112443, 103 Cal.App.4th 1275) and *People v Dennis* (1998) 17 Cal.4th 468, 71 Cal.Rptr.2d 680; 950 P.2d 1035).

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 cable TV's Discovery channel this January. Therefore, it is not surprising that polls show Americans overwhelming support justice for unborn victims of violence.

As noted in the *Pennsylvania v Bullock* 2006 state Supreme Court decision (see Attachment C):

▶ "the concept of a fetus or unborn child as a potential victim of violence is neither obscure nor difficult to grasp...

▶ "[in] similar feticide enactments [in other states], the statutory language does not purport to define the concept of personhood or establish when life as a human being begins and ends; rather, it imposes criminal liability for the destruction of a human embryo or fetus that is biologically alive.

▶ "whether an embryo is a human being, or on whether or at what stage the embryo or fetus is ensouled or acquires 'personhood' ... [is] entirely irrelevant to criminal liability under the statute

▶ "to accept that a fetus is not biologically alive until it can survive outside of the womb [viability] would be illogical

▶ "individuals of ordinary intelligence are readily capable of discerning the conduct prohibited

▶ "the United States Supreme Court has affirmed that states have an "important and legitimate interest" in protecting fetal life at all stages "

These pronouncements from Pennsylvania show how logical fetal homicide laws really are. In fact, 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 D).

And if the families you hear from today had been victimized under crimes specified within federal or military jurisdictions, those prosecutors would be allowed to press charges for the separate death of the unborn (see Attachment E).

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

Thank you. I stand for questions.

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).

Dec. 2006 Penn. Supreme Court Decision, defending state fetal homicide law
COMMONWEALTH OF PENNSYLVANIA v MATTHEW BULLOCK,

From pages 1-2

In the late 1990s, Pennsylvania's General Assembly enacted the Crimes Against the Unborn Child Act. *Act of October 2, 1997, P.L. 379, No. 44, effective March 31, 1998 (as amended, 18 Pa.C.S. §§2601-2609)*. The Act added Chapter 26 to the Pennsylvania Crimes Code, which created several new offenses **designed to protect unborn children from unlawful injury or death**. Under the Act, an individual commits criminal homicide of an unborn child if he or she intentionally, knowingly, recklessly, or negligently causes the death of an unborn child, *see 18 Pa.C.S. §2603*, a term that refers to the fetus at any stage of gestation. *See 18 Pa.C.S. §2602.2* Accordingly, the Act establishes the crimes of first, second, and third degree murder of an unborn child, as well as voluntary manslaughter and aggravated assault of an unborn child. *See 18 Pa.C.S. §§2604-2606*. Its criminal provisions **do not apply, however, to consensual abortion, doctors engaged in good faith medical practice, or pregnant women in regard to crimes against their own unborn children**. *See 18 Pa.C.S. §2608(a)*. Of particular relevance to this appeal are the Act's specifications with regard to voluntary manslaughter:

(a) Offense defined.—A person who kills an unborn child without lawful justification commits voluntary manslaughter of an unborn child if at the time of the killing he is acting under a sudden and intense passion resulting from serious provocation by: (1) the mother of the unborn child whom the actor endeavors to kill, but he negligently or accidentally causes the death of the unborn child . . .

(c) Penalty.—The penalty for voluntary manslaughter of an unborn child shall be the same as the penalty for voluntary manslaughter. *18 Pa.C.S. §2605*.

Presently, the Act prescribes that it is **unlawful to intentionally, knowingly, recklessly, or negligently cause the death of an unborn child, defined to include all stages of gestation from fertilization to live birth. This definition is straightforward. In the first place, the concept of a fetus or unborn child as a potential victim of violence is neither obscure nor difficult to grasp.** *See Booth, 564 Pa. at 241, 766 A.2d at 850* (“Today it is understood that a mother and her unborn child are separate and distinct entities, and that medicine is generally able to prove the corpus delicti of the homicide of an unborn child.”). It is also clear that, by defining unborn child to include all stages of gestation, *see supra note 2, the General Assembly intended to eliminate any viability requirement. Accord People v. Ford, 581 N.E.2d 1189, 1198 (Ill. Ct. App. 1991)*(reaching same conclusion with regard to a similarly-worded definition of unborn child). Moreover, as appellate courts in other jurisdictions have elaborated **in construing similar feticide enactments, the statutory language does not purport to define the concept of personhood or establish when life as a human being begins and ends; rather, it imposes criminal liability for the destruction of a human embryo or fetus that is biologically alive.** *See, e.g., State v. Merrill, 450 N.W.2d 318, 324 (Minn. 1990)* (“People are free to differ or abstain on the profound philosophical and moral questions of whether an embryo is a human being, or on whether or at what stage the embryo or fetus is ensouled or acquires ‘personhood.’ **These questions are entirely irrelevant to criminal liability under the statute.**”). In this context, death occurs when the embryo or fetus “ceases to have the properties of life.” *Id.*; *see also Ford, 581 N.E.2d at 1201* (“The statute only requires proof that, whatever the entity within the mother’s womb

is called, it had life and, because of the acts of the defendant, it no longer does.”); *see also Bullock*, 868 A.2d at 522 (“Clearly, a death occurs when the embryo or fetus no longer has the capacity to thrive or grow.” (citing WEBSTER’S NEW COLLEGIATE DICTIONARY 289 (8th ed. 1981) (defining death as “a permanent cessation of all vital functions”))).

from pages 7-8

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 upon external conditions, namely, the existing state of medical technology (which, of course, tends to improve over time). *See Booth*, 564 Pa. at 246 n.18, 766 A.2d at 853 n.18 (recognizing the General Assembly’s findings concerning “the steady reduction in the age of fetal viability”). Accordingly, 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, and hence, to the question of whether the statute is vague in proscribing the killing of an unborn child. We find that **individuals of ordinary intelligence are readily capable of discerning the conduct prohibited** by the Act...

from pages 9-10

To the contrary, the **United States Supreme Court has affirmed that states have an “important and legitimate interest” in protecting fetal life at all stages, even if that interest only becomes “compelling” at viability**. *Roe v. Wade*, 410 U.S. 113, 163, 93 S. Ct. 705, 732 (1973); *see Planned Parenthood v. Casey*, 505 U.S. 833, 846, 112 S. Ct. 2791, 2804 (1992) (reaffirming that one of Roe’s essential holdings was that “the State has legitimate interests from the outset of the pregnancy in protecting . . . the life of the fetus . . .”); *see also Bullock*, 868 A.2d at 522-24 (discussing cases); *accord People v. Davis*, 872 P.2d 591, 597 (Cal. 1994) (observing that Roe “does not hold that the state has no legitimate interest in protecting the fetus until viability”); *State v. Merrill*, 450 N.W.2d 318, 322 (Minn. 1990) (noting that the state’s interest in protecting “the potentiality of human life” includes protection of the unborn child, “whether an embryo or a nonviable or viable fetus”); *State v. Alfieri*, 724 N.E.2d 477, 482 (Ohio App. 1998)

from pages 12-13

Under prevailing jurisprudence of the United States Supreme Court, **the fact of her pregnancy gives her (and only her) certain liberty interests in relation to the termination** of that pregnancy that the Legislature could reasonably have sought to avoid infringing by exempting her from criminal liability under this particular statute. *Cf. Witters v. State Comm’n for the Blind*, 771 P.2d 1119, 1123 (Wash. 1989) (rejecting an equal protection challenge where the classification at issue served the Legislature’s interest in complying with constitutional requirements). Although the Act **contains a separate exemption for voluntary abortion**, *see 18 Pa.C.S. §2608(a)(1)*, because of the mother’s unique connection to the fetus there are various situations even outside of the abortion context (such as those pertaining to drug addiction or attempted suicide) in which she alone might bear an increased risk of criminal prosecution were it not for the (a)(3) exception. The Legislature could rationally have taken this into account and sought to place the mother on a similar footing to all other persons as respects these types of situations. While this does result in the mother being treated more leniently under the Act as regards crimes against her unborn child, such a result would only be constitutionally problematic if it stemmed from an arbitrary classification, which, as noted, it does not.

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.

Testimony in support of HB 2006
Senate Judiciary Committee
March 15, 2007

Chairman Vratil and members of the committee,

Hello, my name is Becky Gaughan. I am from Topeka and I am here to testify in favor of House Bill 2006.

My story begins like the story of many pregnant moms waiting for the arrival of their much-awaited baby. I had been to the doctor the morning of March 26, 1994. My husband and I were told that we were to be at the hospital on March 27th to have the pregnancy induced. That evening I told my husband that we should go out to eat because I did not feel like cooking. Little did we know that as we left Sirloin Stockade that evening, we would be hit by an eight-time convicted drunk driver. The impact was so severe to my side of the car that the placenta separated from the uterus. Upon arriving at the hospital emergency room the doctor on duty informed us that I had to have an emergency c-section and that the baby was probably dead. When I awoke from surgery the first thing I asked was, "Did Morgan die?" I was told that yes, she had died. At that point my life stopped.

You may ask how losing a baby I never knew had that much of an impact on my life. I wanted and prayed for my baby. Imagine that you had your baby's room all ready, looking just the way you wanted it, only to come home with empty arms. Imagine your four-year-old daughter asking, "Mommy, when does Morgan get to come home?" Imagine your marriage of ten years crumbling before your very eyes and being able to do nothing to heal the pain that destroys both of you. Imagine lowering your baby into the ground and watching all your hopes and dreams go with her to her grave.

We were outraged to later discover that the drunk driver could not be charged with killing our precious baby. To add insult to injury, her existence could not even be mentioned in court. I will never forget how the judge chided our lawyer for merely referring to the "tissue in my stomach." That kind of insult never goes away. Morgan and all those like her who have been killed by a senseless crime deserve to be acknowledged.

It is just not enough to raise the penalty one notch on a crime while at the same time refusing to recognize the humanity of our unborn children. We mothers and fathers will always feel that we cannot rest because our children's lives are not accounted for. They were precious babies -- not just blobs of tissue.

Please vote in favor of this bill. Thank you.

Becky Gaughan
2900 SE Ohio
Topeka, KS 66605
785-266-4909

Senate Judiciary

3-15-07

Attachment 11

Proponent, HB 2006 "Alexa's Law"

Good morning Chairman Vratil and committee,

I am Brad Burke, here in support of HB 2006, also known as Alexa's Law. I received my law degree from KU in 2001 and have worked as a prosecutor for 6 years, starting as an assistant district attorney in Douglas County and now as assistant district attorney in Johnson County. I was asked by Kansans for Life to testify solely in my professional capacity as a criminal prosecutor.

From a prosecutor's perspective, the primary advantage of HB 2006 is that it would allow for criminal prosecution when injury results to both that mother and the unborn child. The State can already prosecute an offender when a pregnant woman is injured for the injury to the woman herself. However there are some limitations under current laws that are addressed by HB 2006. For example, K.S.A. 21-3440, Injury to a pregnant woman, and K.S.A. 21-3441, Injury to a pregnant woman by vehicle, both currently allow the State to prosecute an offender if he or she injures a pregnant woman resulting in the miscarriage of the unborn child, but the two statutes do not apply if the unborn child is not miscarried, even if permanent and severe damage is caused to the unborn child resulting in permanent disability.

HB 2006 would allow the State to prosecute an offender for injuries caused to an unborn child if the unborn child survives the attack, and it would allow the State to prosecute the offender for a variety of degrees of murder if the unborn child dies as a result of the injury sustained.

HB 2006 would also potentially qualify a case to be charged as Capital Murder under K.S.A. 21-3439(a)(6), if a pregnant woman is murdered resulting in the loss of the unborn child in addition to the loss of the pregnant woman. Under current law, Capital Murder is not an option if a pregnant woman and her unborn child is murdered unless a limited additional criminal act such as sexual assault or kidnapping is also perpetrated on the pregnant woman during the commission of the murder.

Finally, there is an overall moral obligation of the State to punish the unjustified taking of innocent human life and HB 2006 provides the State the ability to do just that.

Thank you. I stand for questions.

Brad R. Burke
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Lawrence, KS 66047
785-550-8989

Senator Vratil, members of the committee, thank you for the opportunity to testify this morning.

By way of introduction, I am Jo Ann Van Meter. Presently, I am practicing law in Shawnee County. I have been in private practice for twelve years, focused on criminal defense law, family law and administrative law. Prior to being in private practice, I worked in the office of the District Attorney of Shawnee County prosecuting domestic violence. In the earlier years of my life, I was a registered nurse, working primarily in critical care areas and in general medical surgical areas.

I am, for the whole of my adult life, the mother of two daughters who are now accomplished and independent women.

The circumstances which constitute the genesis of this bill are truly horrific. There is nothing I or anyone else can say that will relieve the pain of the loss of a child and the loss of an expected baby. However, it is a truism in law that bad facts make bad laws.

Our system of criminal justice is one of laws and of rationality. It has evolved over time to represent certain principles. One of those principles is that the guilt of a person and the sentencing of that person are decided in accordance with laws which are applied uniformly. The law strives to provide justice by punishment of the person convicted of a crime. The law can neither remove the pain caused by the perpetrator nor can it restore a person to the position she or he was in prior to the crime. Those touched by the crime may or may not find resolution to the pain caused by the perpetrator. Those who are able to reach a resolution will do so in their own time and in their own way.

For the purposes of legal analysis, I am not familiar with the specifics on which this law is based. The law controlling sentencing of a person convicted of a crime, as presently written, provides a range of sentencing from the death penalty to an increased sentence where aggravating factors are present, including conduct by the perpetrator of the crime that manifested extreme brutality.

I reviewed HB 2006 and the Supplemental Note on House Bill No. 2006. A number of crimes to which this bill would apply are enumerated. I did note, however, the crime of Domestic Battery, K.S.A. 21-3412a, is not included.

I suggest that the act being discussed is a crime of domestic violence. In tumultuous domestic relationships, pregnant women are at the greatest risk of violence. It is reasonable to assume that when a woman becomes pregnant and as her body undergoes a torrent of rapid changes, her attention shifts to herself and away from the man in the relationship. Some men seemingly are not able to tolerate the loss of attention and react aggressively. This violence frequently continues after the birth of the child who then demands the full attention of the mother.

All who work in the area of domestic violence are painfully aware that murder of women in relationships is not uncommon. It is known that significant numbers of pregnant

women are subjected to domestic violence. Pregnant and recently pregnant women are the most frequent victims of domestic homicides. As a former prosecutor and a current defense attorney, I am certain that this bill, should it become law, will not deter individuals from committing acts of violence directed toward women.

As I read through HB 2006, two pieces of the bill immediately caught my attention. The first is the biological language used to describe an unborn child, "individual organism of the species homo sapiens, in utero, at any stage of gestation from fertilization to birth." It is, of course, impossible to enforce such a law. This bill, should it become law, is intended to become effective at conception, a time unknown to most women. Many pregnancies end in the very early weeks of pregnancy for a variety of reasons. It is thought that a substantial number of pregnancies end in the very early term because of chromosomal abnormalities. In the event a woman knows a pregnancy has ended in the early term, it may be impossible to ascertain the reason for the termination of the pregnancy.

The only way to detect an embryonic cluster of cells would be through testing. An equal application of this law would deem any woman who is the reported victim of a person crime would have to be tested for pregnancy. One might consider such a woman to be one who is reported to be the victim of a battery which is, by one of the two statutory provisions, intentional contact such as a push, shove or slap, with another person in a rude, insulting or angry manner. She would have to be tested for pregnancy at State expense. The cost to the State would be extraordinary if the law was applied equally to all women who are reported battered. Further, it would be an intrusive procedure not welcomed by many women who are in emotional turmoil trying to put their lives together. More work would be created for medical persons who do the testing. More work would be created for prosecutors, the individuals who ultimately decide how many and which cases to prosecute.

HB 2006 is unclear as to its intent and its application. The biological description of an unborn child leads one to believe that the author of this bill is aware that words are subject to interpretation. As you know, attorneys are artists in the interpretation of words and phrases. Therefore, it is reasonable to expect the law of unintended consequences will apply. How is it determined that an embryo is battered? Who makes that determination? Who leads the effort to ascertain whether women of a certain age who are victims of violent crimes are also pregnant? What if the woman objects to pregnancy testing?

Finally, as I read this bill, I note the bill lists abortion in (b)(1) before the definition of an unborn child. The bill highlights abortion again by defining it as a medical procedure but defining no other procedure. The substance of the bill doesn't relate to abortion although the initial focus of the bill is on abortion. The bill does, however, define an unborn child as a living organism from fertilization to birth. I suggest, despite assertions to the contrary, that this bill is indeed about abortion, that it is an effort to undermine the legal pinning of the right of an individual woman to choose to have an

abortion. How many changes in law are necessary to outlaw abortion once a fetus is defined by the legislature as an unborn child, an organism from fertilization to birth?

I'll be happy to stand for questions. Thank you.

Jo Ann Van Meter

Senate Judiciary Committee
March 15, 2007

Testimony prepared by
Jennifer Roth, Legislative Committee Chairperson
Kansas Association of Criminal Defense Lawyers
Opponent of House Bill 2006

The Kansas Association of Criminal Defense Lawyers (KACDL) is a 250-person non-profit organization dedicated to justice and due process for those accused of crimes or at risk of being accused of crimes. KACDL opposes **House Bill 2006** because of the following reasons:

Relying on existing statutes will lead to more justice for women and their unborn children.

For over ten years, it has been a crime in Kansas to cause injury to a pregnant woman thereby causing her to miscarry as a result of that injury. In fact, K.S.A. 21-3440 applies when a person is in the commission of a felony OR a misdemeanor, which is more encompassing than HB 2006. Furthermore, K.S.A. 21-3441 punishes injury to a pregnant woman thereby causing her to miscarry as a result of that injury because of unlawful operation of a motor vehicle. This too includes a wide range of offenses, including DUI or running a stop sign. Furthermore, the Kansas Sentencing Guidelines Act provides for upward durational or dispositional departures and this mechanism could be used to punish defendants who cause women to miscarry in the commission of their offenses. Lastly, Kansas has a capital murder statute that can be used in certain cases, just as it was in the case of Chelsea Brooks.

Passing HB 2006 will lead to prolonged court cases and delay closure and justice. There will be autopsies on unborn children. There will be arguments about criminal intent. The need for experts will explode. There will be litigation in appellate courts.

HB 2006 could lead to pregnant women being prosecuted for offenses not included in HB 2006 and perhaps even offenses supposedly exempted by HB 2006. We need look no further than South Carolina for proof (although things like this are occurring around the country). Although South Carolina passed an unborn victims of violence act in 2006 that excludes acts of the mother, it is already in the business of prosecuting women for homicide by child abuse and unlawful neglect on the theory that these women used drugs while pregnant. For example, Regina McKnight was charged with homicide by child abuse after she delivered her stillborn daughter at 34-37 weeks. The baby tested positive for a metabolite of cocaine. Ms. McKnight was convicted and sentenced to serve 12 years.

At the time of her conviction, homicide by child abuse did not specifically apply to fetuses. In fact, it is defined as “causes the death of a child under the age of eleven while committing child abuse or neglect . . .” (See South Carolina Statute § 16-3-85.) Ms. McKnight argued that the term “child” as used in that statute was “most naturally read as including only children already born.” (See *State v. McKnight*, 576 S.E.2d 168 (2003)). The South Carolina Supreme Court disagreed, stating “[i]n several cases this Court has specifically held that the Legislature’s use of the term child includes a viable fetus.” The Court went on to draw conclusions about the Legislature’s intent in using the term child.

HB 2006 would define an unborn child as a person or human being. This would be a definition handed down by the Legislature that could be used to support charges against pregnant women for offenses not covered by HB 2006, such as child abuse and child endangerment. Furthermore, even having exemptions for acts of the mother does not ensure pregnant women will not be prosecuted. In April 2006, Jenny McGlaughry of Antioch, Illinois, was arrested and charged with battery of an unborn child for smoking marijuana in her car. Battery of an unborn child, however, excludes the mother as the "person" who causes the bodily harm. (See 720 Ill. Comp. State. 5/12-3.1.)

HB 2006 could have negative ramifications on pregnant women and other people in other areas of law, such as wrongful death or tort law, and/or could unintentionally expose certain people to criminal charges. For example, it appears that Kansas law now requires that a fetus be viable before a wrongful death claim can be initiated on behalf of the deceased fetus. If an unborn child is defined as a "living individual organism . . . at any stage of gestation," that could impact wrongful death cases. In turn, it could affect tort law, perhaps even negatively impacting pregnant women. For example, what if a woman does not know she is pregnant (but she is) and she uses a certain product that says it is not safe for unborn children. Even if that product was legitimately defective, would the woman be able to seek recourse against the company? Couldn't the company just point to the woman's pregnancy and claim she shouldn't have been using their product?

Furthermore, HB 2006 arguably exposes people to criminal charges that the bill did not mean to include. For example, HB 2006 excludes "the lawful dispensation or administration of lawfully prescribed medication." What about over-the-counter medications? What about the pharmacists who come around the counter and show people which over-the-counter drugs would relieve certain ailments? HB 2006 also excludes "any medical procedure . . . performed by a physician or other licensed medical professional at the request of the pregnant woman." Does this put midwives at risk of criminal charges?

If the Senate decides a change is needed, we urge you to consider narrowly tailoring the changes to address the need. Please do not go beyond what is necessary and possibly expose people to unintended consequences.

Thank you for your consideration,

Jennifer Roth
rothjennifer@yahoo.com
(785) 832-9583

Good morning Chairman Vratil and Committee Members and thank you for allowing me to submit testimony on HB 2006. My name is Erin Thompson and I am a practicing attorney in the state of Kansas. I felt compelled to provide testimony regarding this sensitive subject matter, as I'm concerned about Kansas public policy and concern about the lives of women and their families.

I stand before you today as an opponent to HB 2006. I would first like to express my condolences to the Brooks family for the loss of their daughter, Chelsea, and her baby, Alexa and make clear my support for the intent of this bill – punishing those who commit such heinous crimes. It is, however, my belief that we can accomplish this goal without getting into a divisive political issue.

Before this Committee acts on HB 2006, I want to discuss the history of two statutes that have been in Kansas law for the past twelve years, which address injury to a pregnant woman, and then I want to propose some alternatives to the bill before us today. The alternatives I suggest are meant to bring justice to families, so that perpetrators are prosecuted to the fullest extent, while taking the abortion politics out of the realm of a crime bill. The bill today puts Kansas squarely in the abortion debate, whether intentionally or not, by asserting a position on the beginning of life and defining a pregnancy at any stage as an “unborn child” in Kansas statute. The question of when life begins is a divisive one which rests on an individual’s personal, moral, religious and philosophical beliefs – it is not a question to be answered by the state of Kansas in the context of a crime bill.

In 1995, this legislative body saw a similar case, one in which a woman lost her baby due to a drunk driver. The bill that proponents introduced 12 years ago also had language that brushed up against the abortion debate and beginning of life issues. The questionable language in that bill, SB 16, was as follows, “*‘Preborn human being’ means a human being in existence from fertilization until birth.*” This very committee, with great diplomacy and finesse, created a bill that created two separate crimes for injury to a pregnant woman.

The first crime became KSA 21-3440, which is injury to a pregnant woman by felony or misdemeanor and the second crime became KSA 21-3441, which is injury to a pregnant woman by vehicle. After careful consideration by the legislature, both proponents *and* opponents of SB 16 went on record with their satisfaction regarding the outcome. Knowing that history, I’m perplexed as to why we have a bill similar in nature before us today.

I would like to make the following recommendations regarding this bill so that we can have justice fully served and so that, as a state, we can keep abortion politics out of this debate.

One suggestion is to strengthen the statutes referenced above. In doing some research, it appears that these statutes have only been used three times in the past 12 years. That illustrates, in my opinion, that there is significant confusion surrounding the appropriate

usage of these statutes. For example, there are attorneys who argue that these statutes can only be used if the woman lives, other attorneys, however, argue that you can also use these statutes if the pregnant woman did not live. This is a prime example of confusion surrounding the bill. Other suggestions for the statutes I'd like to make are as follows:

- Amend the statutes to run consecutively, instead of concurrently, with other crimes so that perpetrators receive a more severe punishment.
- Amend the statutes to clearly state that the usage of these crimes would not bar other convictions with which the perpetrator might be charged.
- Increase the severity level for both statutes

Another statute to take into consideration for an amendment is KSA 21-4636, which is the list of aggravating circumstances. In this statute, a provision could be added which would account for injury to a pregnant woman and the subsequent injury or loss of her pregnancy, elevating the underlying offense to an aggravated one. Another option might be creating a separate crime which addresses the intentional and premeditated killing of a pregnant woman specifically in order to prevent her from giving birth to her baby.

As you can see, I have outlined various options that will allow us to bring justice to women and their families while leaving abortion politics out of the equation. I know that we all want justice so that we can help to prevent another family from having to experience what the Brooks' family has had to endure. I know that all of us here want to see perpetrators prosecuted to the full extent possible. I advocate that we do just that without bringing in divisive issues, which have no place in a discussion about violent crimes against pregnant women

I thank you for the opportunity to testify today.

Sincerely,

Erin Thompson

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.

STATEMENT OF ANDREA BROOKS

Good morning. 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.



March 15, 2007

Members of the Senate Judiciary Committee:

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 a distinctive individual. Chelsea Brooks and her family had made plans to welcome Alexa into their arms, but their hopes and dreams were snuffed out when Chelsea was murdered. Two people died that day... Chelsea and her little girl. Alexa would not *become* human when she made that journey through the birth canal... she was already fully human; merely waiting for the signal to be born; to enter the next phase of her human existence..

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. Kansas laws do reflect extra penalties if the woman is harmed, but if she survives and the baby is killed or injured, that is not recognized by Kansas law. It seems ironic that a state that rallied around the torture of an animal cannot give the same standing to a fully-human unborn child whose life is snuffed out because of violence done to the mother... a child whose mommy has made the choice to give her life.

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.

Thirty-four states have some sort of fetal homicide law. California enacted its law in 1970, the law 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."

A woman who is pregnant expects to have a child and nothing else. A woman whose child is injured or killed while pregnant has lost something precious, something that should be protected under the law. The families of these victims deserve something better too. These facts should be reflected in Kansas law. We urge you to support HB 2006 without amendments.

Sincerely,

Judy Smith, State Director
Concerned Women for America of Kansas

CWA of Kansas
PO Box 11233
Shawnee Mission, KS 66207
913-491-1380

Senate Judiciary
3-15-07
Attachment 18



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TESTIMONY IN SUPPORT OF HB 2006 ALEXA'S LAW

Chairman Vratil and members of the Committee:

Thank you for the opportunity to testify in support of HB 2006, Alexa's Law. 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."

HB 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. HB 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 recent case in Wichita of Chelsea Brooks. As you know this bill was named in memory of her unborn child, Alexa.

Unfortunately some opponents claim that the real intent of this bill is to undermine the "right" to abortion by establishing into law the humanity of the unborn child. A simple reading of the bill clearly indicates otherwise. It specifically excludes abortion. The clear intent and sole purpose of HB 2006 is to offer protection under the law for 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
ARCHDIOCESE OF KANSAS CITY IN KANSAS

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

MOST REVEREND MICHAEL O. JACKELS, S.T.D.
DIOCESE OF WICHITA

MICHAEL P. FARMER
Executive Director

MOST REVEREND JAN
ARCHBISHOP EMERITUS - A Senate Judiciary

MOST REVEREND EUGENE J. GERBER, S.T.L., D.D.
BISHOP EMERITUS - DIOCESE OF WICHITA

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

MOST REVEREND M. RET 3-15-07
Attachment 19

This bill is a common sense and compassionate approach, consistent with government's responsibility to protect vulnerable human life. I ask that you please vote to advance HB 2006 favorably for passage and send it to the full Senate for their consideration prior to the end of this year's session.

Thank you,

A handwritten signature in cursive script that reads "Michael P. Farmer".

Michael P. Farmer
Executive Director



214 SW 6th Avenue, Suite 208, Topeka, Kansas 66603-3719 phone 785-233-8601

**TESTIMONY CONCERNING HOUSE BILL 2006
THE UNBORN VICTIMS OF VIOLENCE ACT
Before the Senate Judiciary Committee March 15, 2007**

Chairman Vratil and members of the Senate Judiciary Committee:

While we wholeheartedly endorse the concept of HB 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.

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 via abortion.

But, *Roe v. Wade* will be overturned and the abortion controversy returned to the states. While several states are being applauded for passing laws that will outlaw abortion at that time, this proposal would ensure that abortion stay acceptable in Kansas.

We respectfully ask that all reference to abortion be removed from HB2006.

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

Senate Judiciary
3-15-07
Attachment 20

<<Back



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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Senate Judiciary Committee
HB 2006
OPPOSE
March 15, 2007

Chairman Vratil 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. I understand the family's desire for justice. 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. But, what Kansas has not done as well 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.