

MINUTES OF THE HOUSE FEDERAL AND STATE AFFAIRS COMMITTEE

The meeting was called to order by Chairman William Mason at 1:30 p.m. on March 4, 2004 in Room 313-S of the Capitol.

All members were present.

Committee staff present:

Russell Mills, Legislative Research Department
Mary Torrence, Revisor of Statutes Office
Dennis Hodgins, Legislative Research Department
Rose Marie Glatt, Secretary

Conferees appearing before the committee:

PROPOSERS:

Representative Steven R. Brunk, Wichita, KS
Nick Tomasc, District Attorney, Wyandotte County
Mike Farmer, Executive Director, Kansas Catholic Conference
Kathy Ostrowski, Kansans For Life
Jeanne Gawdon, Kansans For Life
Elmer Feldkamp, Right to Life of Kansas, Inc.
*written testimony only
*Denise Burke, Americans United for Life
*Judy Smith, Director, Concerned Women for America of KS

OPPOSERS:

Jennifer McAdam, Planned Parenthood of Kansas & Mid-Missouri
Julie Burkhart, Pro Kan Do
Anna Holcombe, Kansas National Organization for Women
William Westerbeke, University of Kansas, School of Law
Sandy Barnett, KS Coalition Against Sexual & Domestic Violence
Barbara Holzmark, National Council of Jewish Women

Others attending:

See Attached List.

HB 2552 - Unborn victims of violence act

Ms. Torrence stated that the bill defines for purposes of the KS criminal code, a person or human being to include an unborn child. She explained three instances in which the bill does not apply.

PROPOSERS:

Representative Brunk, a sponsor of the bill, provided the reason for inclusion of “unborn child” in the definition of person or human being ([Attachment 1](#)). He cited three reasons where the bill shall not apply:

- any act committed by the mother of the unborn child;
- any medical procedure, including abortion, performed by a physician or other licensed medical professional at the request of the pregnant woman or her legal guardian; or
- the lawful dispensation or administration of a lawfully prescribed medication.

Nick Tomasc, District Attorney, Wyandotte County, stated there is little protection for a woman carrying an unborn child, and there is no protection for the unborn child should either or both of them be seriously injured or killed as a result of another’s negligence or intentional act ([Attachment 2](#)). Testimony included an article from the May 2000 *William and Mary Law Review*, by Sandra L. Smith, entitled **1845 Fetal Homicide: Woman or Fetus as Victim?*; survey of current state approaches; and recommendations for future state application.

Mike Farmer, Executive Director, Kansas Catholic Conference, stated that **HB 2552** would 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 ([Attachment 3](#)).

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HB 2552 is constitutional; it complies with legal precedent, and mirrors laws in 29 other states.

Kathy Ostrowski, Kansans For Life, presented a packet of information pertaining to context of unborn-victim laws; Kansas status; public perception; legal issues; protective effect; profiles in violence; and objections to the bill (Attachment 4). She urged the Committee to examine the explosion of violence against the unborn, not just when they are victimized because they accompanied their moms, but as they themselves are the actual target of violence.

Jeanne Gawdon, Kansans For Life, played a video of Carol and Buford Lyons of Scott County, Kentucky giving testimony before the Kentucky legislature. Their testimony was included in her hand-out (Attachment 5).

Elmer Feldkamp, Right to Life of Kansas, Inc., appeared as a proponent with concerns (Attachment 6). He stated that they opposed the bill as currently written because it exempts acts of violence against the unborn. He suggested that all reference to "abortion" be removed from **HB 2552**.

*Written testimony only

*Denise Burke, Americans United for Life, wrote that **HB 2552**, as drafted, was constitutional and furthers the State of Kansas' interest in protecting unborn children from criminal violence (Attachment 7).

*Judy Smith, Director, Concerned Women for America of KS, presented information about fetal homicide law in twenty-nine states and data on three national polls pertaining to the issue of criminal assault to a woman who carries an unborn child. (Attachment 8).

OPPONENTS:

Jennifer McAdam, Planned Parenthood of Kansas & Mid-Missouri, stated that Kansas law has already addressed the issue of restitution for injury to a pregnant woman in two different statutes. KS 21-3440 and KS 21-3441 both ensure stiffer penalties for crimes that injure a pregnant woman if she miscarries (Attachment 9).

Julie Burkhart, Pro Kan Do, stated three reasons why they were opposed **HB 2552** (Attachment 10). The bill does not protect women; would create a new and separate offense for a fetus that is harmed during the commission of certain criminal acts; and is a measure to establish a fetus as a person, therefore, attempting to sabotage the 1973 Supreme Court ruling of *Roe v. Wade*.

Anna Holcombe, Kansas National Organization for Women, testified the Unborn Victims of Violence Act diverts the legal system's attention away from a pervasive and very real social problem - violence against women (Attachment 11). A political agenda which serves to deprive women of their rights cannot paradoxically be used in legislation that addresses violence against women.

William Westerbeke, University of Kansas, School of Law, stated the bill would have the legal effect of creating two crimes where one crime previously existed, with the potential for considerably longer periods of incarceration than currently are available under the sentencing guidelines (Attachment 12). An Act defining "person" for criminal law purposes may not have its effects limited to criminal law. He concluded by saying that from a procedural perspective, good legislation should identify its purpose, address it clearly with unambiguous language, and in a manner that has the least potential for unexpected consequences elsewhere in the law.

Sandy Barnett, KS Coalition Against Sexual & Domestic Violence, believed that the proposed legislation was not an appropriate remedy to address violence against women. She offered ten steps the Kansas legislature could take to more effectively address violence against women (Attachment 13).

Barbara Holzmark, National Council of Jewish Women, testified that the bill is another attempt to

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undermine a woman's right to choose (Attachment 14). She questioned whether the bill does anything to curb domestic violence and suggested there are more appropriate ways to punish "harm to the pregnant woman". She urged the Committee to vote No on **HB 2552**.

Discussion followed regarding civil versus criminal action; definition of current law as it relates to pregnant women involved in an accident; purpose and intent of the bill; definitions in the bill; and whether penalties are a deterrent to criminal acts.

The hearing was closed on **HB 2552**. The meeting adjourned at 3:20 p.m. The next meeting is March 8, 2004.