

SENATE BILL REPORT

SB 5441

As Reported By Senate Committee On:
Law & Justice, February 19, 1997

Title: An act relating to abortions.

Brief Description: Prohibiting partial-birth abortions.

Sponsors: Senators Stevens, Hargrove, Swecker, Hochstatter, Oke, Roach, McCaslin, Zarelli, Schow, West and Benton.

Brief History:

Committee Activity: Law & Justice: 2/11/97, 2/19/97 [DP, DNP].

SENATE COMMITTEE ON LAW & JUSTICE

Majority Report: Do pass.

Signed by Senators Roach, Chair; Johnson, Vice Chair; Hargrove, Long, McCaslin, Stevens and Zarelli.

Minority Report: Do not pass.

Signed by Senators Fairley, Goings and Kline.

Staff: Harry Steinmetz (786-7421)

Background: Abortion has been the subject of considerable debate, as well as judicial and legislative activity for the past few decades. Since 1973, the United States and Washington Supreme Courts, the United States Congress, and state Legislature, and the people exercising their initiative powers have acted on the subject.

Particular attention has focused recently on abortions performed by a procedure involving partial delivery of the fetus.

Federal Court Decisions. The U.S. Supreme held in 1973, in *Roe v Wade*, that a woman could, in consultation with her doctor, choose whether or not to have an abortion during the first trimester of her pregnancy, and that the states could not interfere with that decision. During the second trimester state regulation was permitted, at least to the extent of protecting the health of the woman. During the third trimester, or after viability,— states could prohibit abortions, except where necessary to protect the health or life of the woman.

In 1992, in *Planned Parenthood of Southeastern Pennsylvania v. Casey*, the Supreme Court modified its *Roe* decision, while reaffirming (by a five to four majority) the constitutional right to an abortion. In that case, the court significantly expanded the authority of states to regulate abortions prior to viability. Under *Casey*, the test to be applied in judging the constitutionality of a state law on abortion is whether or not that law constitutes an undue burden— on the exercise of the woman's right.

This test prohibits state legislation that has the primary purpose of placing a substantial obstacle in the way of a woman seeking to abort a nonviable fetus. The undue burden test does not prohibit laws that have incidental effects on the expense or difficulty of obtaining an abortion.

The court has also dealt, to a limited extent, with state legislative attempts to regulate particular abortion procedures. In *Planned Parenthood of Central Missouri v. Danforth*, the court struck down a law banning a certain abortion procedure (saline amniocentesis after the 12th week of pregnancy). The court declared the law arbitrary in light of the fact that the prohibited method was the most commonly used procedure, and its ban would require the use of potentially more dangerous procedures in its place.

Federal Legislation. Congress last year passed legislation generally banning partial-birth abortions, but was unable to override a presidential veto.

State Court Decisions. Following *Roe*, in *State v. Koome*, the state Supreme Court declared a parental consent requirement unconstitutional, but expressly relied on federal constitutional analysis in doing so. The court has not addressed abortion under independent state constitutional provisions or analysis. Up to now, the state court has not considered a case involving a law regulating or prohibiting a particular method of performing an abortion.

State Legislation. In 1991 the people approved Initiative 120, which codified the basic holding of *Roe v. Wade*. The initiative declares that every woman has the fundamental right to choose or refuse to have an abortion,— except as specifically limited by the terms of the initiative. It further declares that, except as specifically permitted by that law, the state shall not deny or interfere with a woman’s fundamental right to choose or refuse to have an abortion prior to viability of the fetus, or to protect her life or health.— It is a class C felony to perform an abortion on a viable fetus. Viability is defined as the point in the pregnancy when, in the judgment of the physician on the particular facts of the case before such physician, there is a reasonable likelihood of the fetus’s sustained survival outside the uterus without the application of extraordinary medical measures.—

Summary of Bill: Partial-birth abortions, defined as partially vaginally delivering a living fetus before killing the fetus and completing the delivery, are prohibited, except where necessary to save the life of the mother and no other medical procedure would suffice. Unauthorized performance of such an abortion is a class C felony. A woman upon whom a partial-birth abortion has been performed may not be prosecuted.

A civil cause of action for damages is created against anyone who illegally performs such an abortion. The action may be brought by the mother, the father if he and the mother were married at the time of the abortion, and the maternal grandparents if the mother is a minor at the time of the abortion. Damages may be recovered for physical or psychological injury, and statutory damages of three times the cost of the abortion are allowed, even if any party consented to the performance of an abortion.

The bill contains a referendum clause.

Appropriation: None.

Fiscal Note: Not requested.

Effective Date: Thirty days after the election at which it is approved.

Testimony For: Prohibiting partial-birth abortion is not much different than Initiative 120's prohibition against aborting a viable fetus. It can be performed on a scheduled basis and thus benefits doctors but not patients. The state routinely regulates physician/patient decisions such as in one recent ban on female circumcisions. We have no real way of knowing how many have been performed.

Testimony Against: Science does not support the term partial-birth abortion. The Department of Health has no record of the procedure even being performed in this state. The choice of procedures should be left to the best medical judgment of a physician.

Testified: Senator Stevens, prime sponsor (pro); Dr. Donovan Hanson (pro); Dr. Byron Calhoun (pro); Camille DeBlasi (pro); Melissa Mina (pro); Dr. Maxine Hayes, Department of Health (con); Theresa Connor, Planned Parenthood Association (con).