

HOUSE BILL REPORT

HB 1031

As Reported By House Committee On:

Law & Justice

Title: An act relating to limiting late-term and partial-birth abortions.

Brief Description: Limiting late-term and partial-birth abortions.

Sponsors: Representatives Sterk, Mulliken, Koster, Johnson, Thompson, D. Sommers, Boldt, Sheahan, Sherstad, Carrell, Bush, Smith, Chandler, D. Schmidt and Backlund.

Brief History:

Committee Activity:

Law & Justice: 1/17/97, 1/24/97 [DPS].

HOUSE COMMITTEE ON LAW & JUSTICE

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 7 members: Representatives Sheahan, Chairman; McDonald, Vice Chairman; Sterk, Vice Chairman; Carrell; Lambert; Radcliff and Sherstad.

Minority Report: Do not pass. Signed by 5 members: Representatives Costa, Ranking Minority Member; Constantine, Assistant Ranking Minority Member; Kenney; Lantz and Skinner.

Staff: Bill Perry (786-7123).

Background: Abortion has been the subject of great debate and considerable legislative and judicial activity over the past few decades. Since 1973, both the United States and Washington State Supreme Courts have spoken on the subject, as have the federal Congress, the State Legislature, and the people of the state through the initiative process.

Particular attention has been paid in recent years to abortions performed by a procedure involving partial delivery of the fetus.

FEDERAL COURT DECISIONS. The U.S. Supreme Court held in Roe v. Wade, that a woman could choose, in consultation with her doctor, whether or not to have an abortion during the first trimester of her pregnancy. State interference with such a decision was not allowed. The Court held, however, that during the second trimester

of a pregnancy, state regulation was permissible at least to the extent of protecting the health of the pregnant woman. The Court further held that during the third trimester, or after "viability," state prohibition of an abortion was permissible, except to the extent that an abortion was necessary to preserve the health or life of the woman.

In 1992, in Planned Parenthood of Southeastern Pennsylvania v. Casey, the Court significantly altered its holding in Roe. The Court did not overturn the basic premise of Roe that a woman has a constitutionally protected right to choose whether or not to have an abortion, although four of the Court's justices would have done so. The Court also retained "viability" as the critical point beyond which a state can prohibit abortions. However, the Court significantly expanded the authority of states to regulate abortions prior to viability. Under Casey, the test to be employed in judging the constitutionality of a state law is whether or not the law is an "undue burden" on a 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 an abortion of a nonviable fetus. Permissible purposes include protection of a woman's health and expressing a preference for childbirth over abortion. The undue burden test prohibits interference with a woman's right to make the ultimate decision about abortion. The test does not prohibit laws that have incidental effects on the expense or difficulty of obtaining an abortion.

The Court has dealt, to a limited extent, with the issue of legislative attempts to proscribe particular abortion procedures. In Planned Parenthood of Central Missouri v. Danforth, the Court declared unconstitutional a state 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 method banned was in fact the most commonly used procedure and its ban would require the use of potentially more dangerous procedures in its place.

FEDERAL LEGISLATION. Recently, Congress passed legislation to generally prohibit "partial-birth" abortions. However, this legislation was vetoed by the President.

STATE COURT DECISIONS. Following Roe v. Wade, the state supreme court declared a parental consent requirement in Washington law unconstitutional. In State v. Koome, the court expressly relied on federal constitutional provisions in striking down the parental consent statute. The court has not addressed the question of whether, or to what extent, independent state constitutional provisions might be used to analyze various issues related to abortion. To date, the court has not considered a case related to regulation or prohibition of particular methods of performing abortions.

STATE LEGISLATION. In 1991, the voters of the state, by a vote of 756,653 to 752,354, approved Initiative 120 which codified the basic holding of Roe v. Wade. The initiative provides 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. The initiative further declares that, except as specifically permitted by the initiative, "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."

The initiative also prohibits interference with a woman's right to choose an abortion "to protect her life or health." It is a class C felony to perform an abortion on a viable fetus for any reason other than the protection of a woman's life or health.

Summary of Substitute Bill: "Partial-birth" abortions are prohibited. Illegal 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 in connection with any violation of this prohibition.

The crime is committed by one who intentionally "partially vaginally delivers a living fetus before terminating the life of the fetus and completing the delivery." It is not a crime to perform such an abortion with a reasonable belief that it is necessary to save the life of the woman and that no other abortion procedure would save her life. A civil cause of action is created against one who illegally performs a partial-birth abortion. Such an action may be brought by the mother or father of the fetus, or, in the case of a mother who is a minor, by the maternal grandparents of the fetus. Damages may be recovered for psychological and physical injuries, and "statutory" damages of three times the cost of the abortion may be recovered even if there was consent for the abortion.

Substitute Bill Compared to Original Bill: The substitute bill removes a provision that would have restricted late-term abortions.

Appropriation: None.

Fiscal Note: Not requested.

Effective Date of Substitute Bill: The bill contains an emergency clause and takes effect immediately.

Testimony For: This procedure is often used on healthy babies for purely elective reasons. Even imperfect babies without a chance of normal life should not be killed. The procedure is barbaric and gruesome and can be a threat to the mother's future fertility. Sick babies are the most vulnerable members of society and deserve our protection.

Testimony Against: There is no record of this procedure ever being performed in this state. A family faced with the terrible choice presented by unforeseen problems in a pregnancy should have the right to make this decision. The procedure can preserve the future fertility of a woman. "Partial-birth abortion" is not a medically recognized term, and the bill may discourage or prevent procedures beyond those described by the proponents. The bill violates Initiative 120.

Testified: Representative Sterk, prime sponsor; Jeannie French, citizen (pro); Brenda Schaeffer and Margaret Sheridan, citizens from Franklin, Ohio and Chevy Chase, Maryland respectively (by telephone testimony, pro); Camille De Blasi, Human Life of Washington (pro); Kay Regan, Friends of Family (pro); Tammy Watts, citizen (con); Lisa Stone, Pro Choice Washington (con); Pat Shively, Eastside Women's Health Clinic (con); and Dr. Maxine Hayes, Assistant Secretary, Department of Health.